

CHAPTER 149

HOUSE Substitute for SENATE BILL No. 196

(Amended by Chapters 183 and 195)

AN ACT concerning protection of certain personal information; restricting disclosure or use of certain information; prohibiting certain acts and providing penalties and remedies for violations; amending K.S.A. 12-4516a, 50-702, 60-4104 and 60-4105 and K.S.A. 2005 Supp. 21-4018, 21-4603d and 22-2410 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) It shall be unlawful for any person to knowingly and with the intent to defraud, possess or use a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(b) It shall be unlawful for any person to knowingly and with the intent to defraud, possess or use a reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur.

(c) As used in this section:

(1) "Scanning device" means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(2) "Reencoder" means an electronic device that places encoded information from the computer chip, magnetic strip or stripe of a payment card onto the computer chip, magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(3) "Payment card" means a credit card, debit card or any other card that is issued to an authorized user and that allows the user to obtain, purchase or receive goods, services, money or anything else of value.

(d) Violation of this section shall be a severity level 6, nonperson felony.

(e) This section shall be a part of and supplemental to the Kansas criminal code.

New Sec. 2. (a) (1) Unless required by federal law, no document available for public inspection or copying shall contain an individual's social security number if such document contains such individual's personal information. "Personal information" shall include, but not be limited to, name, address, phone number or e-mail address.

(2) The provisions of paragraph (1) of this subsection shall not apply to documents recorded in the official records of any recorder of deeds of the county or to any documents filed in the official records of the court and shall be included, but not limited to, such documents of any records that when filed constitutes:

- (1) A consensual or nonconsensual lien;
- (2) an eviction record;
- (3) a judgment;
- (4) a conviction or arrest;
- (5) a bankruptcy;
- (6) a secretary of state filing; or
- (7) a professional license.

(b) (1) No person, including an individual, firm, corporation, association, partnership, joint venture or other business entity, or any employee or agent therefor, shall solicit, require or use for commercial purposes an individual's social security number unless such number is necessary for such person's normal course of business and there is a specific use for such number for which no other identifying number may be used.

(2) Paragraph (1) of this subsection does not apply to documents or records that are recorded or required to be open to the public pursuant to state or federal law, or by court rule or order, and this paragraph does not limit access to these documents or records.

(3) Paragraph (1) of this subsection does not apply to the collection, use or release of social security numbers for the following purposes:

(A) Mailing of documents that include social security numbers sent as part of an application or enrollment process or to establish, amend or terminate an account, contract or policy or to confirm the accuracy of the

social security number;

(B) internal verification or administrative purposes;

(C) investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the fair credit reporting act, 15 U.S.C. § 1681, et seq., undertake a permissible purpose enumerated under the Gramm-Leach Bliley Act, 15 U.S.C. § 6802 (e), or locate an individual who is missing, a lost relative, or due a benefit, such as pension, insurance or unclaimed property benefit; or

(D) otherwise required by state or federal law or regulation.

(c) An individual who is aggrieved by a violation of this section may recover a civil penalty of not more than \$1,000 for each violation.

New Sec. 3. As used in sections 3 and 4, and amendments thereto:

(a) “Consumer” means an individual who is a resident of this state.

(b) “Encrypted” means transformation of data through the use of algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process or key, or securing the information by another method that renders the data elements unreadable or unusable.

(c) “Notice” means:

(1) Written notice;

(2) electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001; or

(3) substitute notice, if the individual or the commercial entity required to provide notice demonstrates that the cost of providing notice will exceed \$100,000, or that the affected class of consumers to be notified exceeds 5,000, or that the individual or the commercial entity does not have sufficient contact information to provide notice.

(d) “Redact” means alteration or truncation of data such that no more than the following are accessible as part of the personal information:

(1) Five digits of a social security number; or

(2) the last four digits of a driver’s license number, state identification card number or account number.

(e) “Substitute notice” means:

(1) E-mail notice if the individual or the commercial entity has e-mail addresses for the affected class of consumers;

(2) conspicuous posting of the notice on the web site page of the individual or the commercial entity if the individual or the commercial entity maintains a web site; and

(3) notification to major statewide media.

(f) “Person” means any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency or other entity.

(g) “Personal information” means a consumer’s first name or first initial and last name linked to any one or more of the following data elements that relate to the consumer, when the data elements are neither encrypted nor redacted:

(1) Social security number;

(2) driver’s license number or state identification card number; or

(3) financial account number, or credit or debit card number, alone or in combination with any required security code, access code or password that would permit access to a consumer’s financial account. The term “personal information” does not include publicly available information that is lawfully made available to the general public from federal, state or local government records.

