

HOUSE BILL No. 3003

By Committee on Federal and State Affairs

3-7

9 AN ACT concerning protection of certain personal information; restrict-
10 ing disclosure or use of certain information; prohibiting certain acts
11 and providing penalties and remedies for violations; amending K.S.A.
12 20-160, 50-702, 60-4104 and 60-4105 and K.S.A. 2005 Supp. 21-4018
13 and 21-4603d and repealing the existing sections.
14

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

16 New Section 1. (a) It shall be unlawful for any person to knowingly
17 and with the intent to defraud, possess or use a scanning device to access,
18 read, obtain, memorize or store, temporarily or permanently, information
19 encoded on the computer chip or magnetic strip or stripe of a payment
20 card without the permission of the authorized user of the payment card.

21 (b) It shall be unlawful for any person to knowingly and with the
22 intent to defraud, possess or use a reencoder to place encoded informa-
23 tion on the computer chip or magnetic strip or stripe of a payment card
24 or any electronic medium that allows an authorized transaction to occur,
25 without the permission of the authorized user of the payment card from
26 which the information is being reencoded.

27 (c) As used in this section:

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

32 (2) "Reencoder" means an electronic device that places encoded in-
33 formation from the computer chip, magnetic strip or stripe of a payment
34 card onto the computer chip, magnetic strip or stripe of a different pay-
35 ment card or any electronic medium that allows an authorized transaction
36 to occur.

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

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

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

- 1 New Sec. 2. (a) Unless required by federal law, no document avail-
2 able for public inspection or copying shall contain an individual's social
3 security number if such document contains such individual's personal
4 information. "Personal information" shall include, but not be limited to,
5 name, address, phone number or e-mail address.
- 6 (b) No person, including an individual, firm, corporation, association,
7 partnership, joint venture or other business entity, or any employee or
8 agent therefor, shall solicit, require or use for commercial purposes an
9 individual's social security number unless such number is necessary for
10 such person's normal course of business and there is a specific use for
11 such number for which no other identifying number may be used.
- 12 (c) An individual who is aggrieved by a violation of this section may
13 recover a civil penalty of not more than \$1,000 for each violation.
- 14 New Sec. 3. As used in sections 3 and 4, and amendments thereto:
- 15 (a) "Consumer" means an individual who is a resident of this state.
- 16 (b) "Consumer reporting agency" has the meaning ascribed thereto
17 in 15 U.S.C. § 1681a(f).
- 18 (c) "Notice" means:
- 19 (1) Written notice;
- 20 (2) electronic notice, if the notice provided is consistent with the pro-
21 visions regarding electronic records and signatures set forth in 15 U.S.C.
22 7001; or
- 23 (3) substitute notice, if the individual or the commercial entity re-
24 quired to provide notice demonstrates that the cost of providing notice
25 will exceed \$100,000, or that the affected class of consumers to be notified
26 exceeds 5,000, or that the individual or the commercial entity does not
27 have sufficient contact information to provide notice.
- 28 (d) "Substitute notice" means:
- 29 (1) E-mail notice if the individual or the commercial entity has e-mail
30 addresses for the affected class of consumers;
- 31 (2) conspicuous posting of the notice on the web site page of the
32 individual or the commercial entity if the individual or the commercial
33 entity maintains a web site; and
- 34 (3) notification to major statewide media.
- 35 (e) "Person" means any individual, partnership, corporation, trust,
36 estate, cooperative, association, government, or governmental subdivision
37 or agency or other entity.
- 38 (f) "Personal information" means a consumer's first name or first in-
39 itial and last name linked to any one or more of the following data ele-
40 ments that relate to the consumer, when the data elements are neither
41 encrypted nor redacted:
- 42 (1) Social security number;
- 43 (2) driver's license number or state identification card number; or

1 (3) account number, or credit or debit card number, alone or in com-
2 bination with any required security code, access code or password that
3 would permit access to a consumer's financial account. The term "per-
4 sonal information" does not include publicly available information that is
5 lawfully made available to the general public from federal, state or local
6 government records.

7 (g) "Security breach" means the unauthorized access and acquisition
8 of unencrypted or unredacted computerized data that compromises the
9 security, confidentiality or integrity of personal information maintained
10 by an individual or a commercial entity and that causes, or such individual
11 or entity reasonably believes has caused or will cause, identity theft or
12 other fraud to any consumer. Good faith acquisition of personal infor-
13 mation by an employee or agent of an individual or a commercial entity
14 for the purposes of the individual or the commercial entity is not a breach
15 of the security of the system, provided that the personal information is
16 not used for or is not subject to further unauthorized disclosure.

