

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.

Act 391 of the Regular Session

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

As Engrossed: H3/1/07

A Bill

HOUSE BILL 2215

5 By: Representatives Maloch, D. Creekmore, Adcock, T. Baker, E. Brown, Burris, Cash, Cornwell, Dunn,
6 George, Hardwick, House, J. Johnson, Kidd, Maxwell, Overbey, Pennartz, Pierce, S. Prater, Reep,
7 Rosenbaum, Stewart, Wagner, Walters
8 By: Senators Capps, Broadway, Glover, Salmon, Trusty
9
10

For An Act To Be Entitled

11
12 AN ACT TO PERMIT PLACING A SECURITY FREEZE ON A
13 PERSON'S CONSUMER REPORT; TO PROVIDE PROCEDURES FOR
14 THE PLACEMENT AND REMOVAL OF THE SECURITY FREEZE; TO
15 PROVIDE NOTICE OF THE RIGHT TO OBTAIN A SECURITY
16 FREEZE; AND FOR OTHER PURPOSES.
17
18

Subtitle

19
20 TO PERMIT PLACING A SECURITY FREEZE ON A
21 PERSON'S CONSUMER REPORT, TO PROVIDE
22 PROCEDURES FOR THE PLACEMENT AND REMOVAL
23 OF THE SECURITY FREEZE, AND TO PROVIDE
24 NOTICE OF THE RIGHT TO OBTAIN A SECURITY
25 FREEZE.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code Title 4 is amended to add an additional
31 chapter to read as follows:

32 4-112-101. Title.

33 This chapter shall be known and may be cited as the "Arkansas Consumer
34 Report Security Freeze Act".
35



1 4-112-102. Definitions.

2 As used in this chapter:

3 (1) "Consumer" means an individual who is a resident of this
4 state and who has been a victim of identity theft and who has submitted, at
5 the time the security freeze is requested, a copy of a valid investigative
6 report, an incident report, or a complaint with a law enforcement agency
7 about the unlawful use of the victim's identifying information by another
8 person;

9 (2) "Consumer report" means the same as defined in 15 U.S.C. §
10 1681a(d) as it existed on January 1, 2007;

11 (3) "Consumer reporting agency" means the same as defined in 15
12 U.S.C. § 1681a(f) as it existed on January 1, 2007;

13 (4) "Proper identification" means the same as defined in 15
14 U.S.C. § 1681h(a)(1) as it existed on January 1, 2007; and

15 (5) "Security freeze" means a notice placed in a consumer report
16 of a consumer at the request of the consumer that prohibits a consumer
17 reporting agency from releasing the consumer report or credit score of the
18 consumer in response to a request to open a new account or to extend credit.

19
20 4-112-103. Placement of security freeze.

21 (a)(1) A consumer may request that a security freeze be placed on his
22 or her consumer report by sending a request in writing by certified mail to a
23 consumer reporting agency at an address designated by the consumer reporting
24 agency to receive such requests.

25 (2) This subsection does not prevent a consumer reporting agency
26 from advising a third party that a security freeze is in effect with respect
27 to the consumer report of a consumer.

28 (b)(1) Except as provided in subdivision (b)(2) of this section, a
29 consumer reporting agency shall place a security freeze on a consumer report
30 of a consumer no later than five (5) business days after receiving from the
31 consumer:

32 (A) A written request as provided in subsection (a) of
33 this section;

34 (B) Proper identification; and

35 (C) Payment of the required fee, if applicable.

36 (2) For any security freeze requested before May 1, 2008, the

1 deadline stated in this subsection shall be ten (10) business days if a
2 consumer reporting agency in good faith is unable to process during normal
3 business hours the quantity of security freeze requests received.

4 (c)(1) The consumer reporting agency shall send a written confirmation
5 of the placement of the security freeze to the consumer within ten (10)
6 business days.

7 (2) Upon placing the security freeze on the consumer report of
8 the consumer, the consumer reporting agency shall provide the consumer with a
9 unique personal identification number or password to be used by the consumer
10 when providing authorization for the release of his or her consumer report
11 for a specific period of time.

