

SENATE BILL No. 424

By Committee on Judiciary

2-9

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.

6
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:

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

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

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

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

35 (1) Implement and maintain reasonable procedures and practices
36 appropriate to the nature of the information, and exercise reasonable care

1 to protect the personal-identifying information from unauthorized access,
2 ~~destruction~~, use, modification or disclosure. *If federal or state law or*
3 *regulation governs the procedures and practices of the holder of*
4 *personal information for such protection of personal information, then*
5 *compliance with such federal or state law or regulation shall be deemed*
6 *compliance with this paragraph and failure to comply with such federal*
7 *or state law or regulation shall be prima facie evidence of a violation of*
8 *this paragraph*; and

9 (2) unless otherwise required by federal law or regulation, take
10 reasonable steps to destroy or arrange for the destruction of any records
11 within such holder's custody or control containing any person's personal
12 identifying information when such records are no longer to be retained
13 *holder no longer intends to maintain or possess such records*. Such
14 destruction shall be by shredding, erasing or otherwise modifying the
15 personal identifying information in the records to make it unreadable or
16 undecipherable through any means.

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

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

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

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

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

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

43 (d) *A Each* violation of this section shall be an unconscionable act or

1 practice in violation of K.S.A. 50-627, and amendments thereto. Each
2 record that is ~~subject to unauthorized access, destruction, use, modification~~
3 ~~or disclosure in violation of this section~~ ***not destroyed in compliance with***
4 ***subsection (b)(2)*** shall constitute a separate unconscionable act within the
5 meaning of K.S.A. 50-627, and amendments thereto.

6 ~~(d)~~ ***(e)*** Notwithstanding any other provision of law to the contrary, the
7 exclusive authority to bring an action for any violation of this section shall
8 be with the attorney general. ***Nothing in this section shall be construed to***
9 ***create or permit a private cause of action for any violation of this***
10 ***section.***

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

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

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

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

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

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

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

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

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

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

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