(h) “Security breach” means the unauthorized access and acquisition of unencrypted or unredacted computerized data that compromises the security, confidentiality or integrity of personal information maintained by an individual or a commercial entity and that causes, or such individual or entity reasonably believes has caused or will cause, identity theft to any consumer. Good faith acquisition of personal information by an employee or agent of an individual or a commercial entity for the purposes of the individual or the commercial entity is not a breach of the security of the system, provided that the personal information is not used for or is not subject to further unauthorized disclosure.

New Sec. 4. (a) A person that conducts business in this state, or a government, governmental subdivision or agency that owns or licenses computerized data that includes personal information shall, when it be-

comes aware of any breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused. If the investigation determines that the misuse of information has occurred or is reasonably likely to occur, the person or government, governmental subdivision or agency shall give notice as soon as possible to the affected Kansas resident. Notice must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

(b) An individual or a commercial entity that maintains computerized data that includes personal information that the individual or the commercial entity does not own or license shall give notice to the owner or licensee of the information of any breach of the security of the data following discovery of a breach, if the personal information was, or is reasonably believed to have been, accessed and acquired by an unauthorized person.

(c) Notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. Notice required by this section shall be made in good faith, without unreasonable delay and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation.

(d) Notwithstanding any other provision in this section, an individual or a commercial entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and whose procedures are otherwise consistent with the timing requirements of this section, is deemed to be in compliance with the notice requirements of this section if the individual or the commercial entity notifies affected consumers in accordance with its policies in the event of a breach of security of the system.

(e) An individual or a commercial entity that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with this section. This section does not relieve an individual or a commercial entity from a duty to comply with other requirements of state and federal law regarding the protection and privacy of personal information.

(f) In the event that a person discovers circumstances requiring notification pursuant to this section of more than 1,000 consumers at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. § 1681a(p), of the timing, distribution and content of the notices.

(g) For violations of this section, except as to insurance companies licensed to do business in this state, the attorney general is empowered to bring an action in law or equity to address violations of this section and for other relief that may be appropriate. The provisions of this section are not exclusive and do not relieve an individual or a commercial entity subject to this section from compliance with all other applicable provisions of law.

(h) For violations of this section by an insurance company licensed to do business in this state, the insurance commissioner shall have the sole authority to enforce the provisions of this section.

Sec. 5. K.S.A. 12-4516a is hereby amended to read as follows: 12-4516a. (a) Any person who has been arrested on a violation of a city ordinance of this state may petition the court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. The

petition shall state: (1) The petitioner's full name;

(2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;

(3) the petitioner's sex, race and date of birth;

(4) the crime for which the petitioner was arrested;

(5) the date of the petitioner's arrest, and

(6) the identity of the arresting law enforcement agency.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section, *except that no fee shall be charged to a person who was arrested as a result of being a victim of identity theft under K.S.A. 2005 Supp. 21-4018, and amendments thereto.* Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;

(2) a court has found that there was no probable cause for the arrest;

(3) the petitioner was found not guilty in court proceedings; or

(4) the expungement would be in the best interests of justice and (A) charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interest of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142 and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(g) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as

directed by the order of expungement or when requested by the person whose arrest record was expunged.

Sec. 6. K.S.A. 2005 Supp. 21-4018 is hereby amended to read as follows: 21-4018. (a) Identity theft is knowingly and with intent to defraud for any benefit, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor.

(b) "Identification documents" has the meaning provided in K.S.A. 21-3830, and amendments thereto.

(c) *Except as provided further*, identity theft is a severity level 8, nonperson felony. *If the monetary loss to the victim or victims is more than \$100,000, identity theft is a severity level 5, nonperson felony.*

(d) Identity fraud is:

(1) Willfully and knowingly supplying false information intending that the information be used to obtain an identification document;

(2) making, counterfeiting, altering, amending or mutilating any identification document:

(A) Without lawful authority; and

(B) with the intent to deceive; or

(3) willfully and knowingly obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another for any purpose of deception an identification document.

(e) Identity fraud is a severity level 8, nonperson felony.