12 (d) If a consumer requests a security freeze, the consumer reporting
13 agency shall disclose the process:

14 (1) Of placing a security freeze and temporarily lifting a
15 security freeze; and

16 (2) For allowing access to information from the consumer report
17 of the consumer for a period of time while the security freeze is in place.

18
19 4-112-104. Access to consumer report.

20 (a) If the consumer wishes to allow his or her consumer report to be
21 accessed for a specific period of time while a security freeze is in place,
22 he or she shall contact the consumer reporting agency using a method of
23 contact designated by the consumer reporting agency requesting that the
24 security freeze be temporarily lifted and providing, to complete the request,
25 all of the following:

26 (1) Proper identification;

27 (2) The unique personal identification number or password
28 provided by the consumer reporting agency pursuant to § 4-112-103(c);

29 (3) The proper information regarding the time period for which
30 the consumer report shall be available to users of the consumer report; and

31 (4) The required fee, if applicable.

32 (b) A consumer reporting agency that receives a request from a
33 consumer to temporarily lift a security freeze on his or her consumer report
34 accompanied by all of the items listed in subsection (a) of this section
35 shall comply with the request no later than three (3) business days after
36 receiving the completed request.

1 (c) A consumer reporting agency may develop procedures involving the
2 use of telephone, facsimile, the Internet, or other electronic media to
3 receive and process a request from a consumer to temporarily lift a security
4 freeze on a consumer report pursuant to subsection (a) of this section in an
5 expedited manner.

6
7 4-112-105. Removal of security freeze.

8 (a)(1) A consumer reporting agency shall remove or temporarily lift a
9 security freeze placed on the consumer report of a consumer in the following
10 cases:

11 (A) Upon the consumer's request pursuant to §§ 4-112-104
12 or 4-112-106; or

13 (B) If the consumer report of the consumer was frozen due
14 to a material misrepresentation of fact by the consumer.

15 (2) If a consumer reporting agency intends to remove a security
16 freeze upon a consumer report of a consumer and is not doing so at the
17 request of the consumer, the consumer reporting agency shall notify the
18 consumer in writing prior to removing the security freeze on the consumer
19 report of the consumer.

20 (b) If a third party requests access to a consumer report on which a
21 security freeze is in effect and the third-party request is in connection
22 with an application for credit or any other use and the consumer does not
23 allow his or her consumer report to be accessed for that period of time, the
24 third party may treat the application as incomplete.

25
26 4-112-106. Consumer request for removal of security freeze.

27 (a)(1) A security freeze shall remain in place until the consumer
28 requests that the security freeze be removed using a method of contact
29 designated by the consumer reporting agency.

30 (2) A consumer reporting agency shall remove a security freeze
31 within three (3) business days of receiving a request for removal under
32 subdivision (a)(1) of this section from a consumer who provides with the
33 request:

34 (A) Proper identification;

35 (B) The unique personal identification number or password
36 provided by the consumer reporting agency under § 4-112-103; and

1 (C) The required fee, if applicable.

2 (b) A consumer reporting agency shall require proper identification of
3 the consumer making a request to place or remove a security freeze.

4
5 4-112-107. Exceptions.

6 This chapter does not apply to the use of a consumer credit report by
7 any of the following:

8 (1)(A) A person or entity, or a subsidiary, an affiliate, or an
9 agent of that person or entity, or an assignee of a financial obligation owed
10 by the consumer to that person or entity, or a prospective assignee of a
11 financial obligation owed by the consumer to that person or entity in
12 conjunction with the proposed purchase of the financial obligation, with
13 which the consumer has or had prior to assignment an account or a contract
14 including a demand deposit account, or to whom the consumer issued a
15 negotiable instrument, for the purposes of reviewing the account or
16 collecting the financial obligation owed for the account, contract, or
17 negotiable instrument.

