2020 Kansas Statutes

50-6,139b. Requirements for holders of personal information. (a) As used in this section:
(1) "Holder of personal information" or "holder" means a person who, in the ordinary
course of business, collects, maintains or possesses, or causes to be collected,
maintained or possessed, the personal information of any other person.
(2) "Person" means any individual, partnership, corporation, trust, estate,
cooperative, association, government, governmental subdivision or agency or other
entity.
(3) "Personal information" 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.
(4) "Record" has the meaning provided by K.S.A. 84-1-201, and amendments thereto.
(b) A holder of personal information shall:
(1) Implement and maintain reasonable procedures and practices appropriate to the
nature of the information, and exercise reasonable care to protect the personal
information from unauthorized access, use, modification or disclosure. 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 paragraph
and failure to comply with such federal or state law or regulation shall be prima facie
evidence of a violation of this paragraph; and
(2) unless otherwise required by federal law or regulation, take reasonable steps to
destroy or arrange for the destruction of any records within such holder's custody or
control containing any person's personal information when such holder no longer
intends to maintain or possess such records. Such destruction shall be by shredding,
erasing or otherwise modifying the personal identifying information in the records to
make it unreadable or undecipherable through any means.
(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 paragraph 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. 2020 Supp. 21-6107, and
amendments thereto, or to a violation of an information security obligation imposed
by federal or state statute or regulation.
(d) Each violation of this section shall be an unconscionable act or practice in
violation of K.S.A. 50-627, and amendments thereto. Each record that is not destroyed
in compliance with subsection (b)(2) shall constitute a separate unconscionable act
within the meaning of K.S.A. 50-627, and amendments thereto.
(e) Notwithstanding any other provision of law to the contrary, the exclusive
authority to bring an action for any violation of this section shall be with the attorney
general. 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.

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

History: L. 2016, ch. 103, § 2; July 1.