



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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Fair Credit Reporting Act

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Fair Credit Reporting Act

Reference Number: MTAS-1237

Provisions of the Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681 *et seq.*), which is the federal law governing consumer information, have been amended by the Consumer Credit Reporting Reform Act of 1996 (Pub. L. No. 104-208, the Omnibus Consolidated Appropriations Act for Fiscal year 1997, Title II, Subtitle D, Chapter 1), Section 311 of the Intelligence Authorization for Fiscal Year 1998 (Pub. L. No. 105-107), the Consumer Reporting Employment Clarification Act (CRECA) of 1998 (Pub. L. No. 105-347), Section 506 of the Gramm-Leach-Bliley Act (Pub. L. 106-120), Section 358(g) and 505(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)(Pub. L. 107-156), and the Fair and Accurate Credit Transaction Act (FACTA) of 2003 (Pub. L. No. 108-159), Section 719 of the Financial Services Regulatory Relief Act of 2006 (Public Law 109-351), Section 743 (Div. D, Title VII) of the Consolidated Appropriations Act of 2008 (Public Law 110-161), the Credit and Debit Card Receipt Clarification Act of 2007 (Public Law 110-241), and Sections 205 and 302 of the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 (Public Law 111-24), the Consumer Financial Protection Act of 2010 (CFPA) (Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203) and the Red Flag Program Clarification Act of 2010 (Public Law 111-203).

The newly created Consumer Financial Protection Bureau (CFPB) has assumed responsibility for enforcement of the Fair Credit Reporting Act, the role previously provided by the Federal Trade Commission. The change was implemented by a transfer of FCRA rule making authority from the FTC to CFPB. Specifically, the FCRA requires employers who use outside agencies to perform credit or other background checks (including criminal, reference, or driving record checks), as defined by CRECA, to comply with comprehensive notice, consent, and disclosure obligations both prior to doing the checks and after the results are reported. The provisions of FCRA, CRECA and FACTA directly affect those cities that use outside agencies to secure information about applicants and employees.

The rules apply to anyone over whom the Federal Trade Commission (FTC) has jurisdiction and who maintains or possesses consumer information for business purposes. It applies to individuals and to both large and small organizations that use consumer reports. This includes consumer reporting companies, lenders, insurers, employers, landlords, government agencies, mortgage brokers, car dealers, attorneys, private investigators, debt collectors, individuals who pull consumer reports on prospective at-home employees, and entities that maintain information in consumer reports as part of their role as a service provider to other organizations covered by the rule.

Consumer Reports

Reference Number: MTAS-1916

According to the act (15 U.S.C. § 1681(a), the definition of a consumer report includes:

“any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized under section 604 [§ 1681b].”

Consumer information is defined as any record about an individual that is a consumer report or is derived from a consumer report. However, according to the FACTA amendment, “a consumer report does not include communications made to an employer while investigating suspected employee misconduct relating to employment or employee compliance with applicable laws or with pre-existing written policies of the employer”. 15 U.S.C. § 603(y)(1)(B)(i) and 15 U.S.C. § 603(y)(1)(B)(ii).

Generally, a city that accesses a consumer report while conducting a background check on an applicant has eight (8) main obligations: (1) show a permissible purpose. (15 U.S.C. 604(a)(3)(B) and 604(b)), (2) provide certification of compliance (15 U.S.C. 604(f)), (3) notify consumers when adverse actions are taken (15 U.S.C. 603(k)), (4) Limit on use of information when a fraud or active duty alerts are on

file (15 U.S.C. §605A), (5) comply with regulations when notified of an address discrepancy (15 U.S.C. 605(h)(1)(A)), (6) establish procedures to dispose of records (15 U.S.C. §628); (7) make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained (15 U.S.C. 604(b)(2)(A)(i)), and (8) obtain from the consumer prior written authorization to access reports (U.S.C. 604(b)(2)(A)(ii)),

Before a consumer reporting agency may provide or prepare a consumer report for an applicant, the employer must certify to the agency that: (1) it has provided the required "clear and conspicuous disclosure" to the individual who is the subject of the report; (2) it has received written authorization to obtain the report. 15 U.S.C. § 604(b)(2)(A).

