

SENATE BILL No. 406

By Committee on Federal and State Affairs

2-17

1 AN ACT concerning criminal procedure; relating to telecommunications;
2 mobile communications devices identification system.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) (1) The Kansas bureau of investigation shall establish
6 a mobile communications devices identification system which shall be a
7 central repository of information received by sellers from purchasers and
8 maintained for the purpose of providing information to law enforcement.
9 All information in the system shall be the property of the bureau and shall
10 not be sold or used for any purpose unless authorized by this section or
11 pursuant to rules and regulations adopted by the bureau. The bureau may
12 retain information collected in the mobile communications devices
13 identification system for up to two calendar years from the date the
14 information was added to the system. Any information associated with a
15 record that has been stored in the system for two calendar years and that is
16 not part of an on-going judicial process shall be destroyed.

17 (2) The mobile communications devices identification system, all
18 information contained therein and any records maintained by the bureau,
19 or by any entity contracting with the bureau, submitted to, maintained or
20 stored as a part of the system, shall be confidential, may only be used for
21 investigatory or evidentiary purposes related to criminal violations of state
22 or federal law, shall not be a public record and shall not be subject to the
23 Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto,
24 and only shall be released to law enforcement pursuant to this section.

25 (b) (1) All sellers in this state, prior to the completion of any sale of a
26 pre-paid mobile device or SIM card to a purchaser, shall: (A) Require a
27 purchaser to provide a government-issued identification card; and

28 (B) record the purchaser's full name, complete home address and the
29 mobile equipment identifier or the international mobile station equipment
30 identity of the pre-paid mobile device or SIM card to be purchased, or, if
31 neither are available, the activation code of such device or SIM card.

32 (2) The seller shall report the record of the sale of a pre-paid mobile
33 device or SIM card to the Kansas bureau of investigation through an
34 electronic filing process at the time of such sale. The bureau shall have the
35 authority to contract with any software or hardware vendors necessary to
36 facilitate this instantaneous transfer of reports from the seller to the mobile

1 communications devices identification system. Such reports shall be made
2 and transferred in accordance with rules and regulations adopted pursuant
3 to this section.

4 (c) The information in the mobile communications devices
5 identification system established pursuant to this section shall be available
6 to all law enforcement officers in this state who have a need for
7 information relating to prepaid mobile devices or SIM cards, upon
8 production of a subpoena or other court order. Information in the system
9 may be provided without a subpoena or court order if a law enforcement
10 officer determines that information in the system is necessary in order to
11 respond to a call for emergency services or in an emergency situation that
12 involves the risk of death or serious physical harm.

13 (d) Any seller that willfully fails to make any report required by this
14 section shall be liable to the state for the payment of a civil penalty,
15 recoverable in an action brought by the attorney general, in an amount not
16 exceeding \$100 for each failure to report. The seller shall be liable for an
17 additional civil penalty of up to \$1,000 for subsequent failures to report.
18 Any civil penalty recovered under this subsection shall be transferred to
19 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
20 and amendments thereto. Upon receipt of each such remittance, the state
21 treasurer shall deposit the entire amount in the state treasury to the credit
22 of the attorney general's litigation fund.

23 (e) Effective January 1, 2015, there is hereby imposed a mobile
24 communications devices identification fee of 0.4% per retail transaction.
25 On and after January 1, 2016, the mobile communications devices
26 identification fee shall be 0.05% per retail transaction. The fee shall be
27 collected by the seller from the purchaser with respect to each retail
28 transaction occurring in this state. The amount of the mobile
29 communications devices identification fee shall be either separately stated
30 on an invoice, receipt or other similar document that is provided to the
31 purchaser by the seller, or otherwise disclosed to the purchaser. The
32 amount of the fee that is collected by a seller from a purchaser, if such
33 amount is separately stated on an invoice, receipt or other similar
34 document provided to the purchaser, shall not be included in the base for
35 measuring any tax, fee, surcharge or other charge that is imposed by this
36 state, any political subdivision of this state or any intergovernmental
37 agency.

38 (f) A seller may charge up to a \$2 administrative fee per retail
39 transaction to compensate the seller for expenses associated with reporting
40 the required sales information.

41 (g) For the purposes of this section, a retail transaction that is effected
42 in person by a purchaser in a business location of the seller shall be treated
43 as occurring in this state if that business location is in this state, and any

1 other retail transaction shall be treated as occurring in this state if the retail
2 transaction is treated as occurring in this state for the purposes of
3 subsection (c)(3) of K.S.A. 79-3673, and amendments thereto.

4 (h) The mobile communications devices identification fee is the
5 liability of the purchaser and not the seller, except that the seller shall be
6 liable to remit all mobile communications devices identification fees that
7 the seller collects from purchasers pursuant to this section, including all
8 such fees that the seller is deemed to collect where the amount of the
9 charge has not been separately stated in an invoice, receipt or other similar
10 document provided by the seller.

