

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1038

5 By: Representatives D. Creekmore, Walters
6
7

For An Act To Be Entitled

8 AN ACT TO PROTECT CONSUMERS THAT ARE VICTIMS OF
9 FINANCIAL IDENTITY FRAUD; AND FOR OTHER PURPOSES.
10

Subtitle

11 PROTECTION FOR VICTIMS OF FINANCIAL
12 IDENTITY FRAUD ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 4 is amended to add an additional
20 chapter and subchapter to read as follows:
21

22 Chapter 112 – FINANCIAL IDENTITY FRAUD

23 Subchapter 1 – PROTECTION FOR VICTIMS OF FINANCIAL IDENTITY FRAUD ACT
24 4-112-101. Title.

25 This subchapter shall be known and cited as the "Protection For Victims
26 Of Financial Identity Fraud Act".
27

28 4-112-102. Definitions.

29 As used in this subchapter:

30 (1) "Consumer" means an individual;

31 (2)(A) "Consumer report" means any written, oral, or other
32 communication of any information by a consumer reporting agency bearing on a
33 consumer's creditworthiness, credit standing, credit capacity, character,
34 general reputation, personal characteristics, or mode of living which is used
35 or expected to be used or collected in whole or in part for the purpose of
36 servng as a factor in establishing the consumer's eligibility for credit or



1 insurance to be used primarily for:

2 (i) Personal, family, or household purposes;

3 (ii) Employment purposes; or

4 (iii) Any other purpose authorized under 15 U.S.C. §
 5 1681b as it existed on February 14, 2006.

6 (B) Except as provided in subdivision (2)(C) of this
 7 section, consumer report does not include:

8 (i) Subject to the affiliate sharing provisions of
 9 15 U.S.C. § 1681s-3 as it existed on February 14, 2006, any:

10 (a) Report containing information solely about
 11 transactions or experiences between the consumer and the person making the
 12 report;

13 (b) Communication of the information described
 14 in subdivision (2)(B)(i)(a) of this section among persons related by common
 15 ownership or affiliated by corporate control; or

16 (c) Communication of other information among
 17 persons related by common ownership or affiliated by corporate control, if it
 18 is clearly and conspicuously disclosed to the consumer that the information
 19 may be communicated among the persons and the consumer is given the
 20 opportunity, before the time that the information is initially communicated,
 21 to direct that the information not be communicated among the persons;

22 (ii) Any authorization or approval of a specific
 23 extension of credit directly or indirectly by the issuer of a credit card or
 24 similar device;

25 (iii) Any report in which a person who has been
 26 requested by a third party to make a specific extension of credit directly or
 27 indirectly to a consumer conveys his or her decision with respect to the
 28 request, if the third party advises the consumer of the name and address of
 29 the person to whom the request was made and the person makes the disclosures
 30 to the consumer required under 15 U.S.C. § 1681m as it existed on February
 31 14, 2006; or

32 (iv) A communication described in 15 U.S.C. §
 33 1681a(o) or 15 U.S.C. § 1681a(x) as they existed on February 14, 2006.

34 (C) Except for information or any communication of
 35 information disclosed under 15 U.S.C. § 1681b(g)(3) as it existed on February
 36 14, 2006, the exclusions in subdivision (2)(B) of this section shall not

1 apply with respect to information disclosed to any person related by common
 2 ownership or affiliated by corporate control, if the information is:

3 (i) Medical information;

4 (ii) An individualized list or description based on
 5 the payment transactions of the consumer for medical products or services; or

6 (iii) An aggregate list of identified consumers
 7 based on payment transactions for medical products or services;

8 (3) "Consumer reporting agency" means any person that:

9 (A) For monetary fees, dues, or on a cooperative nonprofit
 10 basis, regularly engages in whole or in part in the practice of assembling or
 11 evaluating consumer credit information or other information on consumers for
 12 the purpose of furnishing consumer reports to third parties; and

13 (B) Uses any means or facility of interstate commerce for
 14 the purpose of preparing or furnishing consumer reports;

15 (4) "Financial identity fraud" means any act that is unlawful
 16 under § 5-37-227;

17 (5) "Person" means any individual, partnership, corporation,
 18 trust, estate, cooperative, association, government or governmental
 19 subdivision or agency, or other entity;

20 (6) "Proper identification" means information sufficient to
 21 identify a person; and

22 (7) "Security freeze" means a notice placed in a consumer's
 23 consumer report at the request of a consumer under § 4-112-103 that prohibits
 24 a consumer reporting agency from releasing the consumer's consumer report or
 25 any information in the consumer report without the consumer's authorization.

26
 27 4-112-103. Security freeze by consumer reporting agency – Procedures.