If an applicant applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application: (1) the person who procures the consumer report on the applicant for employment purposes shall provide to the applicant, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 615(a)(3); and (2) the applicant shall have consented, orally, in writing, or electronically to the procurement of the report by that person. 15 U.S.C. § 604(b)(2)(B).

Once the employer has the consumer report, it may decide to take an action based on the consumer report (or based in part on the consumer report). An adverse action includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee. 15 U.S.C. § 603(k)(B). Before taking any adverse employment action against someone based in whole or in part on the consumer report, the employer must provide the affected individual with an adverse action disclosure that includes a copy of the consumer report as well as a summary of that individual's rights under the FCRA. 15 U.S.C. § 604(b)(3)(A). In other words, when the employer receives the consumer report, he/she must immediately send a copy of the report and the individual's rights statement to the applicant.

Then, if the employer takes adverse action based upon the subject of the report, the employer must by oral, written or electronic means: (1) provide oral, written or electronic notice of the adverse action to the affected individual; (2) written or electronic disclosure of a numeric credit score used in taking any adverse action, the range of possible credit scores, all the key factors that adversely affected the credit score, the date on which the credit score was created and the name of the person or entity that provided the credit score or credit file; (3) provide orally, written or electronically the name, address, and telephone number of the consumer reporting agency that provided the report to the employer (the telephone number provided must be the toll-free number where the individual can reach the agency, if the agency maintains files on consumers on a nationwide basis) and a statement that the agency did not make the decision to take adverse action and thus cannot tell the applicant or employee the specific reason for the actions; (4) provide notice of the individual's right to obtain a free copy of the report on which the adverse action was based within 60 days of notice of the action; and (5) provide notice of the individual's right to dispute the accuracy or completeness of any information in the report with the consumer reporting agency. 15 U.S.C. § 615(a).

Similarly, an employer must provide an adverse action notice to an existing employee who is subject to an employment decision that adversely affects his or her employment, such as termination or discipline, based in whole or in part on a consumer report. U.S.C. § 603(k)(1)(B)(ii). An adverse action notice also is required in employment situations if credit information is used to deny employment. 15 U.S.C. 615(b)(2).

If an applicant applies for employment by mail, telephone, computer, or other similar means, and if a person who procured a consumer report on the consumer for employment purposes takes an adverse action on the employment application based in whole or in part on the report, then the person must provide the consumer within 3 business days of taking such action, an oral, written or electronic notification: (1) that adverse action has been taken based on a consumer report received from a consumer reporting agency; (2) the name, address and telephone number of the consumer reporting agency that furnished the report (including a toll free telephone number if the agency compiles and maintains files on consumers on a nationwide basis); (3) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and (4) that the applicant may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report. 15 U.S.C. § 604(b)(3)(B).

Investigative Reports

Reference Number: MTAS-1239

An investigative consumer report, which is viewed as a much more intrusive inquiry and which contains information collected from personal interviews with neighbors, friends, or associates of the consumer, requires additional obligations. The act (15 U.S.C. § 603(e)) defines an investigative consumer report as:

“a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information”.

If a city wants to use an investigative consumer report, it must disclose to the applicant, in a notice mailed, or otherwise delivered to the applicant, no later than three days after the date the report is first requested, that “the investigative consumer report may be obtained” and “inform the employee or applicant that he or she has a right to request additional disclosures of the nature and scope of the investigation” and provide the current or prospective employee with a “summary of the consumer’s rights.” 15 U.S.C. § 606(a)(1). The city also would have to certify to the consumer reporting agency that it “made the appropriate disclosures and will comply with the disclosure on request of nature and scope of the investigation”. 15 U.S.C. § 606(a)(2). This would not affect investigative reports generated using internal investigators for public safety departments. If a city, however, uses an outside firm to conduct investigative consumer reports, then it must comply.