11 (i) All mobile communications devices identification fees collected
12 by sellers shall be remitted to the department by electronic filing that is
13 consistent with the provisions of article 36 of chapter 79 of the Kansas
14 Statutes Annotated, and amendments thereto. The department shall
15 establish registration and payment procedures for the collection of the
16 mobile communications devices identification fee. The department shall
17 establish procedures by which a seller may document that a sale is not a
18 retail sale, which procedures shall substantially coincide with procedures
19 for documenting sale for resale transactions for article 36 of chapter 79 of
20 the Kansas Statutes Annotated, and amendments thereto.

21 (j) The department shall transfer all remitted mobile communications
22 devices identification fees to the state treasurer in accordance with the
23 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
24 each such remittance, the state treasurer shall deposit the entire amount in
25 the state treasury to the credit of the mobile communications devices
26 identification system fee fund, which is hereby established in the state
27 treasury, to be used for the creation and maintenance of the mobile
28 communications devices identification system established in this section.
29 During fiscal year 2015, the department may retain up to \$70,000 of
30 remitted funds only for use in paying for programming and other one-time
31 costs for establishing a system for collecting the mobile communications
32 devices identification fee. During any fiscal year thereafter, the department
33 shall not retain any remitted funds.

34 (k) To minimize additional costs to the department, the department
35 may conduct audits of sellers in conjunction with sales and use tax audits.
36 The department is authorized to provide the Kansas bureau of
37 investigation and the attorney general with information obtained in such
38 audits if such information indicates that a seller may not be complying
39 with the provisions of this section. The Kansas bureau of investigation
40 may request the department to initiate collection or audit procedures on
41 individual sellers if collection efforts have been unsuccessful.

42 (l) (1) On July 1, 2014, or as soon thereafter as moneys are available,
43 notwithstanding the provisions of K.S.A. 68-416, and amendments thereto,

1 or any other statute, the director of accounts and reports shall transfer
2 \$300,000 from the state highway fund of the department of transportation
3 to the mobile communications devices identification system fee fund of
4 the bureau of investigation.

5 (2) On or before June 30, 2019, the transfer made in subsection (l)(1)
6 shall be repaid in full to the state highway fund of the department of
7 transportation by the bureau of investigation. Such transfer of money shall
8 not bear interest and shall not be deemed to be an indebtedness or debt of
9 the state of Kansas within the meaning of section 6 of article 11 of the
10 constitution of the state of Kansas. During fiscal year 2015, the secretary
11 of transportation is hereby authorized to enter into an agreement with the
12 bureau of investigation to provide for the repayment of such transfer
13 including other terms and conditions as may be prescribed by the secretary
14 of transportation. Any such transfer may be repaid from the mobile
15 communications devices identification system fee fund, the state general
16 fund, any appropriate special revenue funds in the state treasury or any
17 other source of funds of the bureau of investigation. That all moneys
18 received by the department of transportation for repayment of the transfer
19 made under this subsection shall be deposited in the state treasury in
20 accordance with the provisions of K.S.A. 75-4215, and amendments
21 thereto, and shall be credited to the state highway fund.

22 (m) The director of the Kansas bureau of investigation shall adopt
23 rules and regulations necessary to effectuate the provisions of this act.

24 (n) As used in this section: (1) "Department" means the department of
25 revenue;

26 (2) "international mobile station equipment identity" means an
27 equipment identification number, similar to a serial number, used to
28 identify a mobile station;

29 (3) "mobile equipment identifier" means a globally unique number
30 for a physical piece of mobile station equipment;

31 (4) "mobile station" means all user equipment and software needed
32 for communication with a mobile network;

33 (5) "pre-paid mobile device" means any cellular phone or similar
34 wireless communication device for which the mobile device user
35 purchases a set allotment of wireless communication services provided by
36 a wireless carrier;

37 (6) "purchaser" means any person that purchases a pre-paid mobile
38 device or SIM card from a seller;

39 (7) "retail transaction" means the purchase of a pre-paid mobile
40 device or SIM card from a seller for any purpose other than resale, not
41 including the use, storage or consumption of such services;

42 (8) "seller" means any business subject to the provisions of article 36
43 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto,

1 that sells pre-paid mobile devices or SIM cards;

2 (9) "SIM card" means a subscriber identity module or functionally
3 equivalent data storage device; and

4 (10) "wireless carrier" has the meaning provided in 47 U.S.C. §
5 615b(4), as in effect on the effective date of this act.

6 Sec. 2. This act shall take effect and be in force from and after its
7 publication in the statute book.