28 (a)(1)(A) A consumer who has been or who reasonably believes that he
 29 or she has been the victim of financial identity fraud may request a security
 30 freeze on the consumer's consumer report by sending the request in writing by
 31 certified mail to a consumer reporting agency.

32 (B) The request for a security freeze shall include a
 33 valid copy of a police report, investigative report, or complaint the
 34 consumer has filed with a law enforcement agency about the financial identity
 35 fraud that the consumer has been or that the consumer reasonably believes to
 36 have been the victim of.

1 (C) A consumer reporting agency shall not charge a victim
 2 of financial identity fraud a fee for placing, removing, or suspending for a
 3 specific party or a period of time a security freeze on the victim's consumer
 4 report.

5 (2)(A) A consumer who has not been the victim of financial
 6 identity fraud may request a security freeze on the consumer's consumer
 7 report by sending the request in writing by certified mail to a consumer
 8 reporting agency.

9 (B) A consumer reporting agency may charge a fee of not
 10 more than ten dollars (\$10.00) to a consumer for:

- 11 (i) Each placement of a security freeze;
- 12 (ii) Each removal of a security freeze;
- 13 (iii) Each temporary suspension of a security freeze
 14 for a period of time; or

15 (iv) Reissuing the same or a new personal
 16 identification number if the consumer fails to retain the original personal
 17 identification number provided by the consumer reporting agency.

18 (C) A consumer reporting agency may charge a fee of not
 19 more than twelve dollars (\$12.00) for a temporary suspension of a security
 20 freeze for a specific party.

21 (3) Subject to the exceptions in subsection (i) of this section,
 22 when a security freeze has been placed in a consumer report the consumer
 23 reporting agency shall not:

24 (A) Release the consumer report without the consumer's
 25 authorization; or

26 (B)(i) Release information from a consumer report to a
 27 person or entity other than the consumer without the consumer's
 28 authorization.

29 (ii) Subdivision (a)(3)(B)(i) of this section shall
 30 not prevent a consumer reporting agency from advising a person or entity
 31 other than the consumer that a security freeze is in place with respect to
 32 the consumer report.

33 (b) Upon receipt of a request that complies with subsection (a) of
 34 this section, a consumer reporting agency shall:

35 (1) Place a security freeze in the placement of the consumer
 36 report no later than five (5) business days after receiving the request;

1 (2) Send a written confirmation of the placement of the security
 2 freeze to the consumer within ten (10) business days of receipt of the
 3 request from the consumer;

4 (3) Provide the consumer with a personal identification number or
 5 password other than the consumer's social security number to be used by the
 6 consumer when providing authorization for the release of the consumer report
 7 to a specific party or for a period of time;

8 (4) Disclose to the consumer the consumer reporting agency's
 9 procedures for:

10 (A) Placing and temporarily suspending a security freeze;
 11 and (B) Allowing access to information from the consumer
 12 report for a specific party or period of time while the security freeze is in
 13 place; and

14 (5) Provide a sample copy of the consumer reporting agency's
 15 disclosure form to the Consumer Protection Division of the Office of the
 16 Attorney General on or before January 15 of each year following the effective
 17 date of this subchapter and any time a material change is made to its
 18 disclosure form.

19 (c)(1) A consumer may allow access to his or her consumer report by a
 20 specific party or for a period of time while a security freeze is in place by
 21 requesting that the security freeze be temporarily suspended and by providing
 22 the consumer reporting agency:

23 (A) Proper identification;
 24 (B) The personal identification number or password
 25 provided by the consumer reporting agency under subdivision (b)(3) of this
 26 section; and

27 (C) A description of the specific party granted access or
 28 the time period for which the consumer report is to be available to users.

29 (2) The consumer reporting agency shall comply with the request
 30 no later than three (3) business days after receiving the request.

31 (d)(1) A consumer reporting agency may develop procedures involving
 32 the use of telephone, facsimile transmission, the Internet, or other
 33 electronic media to receive and process a request from a consumer to
 34 temporarily suspend a security freeze under subsection (c) of this section.

35 (2) A consumer reporting agency shall not charge a fee to a
 36 consumer for use of the procedures described in subdivision (d)(1) of this

1 section in excess of the fees authorized under subsection (a) of this
 2 section.

3 (e) A consumer reporting agency shall remove or temporarily suspend a
 4 security freeze placed in a consumer report:

5 (1) Upon a consumer's request under subsection (c) or subsection
 6 (g) of this section; or

7 (2)(A) If the security freeze was placed due to a material
 8 misrepresentation of fact by the consumer.

9 (B) If a consumer reporting agency intends to remove a
 10 security freeze under subdivision (e)(2)(A) of this section, the consumer
 11 reporting agency shall notify the consumer in writing prior to removing the
 12 security freeze.