17 New Sec. 4. (a) A person that conducts business in this state, or a
18 government, governmental subdivision or agency that owns or licenses
19 computerized data that includes personal information shall give notice to
20 a consumer of any breach of the security of the system immediately fol-
21 lowing the discovery of a breach in the security of personal information
22 of the consumer whose unencrypted or unredacted personal information
23 was, or is reasonably believed to have been, accessed and acquired by an
24 unauthorized person and that causes, or such individual or entity reason-
25 ably believes has caused or will cause, identity theft or other fraud to any
26 consumer. Notification must be made in good faith, in the most expedient
27 time possible and without unreasonable delay, consistent with the legiti-
28 mate needs of law enforcement as provided in section (c) and consistent
29 with any measures necessary to determine the scope of the breach and
30 to restore the reasonable integrity of the computerized data system.

31 (b) An individual or a commercial entity that maintains computerized
32 data that includes personal information that the individual or the com-
33 mercial entity does not own or license shall give notice to the owner or
34 licensee of the information of any breach of the security of the data fol-
35 lowing discovery of a breach, if the personal information was, or is reason-
36 ably believed to have been, accessed and acquired by an unauthorized
37 person.

38 (c) Notice required by this section may be delayed if a law enforce-
39 ment agency determines that the notice will impede a criminal investi-
40 gation. Notice required by this section shall be made in good faith, with-
41 out unreasonable delay and as soon as possible after the law enforcement
42 agency determines that notification will no longer impede the
43 investigation.

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

9 (e) If an individual or a commercial entity, that is regulated by state
10 or federal law, provides greater protection to personal information than
11 that provided by this section in regard to the subjects addressed by this
12 section, compliance with such state or federal law is deemed compliance
13 with this section with regard to those subjects. This section does not
14 relieve an individual or a commercial entity from a duty to comply with
15 other requirements of state and federal law regarding the protection and
16 privacy of personal information.

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

23 (g) For violations of this section, only the attorney general is empow-
24 ered to bring an action in law or equity to address violations of this section
25 and for other relief that may be appropriate. The provisions of this section
26 are not exclusive and do not relieve an individual or a commercial entity
27 subject to this section from compliance with all other applicable provi-
28 sions of law.

29 Sec. 5. K.S.A. 20-160 is hereby amended to read as follows: 20-160.

30 (a) The supreme court may adopt rules to govern the reproduction, pres-
31 ervation, storage and destruction of court records of this state, not incon-
32 sistent with ~~this act~~ *the provisions of K.S.A. 19-250, 20-159, 20-357 and*
33 *60-465a, and amendments thereto.*

34 (b) *On and after July 1, 2006, parties filing or submitting documents*
35 *with the courts of this state shall not include any references to an indi-*
36 *vidual's social security number if such documents will be available for*
37 *public inspection or copying. The supreme court shall adopt rules imple-*
38 *menting the provisions of this subsection.*

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

- 1 lawfully for the use of the possessor.
- 2 (b) "Identification documents" has the meaning provided in K.S.A.
3 21-3830, and amendments thereto.
- 4 (c) *Except as provided further*, identity theft is a severity level 8,
5 nonperson felony. *If the monetary loss to the victim or victims is more*
6 *than \$100,000, identity theft is a severity level 5, nonperson felony.*
- 7 (d) Identity fraud is:
- 8 (1) Willfully and knowingly supplying false information intending that
9 the information be used to obtain an identification document;
- 10 (2) making, counterfeiting, altering, amending or mutilating any iden-
11 tification document:
- 12 (A) Without lawful authority; and
13 (B) with the intent to deceive; or
14 (3) willfully and knowingly obtaining, possessing, using, selling or fur-
15 nishing or attempting to obtain, possess or furnish to another for any
16 purpose of deception an identification document.
- 17 (e) Identity fraud is a severity level 8, nonperson felony.
- 18 (f) This section shall be part of and supplemental to the Kansas crim-
19 inal code.
- 20 Sec. 7. K.S.A. 2005 Supp. 21-4603d is hereby amended to read as
21 follows: 21-4603d. (a) Whenever any person has been found guilty of a
22 crime, the court may adjudge any of the following:
- 23 (1) Commit the defendant to the custody of the secretary of correc-
24 tions if the current crime of conviction is a felony and the sentence pre-
25 sumes imprisonment, or the sentence imposed is a dispositional departure
26 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
27 term provided by law;
- 28 (2) impose the fine applicable to the offense;
- 29 (3) release the defendant on probation if the current crime of con-
30 viction and criminal history fall within a presumptive nonprison category
31 or through a departure for substantial and compelling reasons subject to
32 such conditions as the court may deem appropriate. In felony cases except
33 for violations of K.S.A. 8-1567, and amendments thereto, the court may
34 include confinement in a county jail not to exceed 60 days, which need
35 not be served consecutively, as a condition of an original probation sen-
36 tence and up to 60 days in a county jail upon each revocation of the
37 probation sentence, or community corrections placement;
- 38 (4) assign the defendant to a community correctional services pro-
39 gram as provided in K.S.A. 75-5291, and amendments thereto, or through
40 a departure for substantial and compelling reasons subject to such con-
41 ditions as the court may deem appropriate, including orders requiring full
42 or partial restitution;
- 43 (5) assign the defendant to a conservation camp for a period not to