If the city decides to reject the applicant based in whole or in part on an investigative consumer report, the city must provide oral, written or electronic notice of the adverse action and also provide the applicant with a copy of the report and the summary of rights before taking such action. After taking adverse action, the city must provide notice to the applicant or employee of the adverse action, provide the name, address and telephone number of the agency that furnished the consumer report on which the adverse action was based and notify the applicant or employee of the right to obtain the report. 15 U.S.C. § 615(a). The city must also provide a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken. 15 U.S.C. § 615(a)(3)(B)

Individuals may dispute inaccurate information that appears in a credit report. 15 U.S.C § Section 611(a)(1)(A) provides that “if the completeness or accuracy of any item of information contained in a consumer’s file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the agency shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file ..., before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.” The 30-day period may be extended for not more than 15 additional days.

Individuals may also dispute inaccurate information with the furnisher of the consumer information (15 U.S.C. 623(a)(8)). 15 U.S.C. § 623(b) requires the furnisher of the consumer information to investigate good faith disputes, considering “all relevant information” submitted by the consumer. If the investigation shows that the information was inaccurate, the furnisher is required to promptly notify each Consumer Reporting Agency to which it reported the information, and provide to the CRA any correction necessary to make the information accurate.

Fair Credit Act: Frequently Asked Questions

Reference Number: MTAS-1578

Question: *You advertise vacancies for cashiers and receive 100 applications. You want credit reports on each applicant because you plan to eliminate those with poor credit histories. What are your obligations?*

Answer: You can get credit reports if you notify each applicant in writing that a credit report may be requested and if you receive the applicant’s written consent. Before you reject an applicant based on

credit report information, you must make a pre-adverse action disclosure that includes a copy of the credit report and the summary of consumer rights under the FCRA. Once you've rejected an applicant, you must provide an adverse action notice if credit report information affected your decision.

Question: *You are considering a number of your long-term employees for a major promotion. You want to check their consumer reports to ensure that only responsible individuals are considered for the position. What are your obligations?*

Answer: You cannot get consumer reports unless the employees have been notified that reports may be obtained and have given their written permission. If the employees gave written permission in the past, you need only make sure that the employees receive or have received a "separate document" notice that reports may be obtained during the course of their employment — no more notice or permission is required. If employees have not received notice and given permission, you must notify the employees and get their written permission before you get their reports. In each case where information in the report influences your decision to deny promotion, you must provide the employee with a pre-adverse action disclosure. The employee also must receive an adverse action notice once you have selected another individual for the job.

Question: *A job applicant gives you the okay to get a consumer report. Although the credit history is poor and that's a negative factor, the applicant's lack of relevant experience carries more weight in your decision not to hire. What's your responsibility?*

Answer: In any case where information in a consumer report is a factor in your decision — even if the report information is not a major consideration — you must follow the procedures mandated by the FCRA. In this case, you would be required to provide the applicant a pre-adverse action disclosure before you reject his or her application. When you formally reject the applicant, you would be required to provide an adverse action notice.

Question: *The applicants for a sensitive financial position have authorized you to obtain credit reports. You reject one applicant, whose credit report shows a debt load that may be too high for the proposed salary, even though the report shows a good repayment history. You turn down another, whose credit report shows only one credit account, because you want someone who has shown more financial responsibility. Are you obliged to provide any notices to these applicants?*

Answer: Both applicants are entitled to a pre-adverse action disclosure and an adverse action notice. If any information in the credit report influences an adverse decision, the applicant is entitled to the notices — even when the information isn't negative.

Disposal of Consumer Information

Reference Number: MTAS-1240

The FCRA amendment also requires that any person who maintains or possesses consumer information must be prepared to dispose of those records in a way that ensures that the information will not be accessed or used improperly. 16 C.F.R. § 682.3(a). This requirement is intended to protect consumer privacy and to prevent identity theft. It addresses only the disposal of consumer information, not all employment information. It also does not address retention schedules or how records should be kept or maintained.

