

Consumer Protection—Identity Theft; Identity Fraud; Door-to-Door Sales; Violation of a Consumer Protection Order; HB 2460

HB 2460 creates and amends law in the Kansas Consumer Protection Act (KCPA) regarding identity theft and identity fraud and creates the crime of violation of a consumer protection order, regarding door-to-door sales.

Identity Theft and Identity Fraud

The bill grants the Attorney General authority, within the limits of available resources, to assist victims of identity theft, identity fraud, and related crimes in pursuing various remedies.

The bill clarifies the duties of holders of personal information. Specifically, the bill defines a “holder of personal information” (holder) as a person (defined by the bill) who collects, maintains, or possesses personal information (defined by the bill) of any other person. A holder has the following duties:

- To implement and maintain reasonable procedures and practices appropriate to the nature of the information, and exercise reasonable care to protect the information from unauthorized access. Compliance with any applicable federal or state law or regulation governing the procedures and practices of the holder regarding the protection of the information will be deemed proof of compliance with this provision, and failure to comply with such law or regulation will be *prima facie* evidence of a violation of this provision; and
- To destroy (by methods specified in the bill) records containing personal information in the holder’s custody or control when the holder no longer intends to maintain or possess such records.

A holder may present an affirmative defense to a violation of these provisions if the holder proves by clear and convincing evidence that:

- The violation resulted from a failure of the method of destruction of such records, and such failure could not reasonably have been foreseen despite the holder’s reasonable care; or
- The holder had, at the time of the violation, a written or electronic records management policy designed to prevent a violation of these provisions, and the destruction was not carried out pursuant such policy.

This affirmative defense is not available to a holder unless the holder proves that persons involved in the violation received training in the records management policy, the violation was the result of a good-faith error, and no reasonable likelihood exists that the violation may cause, enable, or contribute to identity theft or identity fraud, or to a violation of an information security obligation imposed by federal or state statute or regulation.

Each violation of these provisions shall be an unconscionable act or practice under the Kansas Consumer Protection Act, and each record not destroyed in compliance with the bill’s provisions shall constitute a separate unconscionable act.

The bill grants exclusive authority to the Attorney General to bring an action pursuant to the bill's provisions, and nothing in the bill may be construed to create or permit a private cause of action for any violation. The bill states its provisions do not relieve a holder of any duty to comply with other requirements of state and federal law regarding the protection of such information.

The bill amends an existing statute known as the "Wayne Owen Law" to name that statute, in combination with the new law established by the bill regarding identity theft and identity fraud, the "Wayne Owen Act."

The bill also repeals a statute governing the destruction of consumer information.

Door-to-Door Sales

The bill creates the crime of violation of a consumer protection order, which is defined as engaging in a door-to-door sale while prohibited from door-to-door sales. The bill defines "prohibited from door-to-door sales" to mean subject to a temporary or permanent order or judgment of a court entered under the KCPA or any act part of or supplemental to the KCPA that restrains, enjoins, or otherwise prohibits the person from engaging in door-to-door sales in this state or any portion therein. The bill specifies that an order or judgment restrains, enjoins, or otherwise prohibits the person from engaging in door-to-door sales if it:

- Expressly prohibits the person from engaging in door-to-door sales;
- Prohibits conduct that includes engaging in door-to-door sales, such as prohibiting the person from engaging in consumer transactions, as defined in the KCPA; or
- Prohibits engaging in only a particular type of door-to-door sales, such as the sale of roofing-related services, or only in a particular place, in which case criminal liability would arise only if the person engaged in the particular type of door-to-door sale that is restrained.

Violation of a consumer protection order is a severity level 9, person felony. The person shall be subject to criminal liability if the State proves beyond a reasonable doubt that such person had actual or constructive notice of the temporary or permanent order or judgment, as described in the definition of "prohibited from door-to-door sales." The bill outlines circumstances wherein a person would have actual or constructive notice.

The bill provides criminal liability imposed under the terms of the bill shall not relieve any person of civil liability for violating a consumer protection order. Any criminal penalties authorized by law may be imposed in addition to any civil sanctions or liability authorized by law. The bill allows the Attorney General, a county or district attorney, or both to institute criminal action to prosecute this offense and includes a severability clause for the section creating this new crime.

Finally, the bill allows the Attorney General's Office to post conspicuously on its website any judgment or order that restrains, enjoins, or otherwise prohibits a person from engaging in door-to-door sales and adds violation of a consumer protection order to the list of crimes giving rise to civil forfeiture.