- 1 exceed six months as a condition of probation followed by a six-month
2 period of follow-up through adult intensive supervision by a community
3 correctional services program, if the offender successfully completes the
4 conservation camp program;
- 5 (6) assign the defendant to a house arrest program pursuant to K.S.A.
6 21-4603b and amendments thereto;
- 7 (7) order the defendant to attend and satisfactorily complete an al-
8cohol or drug education or training program as provided by subsection
9 (3) of K.S.A. 21-4502, and amendments thereto;
- 10 (8) order the defendant to repay the amount of any reward paid by
11 any crime stoppers chapter, individual, corporation or public entity which
12 materially aided in the apprehension or conviction of the defendant; repay
13 the amount of any costs and expenses incurred by any law enforcement
14 agency in the apprehension of the defendant, if one of the current crimes
15 of conviction of the defendant includes escape, as defined in K.S.A. 21-
16 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.
17 21-3810, and amendments thereto; repay expenses incurred by a fire dis-
18 trict, fire department or fire company responding to a fire which has been
19 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
20 ments thereto, if the defendant is convicted of such crime; repay the
21 amount of any public funds utilized by a law enforcement agency to pur-
22 chase controlled substances from the defendant during the investigation
23 which leads to the defendant's conviction; or repay the amount of any
24 medical costs and expenses incurred by any law enforcement agency or
25 county. Such repayment of the amount of any such costs and expenses
26 incurred by a county, law enforcement agency, fire district, fire depart-
27 ment or fire company or any public funds utilized by a law enforcement
28 agency shall be deposited and credited to the same fund from which the
29 public funds were credited to prior to use by the county, law enforcement
30 agency, fire district, fire department or fire company;
- 31 (9) order the defendant to pay the administrative fee authorized by
32 K.S.A. 2005 Supp. 22-4529, and amendments thereto, unless waived by
33 the court;
- 34 (10) order the defendant to pay a domestic violence special program
35 fee authorized by K.S.A. 2005 Supp. 20-369, and amendments thereto;
- 36 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
37 (7), (8), (9) and (10); or
- 38 (12) suspend imposition of sentence in misdemeanor cases.
- 39 (b) (1) In addition to or in lieu of any of the above, the court shall
40 order the defendant to pay restitution, which shall include, but not be
41 limited to, damage or loss caused by the defendant's crime, unless the
42 court finds compelling circumstances which would render a plan of res-
43 titution unworkable. *In regard to a violation of K.S.A. 21-4018, and*

1 *amendments thereto, such damage or loss shall include, but not be limited*
2 *to, attorney fees and costs incurred to repair the credit history or rating*
3 *of the person whose personal identification documents were obtained and*
4 *used in violation of such section, and to satisfy a debt, lien or other ob-*
5 *ligation incurred by the person whose personal identification documents*
6 *were obtained and used in violation of such section. If the court finds a*
7 *plan of restitution unworkable, the court shall state on the record in detail*
8 *the reasons therefor.*

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

21 (c) In addition to or in lieu of any of the above, the court shall order
22 the defendant to submit to and complete an alcohol and drug evaluation,
23 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
24 4502, and amendments thereto.

25 (d) In addition to any of the above, the court shall order the defend-
26 ant to reimburse the county general fund for all or a part of the expend-
27 itures by the county to provide counsel and other defense services to the
28 defendant. Any such reimbursement to the county shall be paid only after
29 any order for restitution has been paid in full. In determining the amount
30 and method of payment of such sum, the court shall take account of the
31 financial resources of the defendant and the nature of the burden that
32 payment of such sum will impose. A defendant who has been required
33 to pay such sum and who is not willfully in default in the payment thereof
34 may at any time petition the court which sentenced the defendant to
35 waive payment of such sum or any unpaid portion thereof. If it appears
36 to the satisfaction of the court that payment of the amount due will im-
37 pose manifest hardship on the defendant or the defendant's immediate
38 family, the court may waive payment of all or part of the amount due or
39 modify the method of payment.

40 (e) In imposing a fine the court may authorize the payment thereof
41 in installments. In releasing a defendant on probation, the court shall
42 direct that the defendant be under the supervision of a court services
43 officer. If the court commits the defendant to the custody of the secretary

1 of corrections or to jail, the court may specify in its order the amount of
2 restitution to be paid and the person to whom it shall be paid if restitution
3 is later ordered as a condition of parole, conditional release or postrelease
4 supervision.