Consumer information is covered if it is in paper, electronic or other forms. If a city acquires consumer information, the city must take "reasonable measures to protect against unauthorized access to or use of the information" (16 C.F.R. § 682.3(b)), when the city disposes of it. Disposal under the act means "the discarding or abandonment of consumer information or the sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored". 16 C.F.R. § 682.1(c). Reasonable measures for disposing of consumer report information, as suggested by the act (16 C.F.R. § 682.3(b)(1-3)), could include establishing and complying with policies to:

- Burn, pulverize, or shred papers containing consumer report information so that the information cannot be read or reconstructed
- Destroy or erase electronic files or media containing consumer report information so that the information cannot be read or reconstructed
- Conduct due diligence, and hire a document destruction contractor to dispose of material specifically identified as consumer report information consistent with the rule

Under the act (16 C.F.R. § 682.3(b)(3)), "due diligence" includes:

- Reviewing an independent audit of a disposal company's operations and/or its compliance with the rule
- Obtaining information about the disposal company from several references
- Requiring that the disposal company be certified by a recognized trade association
- Reviewing and evaluating the disposal company's security policies or procedures

Legal consequences exist for employers who fail to get an applicant's permission before requesting a consumer report or who fail to provide pre-adverse action disclosures and adverse action notices to unsuccessful job applicants. The FCRA allows individuals to sue employers for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees (15 U.S.C. §§ 616) and (15 U.S.C. §§ 617). The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission (FTC), other federal agencies, and he states may sue employers for non-compliance and obtain civil penalties. 15 U.S.C. §§ 621(a), 15 U.S.C. §§ 621(b) and 15 U.S.C. §§ 621(c).

NOTE: The Fair Credit Reporting Act has been amended to establish "Red Flag and Identity Theft" provisions 15 U.S.C. § 605A and 15 U.S.C. § 605B.

Fair Credit Act Legal Considerations

Reference Number: MTAS-1912

Employers who fail to comply with the rules are subject to FTC fines and penalties, which can be substantial if a large number of files are involved. In the event a person willfully fails to comply with any requirement imposed by the law, the employer 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 or damages of not less than \$100 and not more than \$1,000 or in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater. 15 U.S.C. §§ 1681. The person could also be held liable for such amount of punitive damages as the court may allow (15 U.S.C. §§ 1681n(a)(2)) and, in the case of any successful action to enforce any liability, the cost of the action together with reasonable attorney's fees as determined by the court. 15 U.S.C. §§ 1681n(a)(3).

In the event of a knowing violation, the individual/company that obtains the consumer report is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000 whichever is greater. 15 U.S.C. § 616(b). Additionally, if the state has reason to believe that any person has violated the act, it may bring action to enjoin such violation in any appropriate United States district court and fine such person damages of not more than \$1,000 for each willful or negligent violation. In the case of any successful action, the individual/company will have to pay for the cost of the action and reasonable attorney fees as determined by the court. 15 U.S.C. §§ 621(c)(1). If your city routinely conducts credit checks on applicants or employees, you may want to consider only conducting the checks on positions involving money (finance department employees, police officers, etc.). Then be sure to provide notice and follow the guidelines when an adverse decision is made.

Additionally, Section 1681s(a)(2)(a) gives the Federal Trade Commission authority to seek civil penalties for violations of the FCRA in an amount not more than \$2,500 per violation. In setting a civil penalty amount, it requires a court to consider "the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require." 15 U.S.C. §§ 1681s(a)(2)(b).

Fair Credit Act Summary

Reference Number: MTAS-1913

If your city routinely conducts credit checks on applicants or employees, you may want to consider only conducting the checks on positions involving money (finance department employees, police officers, etc...). Then be sure to provide notice and follow the guidelines when an adverse decision is made.

The CFPB has issued updated FCRA notices that employers and consumer reporting agencies must use when conducting background checks on employees or applicants. The revised form, effective as of January 1, 2013, are available in Appendices K, M and N at the end of Title 12 of the Code of Federal Regulations, Part 1022 and are substantively the same as the old forms. Each form was revised to replace references to the FTC with reference to the CFPB and to provide a link to the new website. They include:

- Appendix F to Part 698 - Summary of Consumer Rights [1],
- Appendix G to Part 698 - Notice of Furnishers Responsibilities [2], and
- Appendix H to Part 698 - Notice of User Responsibilities [3].

The Summary of Consumer Rights is the form used mostly by employers, most notably when obtaining "investigative consumer reports" and sending pre-adverse action letters.

Fair Credit Reporting Act Notice (Sample)

Reference Number: MTAS-1914

A SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit [4] or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
 - **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identify theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days.