18 (B) As used in this subdivision (a)(1), "reviewing the
19 account" includes activities related to account maintenance, monitoring,
20 credit line increases, and account upgrades and enhancements;

21 (2) A subsidiary, an affiliate, an agent, an assignee, or a
22 prospective assignee of a person or an entity to which access has been
23 granted for purposes of facilitating the extension of credit or other
24 permissible use;

25 (3) A state or local agency, law enforcement agency, trial
26 court, or private collection agency acting pursuant to a court order,
27 warrant, or subpoena;

28 (4) A child support agency acting pursuant to Title IV-D of the
29 Social Security Act, 42 U.S.C. § 651 et seq., as it existed on January 1,
30 2007;

31 (5) The state or its agents or assigns acting to investigate
32 fraud or acting to investigate or collect delinquent taxes or unpaid court
33 orders or to fulfill any of its other constitutional or statutory
34 responsibilities if such responsibilities are consistent with a permissible
35 purpose under 15 U.S.C. § 1681b, as it existed on January 1, 2007;

36 (6) The use of credit information used for purposes permitted

1 under 15 U.S.C. § 1681b(c), as it existed on January 8, 2007;

2 (7) Any person or entity administering a credit file monitoring
3 subscription or similar service to which the consumer has subscribed;

4 (8) Any person or entity for the purpose of providing a consumer
5 with a copy of his or her consumer report or credit score upon the request of
6 the consumer;

7 (9) Any person using the information in connection with the
8 business of insurance; or

9 (10) A consumer reporting agency's database or file that is used
10 for one (1) or more of the following:

11 (A) Maintaining criminal records;

12 (B) Fraud prevention or detection;

13 (C) Maintaining personal loss history information; or

14 (D) Employment, tenant, or individual background screening.

15
16 4-112-108. Permissible fees.

17 A consumer reporting agency may charge a consumer a fee of no more than
18 ten dollars (\$10.00) for each security freeze, removal of a security freeze,
19 or temporary lifting of a security freeze for a period of time.

20
21 4-112-109. Written confirmation.

22 (a) If a security freeze is in place, a consumer reporting agency
23 shall not change any of the following official information in a consumer
24 report without sending a written confirmation of the change to the consumer
25 within thirty (30) days of posting the change to the file of the consumer:

26 (1) Name;

27 (2) Date of birth;

28 (3) Social security number; and

29 (4) Address.

30 (b)(1) Written confirmation is not required for technical
31 modifications of official information of a consumer, including name and
32 street abbreviations, complete spellings, or the transposition of numbers or
33 letters.

34 (2) In the case of an address change, the written confirmation
35 shall be sent to both the new address and to the former address.

36

1 4-112-110. Entities not required to place security freeze.

2 The following entities are not required to place a security freeze on a
3 consumer report:

4 (1)(A) A consumer reporting agency that acts only as a reseller
5 of credit information by assembling and merging information contained in the
6 database of another consumer reporting agency or multiple consumer reporting
7 agencies and does not maintain a permanent database of credit information
8 from which new consumer reports are produced.

9 (B) However, a consumer reporting agency acting as a
10 reseller shall honor any security freeze placed on a consumer report by
11 another consumer reporting agency;

12 (2) A check services or fraud prevention services company that
13 issues reports on incidents of fraud or authorizations for the purpose of
14 approving or processing negotiable instruments, electronic funds transfers,
15 or similar methods of payments; or

16 (3) A deposit account information service company that issues
17 reports regarding account closures due to fraud, substantial overdrafts,
18 automatic teller machine abuse, or similar negative information regarding a
19 consumer to inquiring banks or other financial institutions for use only in
20 reviewing a consumer request for a deposit account at the inquiring bank or
21 financial institution.

22
23 4-112-111. Notice.

24 At any time that a consumer is required to receive a summary of rights
25 required under 15 U.S.C. § 1681g, as it existed on January 1, 2007, the
26 following notice shall be included:

27
28 “Arkansas Consumers Have the Right to Obtain a Security Freeze.

29
30 You have the right to place a “security freeze” on your credit report, which
31 will prohibit a consumer reporting agency from releasing information in your
32 credit report without your express authorization. A security freeze must be
33 requested in writing by certified mail. The security freeze is designed to
34 prevent credit, loans, and services from being approved in your name without
35 your consent. However, you should be aware that using a security freeze to
36 take control over who gets access to the personal and financial information

1 in your credit report may delay, interfere with, or prohibit the timely
2 approval of any subsequent request or application you make regarding a new
3 loan, credit, mortgage, government services or payments, rental housing,
4 employment, investment, license, cellular phone, utilities, digital
5 signature, Internet credit card transaction, or other services, including an
6 extension of credit at point of sale.