13 (f) If a person or entity other than the consumer requests access to a
 14 consumer report subject to a security freeze in connection with an
 15 application for credit or any other use and the consumer does not allow
 16 access to the consumer report for that specific party or period of time, the
 17 requesting person or entity may treat the application as incomplete.

18 (g)(1) A security freeze shall remain in place until the consumer
 19 requests that the security freeze be removed.

20 (2) A consumer reporting agency shall remove a security freeze
 21 within three (3) business days of receiving a request for removal from a
 22 consumer who provides:

23 (A) Proper identification; and

24 (B) The personal identification number or password
 25 provided by the consumer reporting agency under subdivision (b)(3) of this
 26 section.

27 (h) A consumer reporting agency shall require proper identification of
 28 the consumer making a request to place or remove a security freeze.

29 (i) This section shall not apply to the use of a consumer report by:

30 (1)(A) A person or person's subsidiary, affiliate, agent, or
 31 assignee with which the consumer has or, prior to assignment, had an account,
 32 contract, or debtor-creditor relationship for the purpose of:

33 (i) Reviewing the account;

34 (ii) Collecting the financial obligation owing for
 35 the account, contract, or debt; or

36 (iii) Extending credit to a consumer with a prior or

1 existing account, contract, or debtor-creditor relationship.

2 (B) For purposes of subdivision (i)(1)(A) of this section,
 3 “reviewing the account” includes activities related to account maintenance,
 4 monitoring, credit line increases, account upgrades, and account
 5 enhancements;

6 (2) A subsidiary, affiliate, agent, assignee, or prospective
 7 assignee of a person to whom access has been granted under subsection (c) of
 8 this section to facilitate the extension of credit or another permissible
 9 use;

10 (3) A person acting under a court order, warrant, or subpoena;

11 (4) Officials of the Office of Child Support Enforcement of the
 12 Revenue Division of the Department of Finance and Administration when
 13 enforcing or seeking to enforce a support obligation under a plan described
 14 in Title IV-D of the Social Security Act;

15 (5) The Attorney General, a state agency, and their agents and
 16 assignees acting to investigate Medicaid fraud;

17 (6) The Director of the Department of Finance and
 18 Administration, the Secretary of State, and their agents or assignees acting
 19 to investigate or collect delinquent taxes or assessments, including interest
 20 and penalties and unpaid court orders, or to fulfill any of their other
 21 statutory or constitutional responsibilities;

22 (7) A person using credit information for prescreening under the
 23 Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681t;

24 (8) A person for the sole purpose of providing a credit file
 25 monitoring subscription service to which the consumer has subscribed;

26 (9) A consumer reporting agency for the sole purpose of
 27 providing a consumer with a copy of the consumer’s consumer report upon the
 28 consumer’s request; and

29 (10) The Consumer Protection Division of the Office of the
 30 Attorney General.

31
 32 4-112-104. Duties of consumer reporting agency if security freeze is
 33 in place.

34 (a) If a security freeze is in place, a consumer reporting agency
 35 shall not change any of the following official information in a consumer
 36 report without sending written confirmation of the change to the consumer

1 within thirty (30) calendar days of the change being posted to the consumer's
 2 consumer report:

- 3 (1) Name;
- 4 (2) Date of birth;
- 5 (3) Social security number; and
- 6 (4) Address.

7 (b) In the case of an address change, the written confirmation shall
 8 be sent to the new address and to the former address.

9 (c) Written confirmation is not required for technical modifications
 10 of official information in a consumer report, including name and street
 11 abbreviations, complete spellings, and transposition of numbers or letters.

12
 13 4-112-105. Persons not required to place security freeze.

14 (a) Except as provided in subsection (b) of this section, the
 15 following persons are not required to place a security freeze under § 4-112-
 16 103:

17 (1) A check services or fraud prevention services company that
 18 reports on incidents of fraud or issues authorizations to approve or process
 19 negotiable instruments, electronic fund transfers, or similar methods of
 20 payment;

21 (2) A deposit account information services company that issues
 22 reports regarding account closures due to fraud, overdrafts, automated teller
 23 machine abuse, or similar negative information regarding a consumer to an
 24 inquiring financial institution for use only in reviewing the consumer's
 25 request for a deposit account at the financial institution; and

26 (3) A consumer reporting agency that:

27 (A) Acts only to resell credit information by assembling
 28 and merging information contained in a database of one (1) or more consumer
 29 reporting agencies; and

30 (B) Does not maintain a permanent database of credit
 31 information from which new consumer reports are produced.

32 (b) Any person that is not required to place a security freeze in a
 33 consumer report under subsection (a) of this section is subject to a security
 34 freeze placed in a consumer report by another consumer reporting agency from
 35 which it obtains information.

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