(f) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 7. K.S.A. 2005 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape, as defined in K.S.A. 21-3809, and amendments thereto, or aggravated escape, as defined in K.S.A. 21-3810, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-

ments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 2005 Supp. 22-4529, and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 2005 Supp. 20-369, and amendments thereto;

(11) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10); or

(12) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. *In regard to a violation of K.S.A. 21-4018, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section.* If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the victim. The administrative judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502, and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution

is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2005 Supp. 21-4729, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2005 Supp. 21-4729, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense serv-

ices or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

(j) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(k) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 2005 Supp. 21-4729, and amendments thereto, and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(n) Except as provided by subsection (f) of K.S.A. 21-4705, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2005 Supp. 21-4729, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2005 Supp. 75-52,144, and amendments thereto, including but not limited to, an approved after-care plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in K.S.A. 21-4705, and amendments thereto. For those offenders who are convicted on or after the effective date of this act, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

Sec. 8. K.S.A. 2005 Supp. 22-2410 is hereby amended to read as follows: 22-2410. (a) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. The petition shall state: (1) The petitioner's full name;

(2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;

- (3) the petitioner's sex, race and date of birth;
- (4) the crime for which the petitioner was arrested;
- (5) the date of the petitioner's arrest; and
- (6) the identity of the arresting law enforcement agency.

There shall be no docket fee for filing a petition pursuant to this section. *In addition, no other surcharge or fee shall be imposed to any person filing a petition pursuant to this section, who was arrested as a result of being a victim of identity theft under K.S.A. 2005 Supp. 21-4018, and amendments thereto.* Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;

(2) a court has found that there was no probable cause for the arrest;

(3) the petitioner was found not guilty in court proceedings; or

(4) the expungement would be in the best interests of justice and (A) Charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined in K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142 and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(g) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

Sec. 9. K.S.A. 60-4104 is hereby amended to read as follows: 60-

4104. Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

- (a) All offenses which statutorily and specifically authorize forfeiture;
- (b) violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto;
- (c) theft which is classified as a felony violation pursuant to K.S.A. 21-3701, and amendments thereto, in which the property taken was live-stock;
- (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments thereto;
- (e) money laundering, K.S.A. 65-4142, and amendments thereto;
- (f) gambling, K.S.A. 21-4303, and amendments thereto, and commercial gambling, K.S.A. 21-4304, and amendments thereto;
- (g) counterfeiting, K.S.A. 2005 Supp. 21-3763, and amendments thereto;
- (h) *violations of section 1, and amendments thereto;*
- (i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;
- (j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;
- (k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission.

Sec. 10. K.S.A. 60-4105 is hereby amended to read as follows: 60-4105. The following property is subject to forfeiture:

- (a) Property described in a statute authorizing forfeiture;
- (b) all property, including the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:
 - (1) Furnished or intended to be furnished by any person in an exchange that constitutes conduct giving rise to forfeiture; or
 - (2) used or intended to be used in any manner to facilitate conduct giving rise to forfeiture, *including, but not limited to, any computer, computer system, computer network or any software or data owned by the defendant which is used during the commission of a violation of section 1, and amendments thereto;*
- (c) all proceeds of any conduct giving rise to forfeiture;
- (d) any property derived from any proceeds which were obtained directly or indirectly from the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;
- (e) all weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture;
- (f) ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;
- (g) contraband, which shall be seized and summarily forfeited to the state without regard to the procedures set forth in this act;
- (h) all controlled substances, raw materials, controlled substance analogs, counterfeit substances, or imitation controlled substances that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state; and
- (i) any items bearing a counterfeit mark.

Sec. 11. K.S.A. 50-702 is hereby amended to read as follows: 50-702. The following words and phrases when used in ~~K.S.A. 50-701 to 50-722, inclusive, and amendments thereto,~~ *the fair credit reporting act* shall have the meanings ascribed to them in this section.

- (a) The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.
- (b) The term “consumer” means an individual.
- (c) The term “consumer report” means 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, or employment purposes, or other purposes authorized under K.S.A. 50-703, *and amendments thereto*. The term does not include (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (2) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (3) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys that decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under K.S.A. 50-714, *and amendments thereto*.

(d) The term "investigative consumer report" means 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 the consumer is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(e) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(f) The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(g) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(h) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(i) *The term "clear and proper identification" means information generally deemed sufficient to identify a person.*

(j) *The term "security freeze" means a notice placed on a consumer report, at the request of the consumer and subject to certain exceptions, that prohibits a consumer reporting agency from releasing the consumer's consumer report or credit score relating to the extension of credit, when the consumer has been the victim of identify theft.*

New Sec. 12. (a) A consumer who is a victim of identify theft may elect to place a security freeze on the consumer's consumer report by written request, sent by certified mail, which includes a valid copy of a police report, investigative report or complaint the consumer has filed with a law enforcement agency about unlawful use of such consumer's personal information by another person and clear and proper identification, to a consumer reporting agency, at an address designated by the consumer reporting agency to receive such requests. A consumer reporting agency shall place a security freeze on a consumer's consumer report no later than five business days after receiving:

(1) A written request provided by this subsection; and

(2) proper identification.

