

HOUSE BILL No. 2084

By Committee on Judiciary

1-22

1 AN ACT concerning the prepaid telephone security act; relating to
2 telecommunications; creating the mobile communications devices
3 identification system.
4

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

6 Section 1. (a) The legislature finds that some mobile communications
7 devices are being used by individuals to perpetrate criminal undertakings
8 and to avoid leaving a verified identity and address. Individuals that sign
9 contracts with wireless telephone providers sign contracts with the
10 providers and provide verifiable names and addresses. However,
11 individuals that purchase prepaid mobile devices do not provide any such
12 information. This has made the use of prepaid mobile devices an
13 increasingly common choice for some individuals to perpetrate criminal
14 activity without leaving any identifying information. Because this lack of
15 information enables criminal elements to continue undetected, the
16 legislature determines that the prepaid telephone security act is necessary
17 to identify individuals engaging in criminal activity while minimally
18 intruding on lawful citizens and business activities.

19 (b) (1) The department shall issue a request for proposal and select a
20 provider with demonstrated capabilities of working with law enforcement
21 agencies and protecting electronic data by January 1, 2016. The provider
22 shall establish a mobile communications devices identification system and
23 provide all necessary equipment, software and training to the sellers to
24 effectuate the provisions of this act. Collection of the fee established
25 pursuant to subsection (f) shall commence for each seller after the provider
26 has delivered and completed employee training at that seller's location.
27 Such contract shall not be subject to the provisions of K.S.A. 75-3739, and
28 amendments thereto.

29 (2) The mobile communications devices identification system shall be
30 a central repository of information received by sellers from purchasers and
31 maintained for the purpose of providing information to law enforcement.
32 All information in the system shall be the property of the department and
33 shall not be sold or used for any purpose unless authorized by this section
34 or pursuant to rules and regulations adopted by the department. The
35 department may promulgate rules and regulations that permit the contract
36 provider to retain information collected in the mobile communications

1 devices identification system for up to two calendar years from the date
2 the information was added to the system. Any information associated with
3 a record that has been stored in the system for two calendar years and that
4 is not part of an on-going judicial process must be destroyed.

5 (3) The mobile communications devices identification system, all
6 information contained therein and any records maintained by the
7 department, or by any entity contracting with the department, submitted to,
8 maintained or stored as a part of the system, shall be confidential, may
9 only be used for investigatory or evidentiary purposes, including open
10 court disclosure and criminal discovery to defense counsel, related to
11 violations of state or federal law, shall not be a public record and shall not
12 be subject to the Kansas open records act, K.S.A. 45-215 et seq., and
13 amendments thereto, and only shall be released to law enforcement
14 officers and prosecutors pursuant to this section. The provisions of this
15 subsection shall expire on June 30, 2020, unless the legislature acts to
16 reenact such provision. The provisions of this subsection shall be reviewed
17 by the legislature prior to July 1, 2020.

18 (4) The department shall issue a request for proposal for an
19 independent data manager to maintain the mobile communications devices
20 identification system. The data manager shall have experience in collecting
21 electronic data from multiple states as well as experience in data security,
22 protection of personal information, responding to data requests from courts
23 and law enforcement officers and any other requirements the department
24 determines are necessary. The department shall promulgate rules and
25 regulations establishing procedures for the data manager to:

26 (A) Provide for the maintenance of all records in the system;
27 (B) destroy old records pursuant to subsection (b)(2); and
28 (C) determine the sufficiency of any emergency request pursuant to
29 subsection (d).

30 (c) (1) All sellers in this state, prior to the completion of any retail
31 transaction to a purchaser, shall: (A) Require a purchaser to provide a valid
32 government issued identification card; and

33 (B) on equipment or software provided to the seller by the contractor
34 at no cost to the seller, record the purchaser's full name, complete physical
35 home address and the mobile equipment identifier or the international
36 mobile station equipment identity of the prepaid mobile device, prepaid
37 wireless communications services or SIM card to be purchased, or, if
38 neither are available, the activation code of such device, services or SIM
39 card.

40 (2) The seller shall record all retail transactions through an electronic
41 filing process that will transfer the information to the system at the time of
42 such sale. The department shall have the authority to contract with any
43 software or hardware vendors necessary to facilitate this instantaneous

1 transfer of reports from the seller to the mobile communications devices
2 identification system. Such reports shall be made and transferred in
3 accordance with rules and regulations adopted pursuant to this section.

4 (d) The information in the mobile communications devices
5 identification system established pursuant to this section shall be available
6 to all law enforcement officers in this state which have a need for
7 information relating to prepaid mobile devices, prepaid wireless
8 communications services or SIM cards, upon production of a subpoena or
9 other court order. Information in the system may be provided without a
10 subpoena or court order if a law enforcement officer determines that
11 information in the system is necessary in order to respond to a call for
12 emergency services or in an emergency situation that involves the risk of
13 death or serious physical harm.

14 (e) Any seller that knowingly fails to electronically record any retail
15 transaction required by this section shall be liable to the state for the
16 payment of a civil penalty, recoverable in an action brought by the attorney
17 general or a county or district attorney located in the jurisdiction of the
18 seller in an amount not exceeding \$100 for each failure to report. After
19 five documented failures to report, the seller shall be liable for an
20 additional civil penalty of up to \$1,000 for each subsequent failure to
21 record a retail transaction. Any civil penalty recovered under this
22 subsection shall be transferred to the state treasurer in accordance with the
23 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
24 each such remittance, the state treasurer shall deposit the entire amount in
25 the state treasury and credit 50% of the moneys to the attorney general's
26 litigation fund and 50% of the moneys to the mobile communications
27 devices identification system fee fund established pursuant to this section.