7
8 When you place a security freeze on your credit report, you will be provided
9 a personal identification number or password to use if you choose to remove
10 the security freeze on your credit report or authorize the release of your
11 credit report for a period of time after the security freeze is in place. To
12 provide that authorization you must contact the consumer reporting agency by
13 one (1) of the methods that it requires and provide all of the following:

- 14 (1) Your personal identification number or password;
15 (2) Proper identification to verify your identity;
16 (3) The proper information regarding the period of time for
17 which the consumer report shall be available; and
18 (4) Payment of the appropriate fee, if any.

19
20 A consumer reporting agency must authorize the release of your credit report
21 no later than three (3) business days after receiving all of the above items
22 by any method that the consumer reporting agency allows.

23
24 A security freeze does not apply to a person or an entity, or its affiliates,
25 or collection agencies acting on behalf of the person or entity with which
26 you have an existing account that requests information in your credit report
27 for the purposes of reviewing or collecting the account. Reviewing the
28 account includes activities related to account maintenance, monitoring,
29 credit line increases, and account upgrades and enhancements.

30
31 You have a right to bring a civil action against anyone, including a consumer
32 reporting agency, that willfully or negligently fails to comply with any
33 requirement of the Arkansas Consumer Report Security Freeze Act.

34
35 A consumer reporting agency has the right to charge you up to ten dollars
36 (\$10.00) to place a security freeze on your credit report, up to ten dollars

1 (\$10.00) to temporarily lift a security freeze on your credit report, and up
2 to ten dollars (\$10.00) to remove a security freeze from your credit report.
3 However, you shall not be charged any fee if you are a victim of identity
4 theft and have submitted, at the time the security freeze is requested, a
5 copy of a valid investigative report or incident report or complaint with a
6 law enforcement agency about the unlawful use of your identifying information
7 by another person.”

8
9 4-112-112. Civil action.

10 (a) Any person or entity that willfully fails to comply with any
11 requirement imposed under this chapter with respect to any consumer is liable
12 to that consumer in an amount equal to the sum of:

13 (1) Any actual damages sustained by the consumer; and

14 (2) In the case of any successful action to enforce any
15 liability under this chapter, the costs of the action together with
16 reasonable attorney’s fees as determined by the court.

17 (b) Any person or entity that obtains a consumer report, requests a
18 security freeze, or requests the temporary lift of a security freeze or the
19 removal of a security freeze from a consumer reporting agency under false
20 pretenses or in an attempt to violate federal or state law is liable to the
21 consumer reporting agency for actual damages sustained by the consumer
22 reporting agency or one thousand dollars (\$1,000), whichever is greater.

23 (c) Any person or entity that is negligent in failing to comply with
24 any requirement imposed under this chapter with respect to any consumer is
25 liable to that consumer in an amount equal to the sum of:

26 (1) Any actual damages sustained by the consumer as a result of
27 the failure; and

28 (2) In the case of any successful action to enforce any
29 liability under this chapter, the costs of the action together with
30 reasonable attorney’s fees as determined by the court.

31 (d) Upon a finding by the court that an unsuccessful pleading, motion,
32 or other paper filed in connection with an action under this chapter was
33 filed in bad faith or for purposes of harassment, the court shall award to
34 the prevailing party reasonable attorney’s fees in relation to the work
35 expended in responding to the pleading, motion, or other paper.

36

1 4-112-113. Enforcement – Penalties – Remedies.

2 (a) A violation of this subchapter constitutes an unfair act or
3 practice or a deceptive act or practice under § 4-88-101 et seq., pertaining
4 to deceptive trade practices.

5 (b)(1) All remedies, penalties, and authority granted to the Attorney
6 General under § 4-88-101 et seq., shall be available to the Attorney General
7 for enforcement of this chapter.

8 (2) The remedies and penalties provided by this section are
9 cumulative to each other and the remedies or penalties available under all
10 other laws of this state.

11
12 SECTION 2. EFFECTIVE DATE. This act takes effect January 1, 2008.

13
14 /s/ Maloch

15
16 APPROVED: 3/20/2007