5 (f) When a new felony is committed while the offender is incarcer-
6 ated and serving a sentence for a felony or while the offender is on pro-
7 bation, assignment to a community correctional services program, parole,
8 conditional release, or postrelease supervision for a felony, a new sentence
9 shall be imposed pursuant to the consecutive sentencing requirements of
10 K.S.A. 21-4608, and amendments thereto, and the court may sentence
11 the offender to imprisonment for the new conviction, even when the new
12 crime of conviction otherwise presumes a nonprison sentence. In this
13 event, imposition of a prison sentence for the new crime does not con-
14 stitute a departure. When a new felony is committed while the offender
15 is on release for a felony pursuant to the provisions of article 28 of chapter
16 22 of the Kansas Statutes Annotated, a new sentence may be imposed
17 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608,
18 and amendments thereto, and the court may sentence the offender to
19 imprisonment for the new conviction, even when the new crime of con-
20 viction otherwise presumes a nonprison sentence. In this event, imposi-
21 tion of a prison sentence for the new crime does not constitute a
22 departure.

23 (g) Prior to imposing a dispositional departure for a defendant whose
24 offense is classified in the presumptive nonprison grid block of either
25 sentencing guideline grid, prior to sentencing a defendant to incarceration
26 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
27 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
28 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-
29 tencing a defendant to incarceration whose offense is classified in grid
30 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
31 whose offense does not meet the requirements of K.S.A. 2005 Supp. 21-
32 4729, and amendments thereto, prior to revocation of a nonprison sanc-
33 tion of a defendant whose offense is classified in grid blocks 4-E or 4-F
34 of the sentencing guideline grid for drug crimes and whose offense does
35 not meet the requirements of K.S.A. 2005 Supp. 21-4729, and amend-
36 ments thereto, or prior to revocation of a nonprison sanction of a de-
37 fendant whose offense is classified in the presumptive nonprison grid
38 block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G
39 of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-
40 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,
41 the court shall consider placement of the defendant in the Labette cor-
42 rectional conservation camp, conservation camps established by the sec-
43 retary of corrections pursuant to K.S.A. 75-52,127, and amendment

1 thereto or a community intermediate sanction center. Pursuant to this
2 paragraph the defendant shall not be sentenced to imprisonment if space
3 is available in a conservation camp or a community intermediate sanction
4 center and the defendant meets all of the conservation camp's or a com-
5 munity intermediate sanction center's placement criteria unless the court
6 states on the record the reasons for not placing the defendant in a con-
7 servation camp or a community intermediate sanction center.

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

13 (i) In addition to any of the above, the court shall order the defendant
14 to reimburse the state general fund for all or a part of the expenditures
15 by the state board of indigents' defense services to provide counsel and
16 other defense services to the defendant. In determining the amount and
17 method of payment of such sum, the court shall take account of the
18 financial resources of the defendant and the nature of the burden that
19 payment of such sum will impose. A defendant who has been required
20 to pay such sum and who is not willfully in default in the payment thereof
21 may at any time petition the court which sentenced the defendant to
22 waive payment of such sum or any unpaid portion thereof. If it appears
23 to the satisfaction of the court that payment of the amount due will im-
24 pose manifest hardship on the defendant or the defendant's immediate
25 family, the court may waive payment of all or part of the amount due or
26 modify the method of payment. The amount of attorney fees to be in-
27 cluded in the court order for reimbursement shall be the amount claimed
28 by appointed counsel on the payment voucher for indigents' defense serv-
29 ices or the amount prescribed by the board of indigents' defense services
30 reimbursement tables as provided in K.S.A. 22-4522, and amendments
31 thereto, whichever is less.

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

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

42 (l) The secretary of corrections is authorized to make direct place-
43 ment to the Labette correctional conservation camp or a conservation

1 camp established by the secretary pursuant to K.S.A. 75-52,127, and
2 amendments thereto, of an inmate sentenced to the secretary's custody
3 if the inmate: (1) Has been sentenced to the secretary for a probation
4 revocation, as a departure from the presumptive nonimprisonment grid
5 block of either sentencing grid, for an offense which is classified in grid
6 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
7 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
8 guidelines grid for drug crimes, or for an offense which is classified in
9 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
10 and such offense does not meet the requirements of K.S.A. 2005 Supp.
11 21-4729, and amendments thereto, and (2) otherwise meets admission
12 criteria of the camp. If the inmate successfully completes a conservation
13 camp program, the secretary of corrections shall report such completion
14 to the sentencing court and the county or district attorney. The inmate
15 shall then be assigned by the court to six months of follow-up supervision
16 conducted by the appropriate community corrections services program.
17 The court may also order that supervision continue thereafter for the
18 length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

22 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
23 amendments thereto, in addition to any of the above, for felony violations
24 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall
25 require the defendant who meets the requirements established in K.S.A.
26 2005 Supp. 21-4729, and amendments thereto, to participate in a certified
27 drug abuse treatment program, as provided in K.S.A. 2005 Supp. 75-
28 52,144, and amendments thereto, including but not limited to, an ap-
29 proved after-care plan. If the defendant fails to participate in or has a
30 pattern of intentional conduct that demonstrates the offender's refusal to
31 comply with or participate in the treatment program, as established by
32 judicial finding, the defendant shall be subject to revocation of probation
33 and the defendant shall serve the underlying prison sentence as estab-
34 lished in K.S.A. 21-4705, and amendments thereto. For those offenders
35 who are convicted on or after the effective date of this act, upon com-
36 pletion of the underlying prison sentence, the defendant shall not be
37 subject to a period of postrelease supervision. The amount of time spent
38 participating in such program shall not be credited as service on the un-
39 derlying prison sentence.

