367.365 Consumer's election regarding security freeze on consumer report -- Subsequent access -- Duties of consumer reporting agency -- Duration of security freeze -- Inapplicability to certain consumer reports -- Permitted charges for security freeze -- Changes to official consumer report information -- Penalties for section's violation.

(1) (a) A consumer may elect to place a security freeze on the consumer's consumer report by written request, sent by certified mail, that includes clear and proper identification, to a consumer reporting agency at an address designated by the consumer reporting agency to receive such request. A consumer reporting agency shall place a security freeze on a consumer's consumer report no later than ten (10) business days after receiving a written request for the security freeze from the consumer.

(b) When a security freeze is in place, information from a consumer's consumer report shall not be released to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's consumer report.

(2) The consumer reporting agency shall, no later than ten (10) business days after the date the agency receives the request for a security freeze, provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the access to his or her credit file for a specific period of time. In addition, the consumer reporting agency shall simultaneously provide to the consumer in writing the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit file for a specific period while the security freeze is in effect.

(3) A consumer may request in writing a replacement personal identification number or password. The request shall comply with the requirements for requesting a security freeze under subsection (1) of this section. The consumer reporting agency shall, not later than the tenth business day after the date the agency receives the request for a replacement personal identification number or password, provide the consumer with a new, unique personal identification number or password to be used by the consumer instead of the number or password that was provided under subsection (2) of this section.

(4) If a third party requests access to a consumer report on which a security freeze is in effect, and this request is in connection with an application for credit, the third party may treat the application as incomplete.

(5) If the consumer wishes to allow his consumer report or credit score to be accessed for a specific period of time while a freeze is in place, the consumer shall contact the consumer reporting agency and request that the freeze be temporarily lifted and provide the following:

(a) Clear and proper identification;

(b) The unique personal identification number or password provided by the

consumer reporting agency pursuant to subsection (2) or (3) of this section; and

(c) The proper information regarding the time period for which the report shall be available to users of the consumer report.

(6) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection (5) of this section shall comply with the request no later than three (3) business days after receiving the request. A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer report or credit score pursuant to subsection (5) of this section in an expedited manner.

(7) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's consumer report only in the following cases:

(a) Upon consumer request as provided in this section; or

(b) If the consumer's consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumerâ€™s consumer report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's consumer report.

(8) A security freeze shall remain in place until the consumer requests that the security freeze be removed, but no longer than seven (7) years from the date the security freeze was put in place. A consumer reporting agency shall remove a security freeze within three (3) business days of receiving a request for removal from the consumer, who provides both of the following:

(a) Clear and proper identification; and

(b) The unique personal identification number or password provided by the consumer reporting agency.

(9) A security freeze does not apply to a consumer report provided to:

(a) A federal, state, or local governmental entity, including a law enforcement agency, or court, or their agents or assigns;

(b) A private collection agency for the sole purpose of assisting in the collection of an existing debt of the consumer who is the subject of the consumer report requested;

(c) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph,

"reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(d) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (5) of this section for the purposes of facilitating the extension of credit;

(e) A person, for the purposes of prescreening as provided by the federal Fair Credit Reporting Act;

(f) A consumer reporting agency for the purposes of providing a consumer with a copy of his own report on his request;

(g) A child support enforcement agency;

(h) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple credit reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer report by another consumer reporting agency;

(i) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

(j) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;

(k) Any person or entity using a consumer report in preparation for a civil or criminal action, or an insurance company in investigation of a claim; or

(l) Any insurance company for setting or adjusting a rate or underwriting for property and casualty insurance purposes.

(10) A consumer reporting agency may impose a reasonable charge on a consumer for initially placing, temporarily lifting, or removing a security freeze on a consumer file. The amount of the charge may not exceed ten dollars ($10). On January 1 of each year, a consumer reporting agency may increase the charge for placing a security alert. The increase shall be based proportionally on changes to the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest twenty-five cents ($0.25). An exception shall be allowed whereby the consumer will be charged zero dollars by the consumer reporting agency placing the security freeze if the consumer is a victim of identity theft and, upon the request of the consumer reporting agency, provides the consumer reporting agency with a valid police report.

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

confirmation of the change to the consumer within thirty (30) days of the change being posted to the consumer's file:

(a) Name;

(b) Date of birth;

(c) Social Security number; and

(d) Address.

Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

(12) Any person who willfully fails to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) Any actual damages sustained by the consumer as a result of the failure;

(b) Any liquidated damages of not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000);

(c) Any punitive damages as the court may allow; and

(d) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(13) Any person, other than the named individual or individuals in the report, who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or one thousand dollars ($1,000), whichever is greater.

(14) Any person who is negligent in failing to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer in an amount equal to the sum of:

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

(b) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(15) Nothing in KRS 367.363 to 367.365 shall be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General authorized under any other provision of law to bring or seek redress for persons that violate KRS 367.363 to 367.365.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 42, sec. 3, effective July 12, 2006.