28 (f) (1) The department is authorized, in consultation with the mobile
29 communications devices identification system data manager, Kansas law
30 enforcement officer agency heads and the department of revenue, to
31 promulgate rules and regulations to establish a mobile communications
32 devices identification fee to be collected at the point of purchase that is
33 necessary to operate the system. Such fee shall be no greater than 1% of
34 the cost of a retail transaction. The fee shall be collected by the seller from
35 the purchaser with respect to each retail transaction occurring in this state.
36 Collection of this fee shall commence for each seller after the provider has
37 delivered and completed employee training at that seller's location. Such
38 contract shall not be subject to the provisions of K.S.A. 75-3739, and
39 amendments thereto.

40 (2) The amount of the mobile communications devices identification
41 fee shall be either separately stated on an invoice, receipt or other similar
42 document that is provided to the purchaser by the seller, or otherwise
43 disclosed to the purchaser. The amount of the fee that is collected by a

1 seller from a purchaser, if such amount is separately stated on an invoice,
2 receipt or other similar document provided to the purchaser, shall not be
3 included in the base for measuring any tax, fee, surcharge or other charge
4 that is imposed by this state, any political subdivision of this state or any
5 intergovernmental agency.

6 (g) A seller may charge and keep up to a \$2 administrative fee,
7 separate from the mobile communications devices identification fee, per
8 retail transaction to compensate the seller for expenses associated with
9 reporting the required sales information.

10 (h) For the purposes of this section, a retail transaction that is effected
11 in person by a purchaser in a business location of the seller shall be treated
12 as occurring in this state if that business location is in this state, and any
13 other retail transaction shall be treated as occurring in this state if the retail
14 transaction is treated as occurring in this state for the purposes of K.S.A.
15 79-3673(c)(3), and amendments thereto.

16 (i) The mobile communications devices identification fee is the
17 liability of the purchaser and not the seller, except that the seller shall be
18 liable to remit all mobile communications devices identification fees that
19 the seller collects from purchasers pursuant to this section, including all
20 such fees that the seller is deemed to collect where the amount of the
21 charge has not been separately stated in an invoice, receipt or other similar
22 document provided by the seller.

23 (j) All mobile communications devices identification fees collected
24 by sellers shall be remitted to the department of revenue by electronic
25 filing that is consistent with the provisions of article 36 of chapter 79 of
26 the Kansas Statutes Annotated, and amendments thereto. The department
27 of revenue shall establish registration and payment procedures for the
28 collection of the mobile communications devices identification fee. The
29 department of revenue shall establish procedures by which a seller may
30 document that a sale is not a retail sale, which procedures shall
31 substantially coincide with procedures for documenting sale for resale
32 transactions pursuant to article 36 of chapter 79 of the Kansas Statutes
33 Annotated, and amendments thereto.

34 (k) The department of revenue shall transfer all remitted mobile
35 communications devices identification fees to the state treasurer in
36 accordance with the provisions of K.S.A. 75-4215, and amendments
37 thereto. Upon receipt of each such remittance, the state treasurer shall
38 deposit the entire amount in the state treasury to the credit of the mobile
39 communications devices identification system fee fund, which is hereby
40 established in the state treasury, to be used for the creation and
41 maintenance of the mobile communications devices identification system
42 established in this section. During fiscal year 2015, the department of
43 revenue may retain up to \$70,000 of remitted funds only for use in paying

1 for programming and other one-time costs for establishing a system for
2 collecting the mobile communications devices identification fee. During
3 any fiscal year hereafter, the department of revenue shall not retain any
4 remitted funds.

5 (l) To minimize additional costs to the department of revenue, the
6 department of revenue may conduct audits of sellers in conjunction with
7 sales and use tax audits. The department of revenue is authorized to
8 provide the department and the attorney general with information obtained
9 in such audits if such information indicates that a seller may not be
10 complying with the provisions of this section. The department may request
11 the department of revenue to initiate collection or audit procedures on
12 individual sellers if collection efforts have been unsuccessful.

13 (m) The secretary of administration shall adopt rules and regulations
14 necessary to effectuate the provisions of this section.

15 (n) As used in this section:

16 (1) "Department" means the department of administration;

17 (2) "international mobile station equipment identity" means an
18 equipment identification number, similar to a serial number, used to
19 identify a mobile station;

20 (3) "mobile equipment identifier" means a globally unique number
21 for a physical piece of mobile station equipment;

22 (4) "mobile station" means all user equipment and software needed
23 for communication with a mobile network;

24 (5) "prepaid mobile device" means any cellular phone or similar
25 wireless communication device for which the mobile device user
26 purchases a set allotment of wireless communication services provided by
27 a wireless carrier;

28 (6) "prepaid wireless communications services" means prepaid
29 wireless service as defined in K.S.A. 2014 Supp. 12-5363, and
30 amendments thereto;

31 (7) "purchaser" means any person that purchases a prepaid mobile
32 device or SIM card from a seller;

33 (8) "retail transaction" means the purchase of a prepaid mobile
34 device, prepaid wireless communications services or SIM card from a
35 seller for any purpose other than resale, not including the use, storage or
36 consumption of such services;

37 (9) "seller" means any business subject to the provisions of article 36
38 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto,
39 that sells prepaid mobile devices or SIM cards;

40 (10) "SIM card" means a subscriber identity module or functionally
41 equivalent data storage device; and

42 (11) "wireless carrier" has the meaning provided in 47 U.S.C. §
43 615b(4), as in effect on the effective date of this act.

1 Sec. 2. This act shall take effect and be in force from and after its
2 publication in the statute book.