

SESSION OF 2016

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2134

As Amended by Senate Committee of the Whole

Brief*

HB 2134, as amended, would enact new law supplemental to and amend provisions in the Fair Credit Reporting Act to authorize security freezes on consumer credit reports for protected consumers.

Definitions

The bill would establish definitions in the Fair Credit Reporting Act, including:

- “Protected consumer” means an individual who is:
 - Under the age of 16 years at the time a request for placement of a security freeze is made; or
 - An individual for whom a guardian or conservator has been appointed;
- “Security freeze for a protected consumer” means one of the following:
 - If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction placed on the protected consumer’s record that prohibits the consumer reporting agency from releasing the protected consumer’s record; or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- If a consumer reporting agency has a file pertaining to the protected consumer, a restriction placed on the protected consumer's consumer report that prohibits the consumer reporting agency from releasing the protected consumer's consumer report or any information derived from the protected consumer's consumer report;
- "Sufficient proof of authority" means documentation that shows a representative has the authority to act on behalf of a protected consumer, including any of the following:
 - An order issued by a court;
 - A lawfully executed and valid power of attorney; or
 - A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

The bill also would define "record" and "sufficient proof of identification."

Security Freezes—Protected Consumers

The bill would enact new law, effective January 1, 2017, to require a consumer reporting agency to place a security freeze for a protected consumer if the consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze and the protected consumer's representative:

- Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

- Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;
- Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and
- Pays to the consumer reporting agency a fee, as specified in the bill:
 - A consumer reporting agency would be permitted to charge a reasonable fee, not exceeding \$10, for each placement or removal of a security freeze for a protected consumer unless the protected consumer's representative has obtained a police report or affidavit of alleged fraud against the protected consumer and provides a copy of this report or affidavit, or a request for placement or removal of a security freeze is for a protected consumer who is under the age of 18 years at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.

The bill would further provide if a consumer reporting agency does not have a record pertaining to a protected consumer when it receives a request for a security freeze, the consumer reporting agency would be required to create a record for the protected consumer. The consumer reporting agency would be required, within 30 days after receiving a request meeting the requirements specified in the bill, to place a security freeze for the protected consumer.

Consumer Report Records; Removal of Security Freezes

The bill would prohibit, unless a security freeze for the protected consumer has been removed, a consumer reporting agency from releasing the protected consumer's

consumer report, any information derived from this report, or any record created for the protected consumer.

Under the bill, a security freeze for a protected consumer would remain in effect until:

- The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the security freeze in accordance with provisions of the bill; or
- The security freeze is removed in accordance with provisions of the bill.

If a protected consumer or a protected consumer's representative wishes to remove a security freeze, the protected consumer or representative must:

- Submit a request for the removal to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;
- Provide to the consumer reporting agency the following sufficient proof of identification of the protected consumer:
 - For a request by the protected consumer, proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; or
 - For a request by the representative of a protected consumer, sufficient proof of identification of the representative and sufficient proof of authority to act on behalf of the protected consumer; and

- Pay a fee to the consumer reporting agency, as described in provisions in the bill relating to fees, for placement or removal of a security freeze.

Applicability of Security Freeze Provisions; Failure to Comply

The bill would not apply to:

- A person administering a credit file monitoring subscription service to which the protected consumer has subscribed or the representative of the protected consumer has subscribed on behalf of the protected consumer;
- A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative; or
- A person or entity listed in KSA 2015 Supp. 50-723 (i)(1) and (6) – (12) or 50-724(a)(1) – (5). Those persons and entities include federal, state, or local government entities, including a law enforcement agency or court; persons providing a consumer a copy of the consumer's own report at such consumer's request; a child support enforcement agency; check services or fraud prevention services companies; and employers in connection with applications for employment. This also would include any database or file which consists solely of any information adverse to the interests of the consumer (e.g. criminal record information, tenant screening, and employment screening).

The bill would further permit a consumer reporting agency to remove a security freeze for a protected consumer or delete a record of a protected consumer if such security

freeze was placed or the record was created based on a material misrepresentation of a fact by the protected consumer or the protected consumer's representative.

Finally, the bill would provide that any person who fails to comply with any requirement imposed under the new section (made supplemental to the Fair Credit Reporting Act) with respect to any protected consumer shall be liable pursuant to the provisions of the Fair Credit Reporting Act.

Effective Date

The bill would take effect and be in force from and after January 1, 2017, and its publication in the *Kansas Register*.

Background

The bill was introduced in the House Appropriations Committee. At the 2015 hearing in the House Financial Institutions Committee, Representative Carlin appeared as a proponent and also offered testimony on behalf of a constituent. The testimony indicated the bill would establish proactive steps to prevent the theft of a child's identity. The proponents noted victims of child identity theft may not learn they have bad credit until a notice is received from a collection agency or until they apply for student loans or a mortgage. A representative of the Consumer Data Industry Association (CDIA) also appeared in support of the bill and requested amendments, including a change in the effective date for the provisions, to make the bill consistent with laws passed in other states.

The House Committee on Financial Institutions' amendments (adopted during the 2015 Session) added an age limitation to when a security freeze would be effective; added further persons and entities from the Fair Credit Reporting Act to the list of exceptions from the security freeze requirements in the bill; deleted penalty provisions associated

with the willful failure to comply with the security freeze provisions created by the bill and instead make persons who fail to comply with any imposed requirement liable pursuant to the Fair Credit Reporting Act (penalties for willful noncompliance and recovery of damages already are included in this act); and delayed the effective date for the new provisions. The House Committee also made technical amendments.

In 2016, the bill was referred from General Orders of the House to the Committee on Insurance and Financial Institutions. A hearing was held on the bill and the proponents included Representative Carlin and a CDIA representative. The CDIA representative indicated support for the bill was conditional on adoption of an amendment to lower an age limitation specified for minors. A representative of the State Farm Insurance Companies provided neutral testimony and also requested amendments to address access to credit file information in limited circumstances (e.g. insurance underwriting, claims handling, and underwriting).

The House Committee on Insurance and Financial Institutions amendments deleted one of three criteria, the protected consumer reaches 18 years of age, associated with the removal of a security freeze; modified the definition of “protected consumer” to lower the age, from 18 to 16, of an individual who may request a security freeze under the provisions of the bill; and updated the effective date of the bill and the statute amended by the bill and associated statutory references.

The Senate Committee of the Whole modified the effective date to publication in the *Kansas Register*. (The provisions created by the bill would be in effect on and after January 1, 2017.)

The fiscal note prepared by the Division of the Budget on the bill in 2015, as introduced, states the bill has the potential for increasing litigation in the courts. If the bill does increase litigation, the Office of Judicial Administration

indicates there would be a fiscal effect on the operations of the court system. However, the fiscal note states it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect associated with the bill was not reflected in *The FY 2016 Governor's Budget Report*.