

SENATE BILL No. 424

By Committee on Judiciary

2-9

Proposed Amendments for SB 424
Senate Judiciary
March 17, 2016
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Office of Revisor of Statutes

1 AN ACT concerning consumer protection; relating to identity theft and
2 identity fraud; security of personal-identifying information; powers and
3 duties of the attorney general; amending K.S.A. 2015 Supp. 50-6,139
4 and repealing the existing section; also repealing K.S.A. 2015 Supp.
5 50-7a03.

strike

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

8 New Section 1. (a) Within the limits of available resources, the
9 attorney general may assist victims of identity theft, identity fraud and
10 related crimes and violations in obtaining refunds in relation to fraudulent
11 or unauthorized charges or debits, canceling fraudulent accounts,
12 correcting false information in consumer reports caused by identity theft or
13 identity fraud, correcting false information in personnel files and court
14 records, obtaining security freezes, completing identity theft affidavits,
15 filing complaints and related matters.

16 (b) This section shall be part of and supplemental to the Kansas
17 consumer protection act.

18 New Sec. 2. (a) As used in this section:

or "holder"

19 (1) "Holder of personal-identifying information" means a person who,
20 in the ordinary course of business, collects, maintains or possesses, or
21 causes to be collected, maintained or possessed, the personal-identifying
22 information of any person.

other

23 (2) "Person" means any individual, partnership, corporation, trust,
24 estate, cooperative, association, government, governmental subdivision or
25 agency or other entity.

26 (3) "Personal-identifying information" has the meaning provided by
27 K.S.A. 2015 Supp. 21-6107, and amendments thereto.

means personal information as defined by K.S.A. 50-7a01(g), and
amendments thereto, and any other information which identifies
an individual for which an information security obligation is
imposed by federal or state statute or regulation

28 (4) "Record" has the meaning provided by K.S.A. 84-1-201, and
29 amendments thereto.

30 (b) A holder of personal-identifying information shall:

31 (1) Implement and maintain reasonable procedures and practices
32 appropriate to the nature of the information, and exercise reasonable care
33 to protect the personal-identifying information from unauthorized access,
34 destruction, use, modification or disclosure; and

35 (2) unless otherwise required by federal law or regulation, take
36 reasonable steps to destroy or arrange for the destruction of any records

. If federal or state law or regulation governs the procedures and
practices of the holder of personal information for such protection
of personal information, then compliance with such federal or
state law or regulation shall be deemed compliance with this
subparagraph and failure to comply with such federal or state law
or regulation shall be prima facie evidence of a violation of this
subparagraph

1 within such holder's custody or control containing any person's personal
 2 identifying information when such records are no longer to be retained.
 3 Such destruction shall be by shredding, erasing or otherwise modifying the
 4 personal identifying information in the records to make it unreadable or
 5 undecipherable through any means.

holder no longer intends to maintain or possess such records

Insert subsection (c) from next page

(d) 6 (e) A violation of this section shall be an unconscionable act or
 7 practice in violation of K.S.A. 50-627, and amendments thereto. Each
 8 record that is subject to unauthorized access, destruction, use, modification
 9 or disclosure in violation of this section shall constitute a separate
 10 unconscionable act within the meaning of K.S.A. 50-627, and amendments
 11 thereto.

Each

not destroyed in compliance with subsection (b)(2)

(e) 12 (d) Notwithstanding any other provision of law to the contrary, the
 13 exclusive authority to bring an action for any violation of this section shall
 14 be with the attorney general.

(g) 15 (e) This section shall be part of and supplemental to the Kansas
 16 consumer protection act.

Nothing in this section shall be construed to create or permit
 a private cause of action for any violation of this section.

(f) Nothing in this section relieves a holder of personal
 information from any duty to comply with other
 requirements of state and federal law regarding the protection
 of such information.

17 Sec. 3. K.S.A. 2015 Supp. 50-6,139 is hereby amended to read as
 18 follows: 50-6,139. (a) The conduct prohibited by K.S.A. 2015 Supp. 21-
 19 6107, and amendments thereto, constitutes an unconscionable act or
 20 practice in violation of K.S.A. 50-627, and amendments thereto, and any
 21 person who engages in such conduct shall be subject to the remedies and
 22 penalties provided by the Kansas consumer protection act.

23 (b) For the purposes of the remedies and penalties provided by the
 24 Kansas consumer protection act:

25 (1) The person committing the conduct prohibited by K.S.A. 2015
 26 Supp. 21-6107, and amendments thereto, shall be deemed the supplier, and
 27 the person who is the victim of such conduct shall be deemed the
 28 consumer; and

29 (2) proof of a consumer transaction shall not be required.

30 (c) This section shall be part of and supplemental to the Kansas
 31 consumer protection act and.

32 (d) The provisions of this section and sections 1 and 2, and
 33 amendments thereto, shall be known and may be cited as the Wayne Owen
 34 law act.

35 (e) The attorney general may adopt rules and regulations as deemed
 36 appropriate for the administration of the Wayne Owen act. Any violation
 37 of rules and regulations adopted pursuant to such authority shall be
 38 considered a violation of the Wayne Owen act.

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39 Sec. 4. K.S.A. 2015 Supp. 50-6,139 and 50-7a03 are hereby repealed.

40 Sec. 5. This act shall take effect and be in force from and after its
 41 publication in the statute book.

(c) A holder of personal information shall have an affirmative defense to a violation of subsection (b)(2) if such holder proves by clear and convincing evidence that:

(1) The violation resulted from a failure of the method of destruction of records to make personal information contained in such records unreadable or undecipherable through any means, and such failure could not reasonably have been foreseen despite the holder's exercise of reasonable care in selecting and employing a method of destruction; or

(2) the holder of personal information had in effect at the time of the violation a bona fide written or electronic records management policy, including practices and procedures reasonably designed, maintained, and expected to prevent a violation of subsection (b)(2), and that the records involved in the violation of subsection (b)(2) were destroyed or disposed of in violation of such policy. No affirmative defense under this subparagraph shall be available unless such holder proves:

(A) The employees or other persons involved in the violation received training in the holder's written or electronic records management policy;

(B) the violation resulted from a good faith error; and

(C) no reasonable likelihood exists that the violation may cause, enable or contribute to identity theft or identity fraud as defined by K.S.A. 2015 Supp. 21-6107, and amendments thereto, or to a violation of an information security obligation imposed by federal or state statute or regulation.