

## SENATE BILL No. 407

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