In addition, since September 2005 all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit [4] for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit [4] for an explanation of dispute procedures.

- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit. [4]
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit. [4]

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Consumer Help (FRCH) P O Box 1200 Minneapolis, MN 55480 Telephone: 888-851-1920 Website Address: www.federalreserveconsumerhelp.gov [5] Email Address: ConsumerHelp@FederalReserve.gov [6]
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand

Avenue, Suite 100
Kansas City, Missouri 64108-2638
1-877-275-3342

Air, surface, or rail common carriers regulated by
former Civil Aeronautics Board or Interstate
Commerce Commission

Department of Transportation , Office of
Financial Management
Washington, DC 20590 202-366-1306

Activities subject to the Packers and Stockyards
Act, 1921

Department of Agriculture
Office of Deputy Administrator - GIPSA
Washington, DC 20250 202-720-7051

Notification of Rights for Tennessee Consumers

Reference Number: MTAS-1915

T.C.A. §§ 47-18-2108 provides that employees/applicants have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without their express authorization. A security freeze must be requested in writing by certified mail or by electronic means as provided by a consumer reporting agency. The security freeze is designed to prevent credit, loans, and services from being approved in the employee or applicants' name without their consent. If the employees/applicants are actively seeking a new credit, loan, utility, or telephone account, you should understand that the procedures involved in lifting a security freeze may slow your applications for credit. Employees/Applicants should plan ahead and lift a freeze in advance of actually applying for new credit. When a security freeze is placed on a credit report, the employee/applicant will be provided a personal identification number or password to use if they choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time after the freeze is in place. To provide that authorization the employee/applicant must contact the consumer reporting agency and provide all of the following:

- (1) The personal identification number or password;
- (2) Proper identification to verify their identity; and
- (3) The proper information regarding the period of time for which the report shall be available.

A consumer reporting agency must authorize the release of your credit report no later than fifteen (15) minutes after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which the employees/applicants have an existing account, that requests information in the credit report for the purposes of fraud control, or, reviewing or collecting the account. Reviewing the account includes activities related to account maintenance.

The employee/applicant should consider filing a complaint regarding their identity theft situation with the Federal Trade Commission and the Tennessee department of commerce and insurance, division of consumer affairs, either in writing or via their Web sites.

The employee/applicant has a right to bring civil action against anyone, including a consumer reporting agency, who improperly obtains access to a file, misuses file data, or fails to correct inaccurate file data.

Unless the employees/applicants are victims of identity theft with a police report, or other official document acceptable to a consumer reporting agency to verify the crimes, a consumer reporting agency has the right to charge the employee/applicant up to seven dollars and fifty cents (\$7.50) to place a freeze on their credit report, but may not charge them to temporarily lift a freeze on their credit report. A consumer reporting agency may charge a consumer a reasonable fee not to exceed five dollars (\$5.00) to permanently remove a security freeze, or to replace a personal identification number or password. A consumer reporting agency may increase these fees annually based on changes to a common measure of consumer prices. A consumer reporting agency may not charge a Tennessee consumer to place or permanently remove a security freeze if that Tennessee consumer is a victim of identity theft as defined in Tennessee law or federal law regarding identity theft and presents to the

consumer reporting agency, at the time the request is made, a police report or other official document acceptable to the consumer reporting agency detailing the theft.

Additionally, T.C.A. § 47-18-2111 gives parents or legal guardians the ability to enact a security freeze on persons under 16 years of age or an incapacitated person under the care of a guardian or conservator. When the freeze is in place, consumer reporting agencies cannot release that person's credit report or any other information regarding that person unless the security freeze is removed. The maximum fee for placing or lifting a freeze for a "protected consumer" is ten dollars (\$10.00) for each action.

Links:

- [1] https://ecfr.io/Title-16/pt16.1.698#ap16.1.698_13.f
- [2] https://ecfr.io/Title-16/pt16.1.698#ap16.1.698_13.g
- [3] https://ecfr.io/Title-16/pt16.1.698#ap16.1.698_13.h
- [4] <http://www.ftc.gov/credit>
- [5] <http://www.federalreserveconsumerhelp.gov/>
- [6] <mailto:ConsumerHelp@FederalReserve.gov>

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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