40 Sec. 8. K.S.A. 60-4104 is hereby amended to read as follows: 60-
41 4104. Conduct and offenses giving rise to forfeiture under this act,
42 whether or not there is a prosecution or conviction related to the offense,
43 are:

- 1 (a) All offenses which statutorily and specifically authorize forfeiture;
2 (b) violations of the uniform controlled substances act, K.S.A. 65-
3 4101 et seq., and amendments thereto;
4 (c) theft which is classified as a felony violation pursuant to K.S.A.
5 21-3701, and amendments thereto, in which the property taken was
6 livestock;
7 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments
8 thereto;
9 (e) money laundering, K.S.A. 65-4142, and amendments thereto;
10 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-
11 mercial gambling, K.S.A. 21-4304, and amendments thereto;
12 (g) counterfeiting, K.S.A. 2005 Supp. 21-3763, and amendments
13 thereto;
14 (h) *violations of section 1, and amendments thereto;*
15 ~~(h)~~ (i) an act or omission occurring outside this state, which would
16 be a violation in the place of occurrence and would be described in this
17 section if the act occurred in this state, whether or not it is prosecuted in
18 any state;
19 ~~(i)~~ (j) an act or omission committed in furtherance of any act or omis-
20 sion described in this section including any inchoate or preparatory of-
21 fense, whether or not there is a prosecution or conviction related to the
22 act or omission;
23 ~~(j)~~ (k) any solicitation or conspiracy to commit any act or omission
24 described in this section, whether or not there is a prosecution or con-
25 viction related to the act or omission.
26 Sec. 9. K.S.A. 60-4105 is hereby amended to read as follows: 60-
27 4105. The following property is subject to forfeiture:
28 (a) Property described in a statute authorizing forfeiture;
29 (b) all property, including the whole of any lot or tract of land and
30 any appurtenances or improvements to real property that is either:
31 (1) Furnished or intended to be furnished by any person in an
32 exchange that constitutes conduct giving rise to forfeiture; or
33 (2) used or intended to be used in any manner to facilitate conduct
34 giving rise to forfeiture, *including, but not limited to, any computer, com-*
35 *puter system, computer network or any software or data owned by the*
36 *defendant which is used during the commission of a violation of section*
37 *1, and amendments thereto;*
38 (c) all proceeds of any conduct giving rise to forfeiture;
39 (d) any property derived from any proceeds which were obtained
40 directly or indirectly from the commission of an offense listed in K.S.A.
41 60-4104, and amendments thereto;
42 (e) all weapons possessed, used, or available for use in any manner
43 to facilitate conduct giving rise to forfeiture;

- 1 (f) ownership or interest in real property that is a homestead, to the
2 extent the homestead was acquired with proceeds from conduct giving
3 rise to forfeiture;
- 4 (g) contraband, which shall be seized and summarily forfeited to the
5 state without regard to the procedures set forth in this act;
- 6 (h) all controlled substances, raw materials, controlled substance an-
7 alogs, counterfeit substances, or imitation controlled substances that have
8 been manufactured, distributed, dispensed, possessed, or acquired in vi-
9 olation of the laws of this state; and
- 10 (i) any items bearing a counterfeit mark.
- 11 Sec. 10. K.S.A. 50-702 is hereby amended to read as follows: 50-702.
12 The following words and phrases when used in ~~K.S.A. 50-701 to 50-722,~~
13 ~~inclusive, and amendments thereto,~~ *the fair credit reporting act* shall have
14 the meanings ascribed to them in this section.
- 15 (a) The term “person” means any individual, partnership, corpora-
16 tion, trust, estate, cooperative, association, government or governmental
17 subdivision or agency, or other entity.
- 18 (b) The term “consumer” means an individual.
- 19 (c) The term “consumer report” means any written, oral, or other
20 communication of any information by a consumer reporting agency bear-
21 ing on a consumer’s credit worthiness, credit standing, credit capacity,
22 character, general reputation, personal characteristics, or mode of living
23 which is used or expected to be used or collected in whole or in part for
24 the purpose of serving as a factor in establishing the consumer’s eligibility
25 for credit or insurance to be used primarily for personal, family, or house-
26 hold purposes, or employment purposes, or other purposes authorized
27 under K.S.A. 50-703, *and amendments thereto*. The term does not include
28 (1) any report containing information solely as to transactions or experi-
29 ences between the consumer and the person making the report; (2) any
30 authorization or approval of a specific extension of credit directly or in-
31 directly by the issuer of a credit card or similar device; or (3) any report
32 in which a person who has been requested by a third party to make a
33 specific extension of credit directly or indirectly to a consumer conveys
34 that decision with respect to such request, if the third party advises the
35 consumer of the name and address of the person to whom the request
36 was made and such person makes the disclosures to the consumer re-
37 quired under K.S.A. 50-714, *and amendments thereto*.
- 38 (d) The term “investigative consumer report” means a consumer re-
39 port or portion thereof in which information on a consumer’s character,
40 general reputation, personal characteristics, or mode of living is obtained
41 through personal interviews with neighbors, friends, or associates of the
42 consumer reported on or with others with whom the consumer is ac-
43 quainted or who may have knowledge concerning any such items of in-