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

(c) The consumer reporting agency, no later than 10 business days

after the date the agency places a security freeze, shall provide the consumer with a unique personal identification number, password or similar device to be used by the consumer when providing authorization for the access to the consumer's consumer report 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 consumer report for a specific period while the security freeze is in effect.

(d) If, in connection with an application for credit or any other use, a third party requests access to a consumer report on which a security freeze is in effect, the third party shall treat the application as incomplete if the consumer does not allow the consumer's consumer report to be accessed for that specific period of time.

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

- (1) Clear and proper identification;
- (2) the unique personal identification number or password provided by the consumer reporting agency in accordance with subsection (c); and
- (3) the proper information regarding the time period for which the report shall be available to users of the consumer report.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection (e) shall comply with the request no later than three 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 pursuant to subsection (e) in an expedited manner.

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

- (1) Upon consumer request as provided in this section; or
- (2) if the consumer's consumer report was frozen due to a material misrepresentation of fact by the consumer, in which case, if a consumer reporting agency intends to remove a freeze upon the consumer's consumer report, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's consumer report.

(h) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days after receiving a request for removal from the consumer, who shall be required to provide:

- (1) Clear and proper identification; and
- (2) the unique personal identification number or password provided by the consumer reporting agency in accordance with subsection (c).

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

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

(2) 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;

(3) a person or entity, or a subsidiary, affiliate or agent of such person or entity, or an assignee of a financial obligation owing by the consumer to such person or entity, or a prospective assignee of a financial obligation owing by the consumer to such person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment of 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;

(4) a subsidiary, affiliate, agent, assignee or prospective assignee of a

person to whom access has been granted under subsection (e) for the purposes of facilitating the extension of credit;

(5) a person providing a credit report for the purposes permitted under 15 U.S.C. § 1681b(c);

(6) any person providing a consumer with a copy of the consumer's own report at such consumer's request;

(7) a child support enforcement agency;

(8) 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 consumer 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;

(9) 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;

(10) a deposit account information service company which issues 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, reports regarding account closures due to fraud, substantial overdrafts, ATM abuse or similar negative information regarding a consumer;

(11) an employer in connection with any application for employment with the employer;

(12) any person administering a credit file monitoring subscription service to which the consumer has subscribed; or

(13) any person or entity for use in setting or adjusting a rate, adjusting a claim or underwriting for insurance purposes.

(j) A consumer reporting agency shall not charge a fee for placing, temporarily lifting or removing a security freeze on a consumer report.

(k) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in the consumer report without sending a written confirmation of the change to the consumer within 30 days after the change is posted to the consumer's file: Name, date of birth, social security number and 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.

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

(1) 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

(2) such amount of punitive damages as the court may allow; and

(3) 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.

(m) Any person 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 \$1,000, whichever is greater.

(n) 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:

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

(2) 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.

(o) Upon a finding by the court that an unsuccessful pleading, motion or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to

the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion or other paper.

(p) This section shall be part of and supplemental to the fair credit reporting act.

(q) This section shall take effect and be in force on and after January 1, 2007.

New Sec. 13. (a) Nothing in section 10, and amendments thereto, shall be construed to require the following to place a security freeze on a consumer report:

(1) 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;

(2) a deposit account information service company which issues 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, reports regarding account closures due to fraud, substantial overdrafts, ATM abuse or similar negative information regarding a consumer;

(3) a consumer reporting agency that acts as a reseller of credit information that assembles or merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced;

(4) any database or file which consists solely of any information adverse to the interests of the consumer, including, but not limited to, criminal record information, which is used for fraud prevention or detection, tenant screening, employment screening or any purpose permitted by the federal fair credit reporting act, 15 U.S.C. §1681b;

(5) a person to the extent such person offers fraud prevention services that issues reports on incidents of fraud or reports used primarily in the detection or prevention of fraud; or

(6) any bank, savings bank, trust company, savings and loan association, credit union or any other financial institution regulated by the state of Kansas or any agency of the United States.

(b) This section shall be part of and supplemental to the fair credit reporting act.

(c) This section shall take effect and be in force on and after January 1, 2007.

New Sec. 14. Unless otherwise required by federal law or regulation, a person or business shall take reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information which is no longer to be retained by the person or business by shredding, erasing or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

New Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable.

Sec. 16. K.S.A. 12-4516a, 50-702, 60-4104 and 60-4105 and K.S.A. 2005 Supp. 21-4018, 21-4603d and 22-2410 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 19, 2006.