1 formation. However, such information shall not include specific factual
2 information on a consumer's credit record obtained directly from a cred-
3 itor of the consumer or from a consumer reporting agency when such
4 information was obtained directly from a creditor of the consumer or from
5 the consumer.

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

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

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

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

25 (i) *The term "clear and proper identification" means information gen-*
26 *erally deemed sufficient to identify a person.*

27 (j) *"Security alert" means a notice placed in a consumer's consumer*
28 *report, at the request of the consumer, which notifies a recipient of the*
29 *credit report, credit score or summary report that the consumer's identity*
30 *may have been used without the consumer's consent to fraudulently obtain*
31 *goods or services in the consumer's name.*

32 (k) *The term "security freeze" means a notice placed on a consumer*
33 *report, at the request of the consumer and subject to certain exceptions,*
34 *that prohibits a consumer reporting agency from releasing the consumer's*
35 *consumer report or credit score without the express authorization of the*
36 *consumer.*

37 New Sec. 11. (a) A consumer may elect to place a security alert in
38 the consumer's consumer report by making a request in writing or by
39 telephone to a consumer credit reporting agency.

40 (b) A consumer credit reporting agency shall notify a person who
41 requests information from a consumer report if a security alert has been
42 placed in the report, regardless of whether a full consumer report, credit
43 score or summary report is requested.

- 1 (c) A consumer credit reporting agency shall place a security alert in
2 a consumer's consumer report no later than five business days after re-
3 ceiving a request to do so from the consumer.
- 4 (d) The security alert shall remain in place for at least 90 days and a
5 consumer shall have the right to request a renewal of the security alert.
- 6 (e) Any person who uses information in a consumer's consumer re-
7 port in connection with the approval of credit based on an application for
8 an extension of credit, or with the purchase, lease or rental of goods or
9 non-credit-related services, and who receives notice of a security alert
10 pursuant to subsection (b) may not lend money, extend credit or complete
11 the purchase, lease or rental of goods or non-credit-related services with-
12 out taking reasonable steps to verify the consumer's identity in order to
13 ensure that the application for an extension of credit or for the purchase,
14 lease or rental of goods or non-credit-related services is not the result of
15 identity theft. If the consumer has placed a statement with the security
16 alert in the consumer's consumer report requesting that the consumer's
17 identity be verified by calling a specified telephone number, any person
18 who receives the statement with notice of the security alert pursuant to
19 subsection (b) shall take reasonable steps to verify the identity of the
20 consumer by contacting the consumer using the specified telephone num-
21 ber prior to lending money, extending credit or completing the purchase,
22 lease or rental of goods or non-credit-related services. If a person uses a
23 information in a consumer report to facilitate the extension of credit or
24 for another permissible purpose on behalf of a subsidiary, affiliate, agent,
25 assignee or prospective assignee, such person may verify a consumer's
26 identity under this section in lieu of the subsidiary, affiliate, agent, as-
27 signee or prospective assignee.
- 28 (f) For purposes of this section, "extension of credit" does not include
29 an increase in the dollar limit of an existing open-end credit plan, as
30 defined in Regulation Z issued by the Board of Governors of the Federal
31 Reserve System (12 C.F.R. 226.2), or any change to, or review of, an
32 existing credit account.
- 33 (g) If reasonable steps are taken to verify the accuracy of a consumer's
34 first and last name, address, or social security number to confirm that an
35 extension of credit is not the result of identity theft, those steps constitute
36 compliance with the requirements of this section, except that if a con-
37 sumer has placed a statement including a telephone number with the
38 security alert in the consumer's consumer report, the consumer's identity
39 shall be verified by contacting the consumer using such telephone num-
40 ber as specified by subsection (e).
- 41 (h) A consumer credit reporting agency shall notify each consumer
42 who has requested that a security alert be placed in the consumer's con-
43 sumer report of the expiration date of the alert.

1 (i) Any consumer credit reporting agency which recklessly, willfully
2 or intentionally fails to place a security alert in a consumer's consumer
3 report in accordance with this section shall be liable to the aggrieved
4 consumer in a civil action brought in the district court for actual damages,
5 a civil penalty in an amount not exceeding \$2,500 for each violation and
6 reasonable attorney fees and costs of the action.

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

9 New Sec. 12. (a) A consumer may elect to place a security freeze on
10 the consumer's consumer report by written request, sent by certified mail,
11 which includes clear and proper identification, to a consumer reporting
12 agency. A consumer reporting agency shall place a security freeze on a
13 consumer's consumer report no later than five business days after receiv-
14 ing a written request for the security freeze from the consumer.

15 (b) When a security freeze is in place, information from a consumer
16 report shall not be released to a third party without prior express au-
17 thorization from the consumer. This subsection shall not prevent a con-
18 sumer reporting agency from advising a third party that a security freeze
19 is in effect with respect to a consumer report.

20 (c) The consumer reporting agency, no later than five business days
21 after the date the agency receives a request for a security freeze, shall
22 provide the consumer with a unique personal identification number or
23 password to be used by the consumer when providing authorization for
24 the access to the consumer's consumer report for a specific period of
25 time. In addition, the consumer reporting agency shall simultaneously
26 provide to the consumer in writing the process of placing, removing and
27 temporarily lifting a security freeze and the process for allowing access
28 to information from the consumer's consumer report for a specific period
29 while the security freeze is in effect.

30 (d) A consumer may request in writing a replacement personal iden-
31 tification number or password. The request shall comply with the require-
32 ments for requesting a security freeze pursuant to subsection (a). The
33 consumer reporting agency, not later than the 7th business day after the
34 date the agency receives the request for a replacement personal identi-
35 fication number or password, shall provide the consumer with a new,
36 unique personal identification number or password to be used by the
37 consumer instead of the number or password provided pursuant to sub-
38 section (c).

39 (e) A consumer reporting agency shall notify a person who requests
40 a consumer report or score if a security freeze is in effect for the consumer
41 report.

42 (f) If, in connection with an application for credit or any other use, a
43 third party requests access to a consumer report on which a security

- 1 freeze is in effect, the third party must treat the application as incomplete
2 if the consumer does not allow the consumer's consumer report to be
3 accessed for that specific period of time.
- 4 (g) If the consumer wishes to allow the consumer's consumer report
5 or score to be accessed for a specific period of time while a freeze is in
6 place, the consumer shall contact the consumer reporting agency, request
7 that the freeze be temporarily lifted and provide the following:
- 8 (1) Clear and proper identification;
9 (2) the unique personal identification number or password provided
10 by the consumer reporting agency in accordance with subsection (c) or
11 (d); and
12 (3) the proper information regarding the time period for which the
13 report shall be available to users of the consumer report.
- 14 (h) A consumer reporting agency that receives a request from a con-
15 sumer to temporarily lift a freeze on a consumer report pursuant to sub-
16 section (g) shall comply with the request no later than three business days
17 after receiving the request. A consumer reporting agency may develop
18 procedures involving the use of telephone, fax, the internet or other elec-
19 tronic media to receive and process a request from a consumer to tem-
20 porarily lift a freeze on a consumer report or score pursuant to subsection
21 (g) in an expedited manner.
- 22 (i) A consumer reporting agency shall remove or temporarily lift a
23 freeze placed on a consumer's consumer report only in the following
24 cases:
- 25 (1) Upon consumer request as provided in this section; or
26 (2) if the consumer's consumer report was frozen due to a material
27 misrepresentation of fact by the consumer, in which case, if a consumer
28 reporting agency intends to remove a freeze upon the consumer's con-
29 sumer report, the consumer reporting agency shall notify the consumer
30 in writing prior to removing the freeze on the consumer's consumer
31 report.
- 32 (j) A security freeze shall remain in place until the consumer requests
33 that the security freeze be removed. A consumer reporting agency shall
34 remove a security freeze within three business days after receiving a re-
35 quest for removal from the consumer, who shall be required to provide:
- 36 (1) Clear and proper identification; and
37 (2) the unique personal identification number or password provided
38 by the consumer reporting agency in accordance with subsection (c) or
39 (d).
- 40 (k) A security freeze does not apply to a consumer report provided
41 to:
- 42 (1) A federal, state or local governmental entity, including a law en-
43 forcement agency or court, or agents or assigns thereof;

- 1 (2) a private collection agency for the sole purpose of assisting in the
2 collection of an existing debt of the consumer who is the subject of the
3 consumer report requested;
- 4 (3) a person or entity, or a subsidiary, affiliate or agent of such person
5 or entity, or an assignee of a financial obligation owing by the consumer
6 to such person or entity, or a prospective assignee of a financial obligation
7 owing by the consumer to such person or entity in conjunction with the
8 proposed purchase of the financial obligation, with which the consumer
9 has or had prior to assignment of an account or contract, including a
10 demand deposit account, or to whom the consumer issued a negotiable
11 instrument, for the purposes of reviewing the account or collecting the
12 financial obligation owing for the account, contract, or negotiable instru-
13 ment. For purposes of this paragraph, "reviewing the account" includes
14 activities related to account maintenance, monitoring, credit line in-
15 creases and account upgrades and enhancements;
- 16 (4) a subsidiary, affiliate, agent, assignee or prospective assignee of a
17 person to whom access has been granted under subsection (g) for the
18 purposes of facilitating the extension of credit;
- 19 (5) a person, for the purposes of prescreening as provided by the
20 federal fair credit reporting act, 15 U.S.C. §1681b;
- 21 (6) a consumer reporting agency for the purposes of providing a con-
22 sumer with a copy of the consumer's own report at such consumer's
23 request;
- 24 (7) a child support enforcement agency;
- 25 (8) a consumer reporting agency that acts only as a reseller of credit
26 information by assembling and merging information contained in the da-
27 tabase of another consumer reporting agency or multiple consumer re-
28 porting agencies and does not maintain a permanent database of credit
29 information from which new consumer reports are produced; however, a
30 consumer reporting agency acting as a reseller shall honor any security
31 freeze placed on a consumer report by another consumer reporting
32 agency;
- 33 (9) a check services or fraud prevention services company, which is-
34 sues reports on incidents of fraud or authorizations for the purpose of
35 approving or processing negotiable instruments, electronic funds trans-
36 fers or similar methods of payments; or
- 37 (10) a deposit account information service company which issues to
38 inquiring banks or other financial institutions, for use only in reviewing a
39 consumer request for a deposit account at the inquiring bank or financial
40 institution, reports regarding account closures due to fraud, substantial
41 overdrafts, ATM abuse or similar negative information regarding a
42 consumer.
- 43 (k) A consumer reporting agency may impose a reasonable charge on

1 a consumer for initially placing a security freeze on a consumer report.
2 The amount of the charge may not exceed \$10. The charge to temporarily
3 lift the security freeze may not exceed \$8 per request. At no time shall
4 the consumer be charged for revoking the freeze. On January 1 of each
5 year, a consumer reporting agency may increase the charge for placing a
6 security alert based proportionally on changes to the consumer price in-
7 dex of all urban consumers as determined by the United States depart-
8 ment of labor, with fractional changes rounded to the nearest \$.25. An
9 exception shall be allowed whereby the consumer will be charged zero
10 dollars by the consumer reporting agency placing the security freeze if:

11 (1) The consumer is a victim of identity theft and, upon the request
12 of the consumer reporting agency, provides the consumer reporting
13 agency with a police report; or

14 (2) the consumer is 62 or more years of age.

15 (l) If a security freeze is in place, a consumer reporting agency shall
16 not change any of the following official information in the consumer re-
17 port without sending a written confirmation of the change to the con-
18 sumer within 30 days after the change is posted to the consumer's file:
19 Name, date of birth, social security number and address. Written confir-
20 mation is not required for technical modifications of a consumer's official
21 information, including name and street abbreviations, complete spellings
22 or transposition of numbers or letters. In the case of an address change,
23 the written confirmation shall be sent to both the new address and to the
24 former address.

25 (m) Any consumer reporting agency which violates, whether negli-
26 gently or intentionally, a security freeze by releasing a consumer report
27 or credit score which has been placed under a security freeze shall be
28 liable to the aggrieved consumer in a civil action brought in the district
29 court for actual damages, a civil penalty in an amount not exceeding
30 \$10,000 for each violation and reasonable attorney fees and costs of the
31 action.

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

34 New Sec. 13. (a) Nothing in section 12, and amendments thereto,
35 shall be construed to require the following to place a security freeze on
36 a consumer report:

37 (1) A check services or fraud prevention services company, which
38 issues reports on incidents of fraud or authorizations for the purpose of
39 approving or processing negotiable instruments, electronic funds trans-
40 fers, or similar methods of payments;

41 (2) a deposit account information service company which issues to
42 inquiring banks or other financial institutions, for use only in reviewing a
43 consumer request for a deposit account at the inquiring bank or financial

1 institution, reports regarding account closures due to fraud, substantial
2 overdrafts, ATM abuse or similar negative information regarding a
3 consumer;

4 (3) a reseller of credit information that assembles or merges infor-
5 mation contained in the database of another consumer reporting agency
6 or multiple consumer reporting agencies and does not maintain a per-
7 manent database of credit information from which new consumer reports
8 are produced;

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

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

17 (6) any bank, savings bank, trust company, savings and loan associa-
18 tion, credit union or any other financial institution regulated by the state
19 of Kansas or any agency of the United States.

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

22 New Sec. 14. If any provision of this act or its application to any
23 person or circumstance is held invalid, the invalidity shall not affect any
24 other provision or application of the act which can be given effect without
25 the invalid provision or application. To this end the provisions of this act
26 are severable.

27 Sec. 15. K.S.A. 20-160, 60-4104 and 60-4105 and K.S.A. 2005 Supp.
28 21-4018 and 21-4603d are hereby repealed.

29 Sec. 16. This act shall take effect and be in force from and after its
30 publication in the statute book.