

KANSAS

IDENTITY THEFT RANKING BY STATE: Rank 29, 61.0 Complaints Per 100,000
Population, 1694 Complaints (2007)
Updated December 15, 2008

Current Laws:

In Kansas, identity theft is defined as “knowingly and with intent to defraud for any benefit, obtaining, possessing, transferring, using, or attempting to obtain, possess, transfer, or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor.”

Identification documents include any card, certificate or document or banking instrument (credit or debit card) that identifies or purports to identify the bearer of such document, whether or not intended for use as identification, including drivers' licenses, nondrivers' identification cards, certified copies of birth, death, marriage and divorce certificates, Social Security cards and employee identification cards.

Violations are a severity level 8, nonperson felony. This is punishable by up to 11 months in prison; however, there is a presumption of probation (up to 18 months) for this severity level. The penalty increases to severity level 5 if the monetary loss to the victim is more than \$100,000. Severity level 5 nonperson felonies are punishable by up to 43 months in prison.

Identity fraud is defined as willfully and knowingly supplying false identification intending that the information be used to obtain an identification document; or making, counterfeiting, altering, amending, or mutilating any identification document with the intent to deceive. It also includes willfully and knowingly obtaining, possessing, using, selling, or attempting to do obtain, possess, or furnish an identification document to another for the purpose of deception. Identity fraud is a severity level 8, nonperson felony.

Statute: §21-4018: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=11923>

Dealing in false identification documents is also a severity level 8, nonperson felony. It prohibits the reproduction, manufacture, selling, or offering for sale any identification document that simulates, purports to be, or is designed to cause others to reasonably believe it is a legitimate identification document, and bears a fictitious name or other false information.

Statute: §21-3830: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=11865>

Vital Records Identity Fraud, which is also a severity level 8, nonperson felony, focuses on birth, death, marriage, and divorce certificates. It prohibits:

- Willfully and knowingly supplying false information intending that the information be used to obtain a certified copy of a vital record; or
- Making, counterfeiting, altering, amending, or mutilating any certified copy of a vital record with the intent to deceive; or

- Obtaining, possessing, using, selling, or furnishing or attempting to do so, for the purpose of deception, a certified copy of a vital record.

These provisions do not apply to a person under 21 who uses the identification document of another person to purchase an alcoholic beverage, or to a person under 18 who uses the documents of another to purchase tobacco, a periodical or videotape that contains nudity, admittance to a performance that prohibits the attendance of the person based on age, or an item that is prohibited by law for use or consumption by such person.

Statute: §21-3830: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=11865>

Payment Cards: A person is guilty of criminal use of a financial card if with intent to defraud and for the purpose of obtaining money, goods, property, services, or communication services, a person:

- Uses a financial card without the consent of the cardholder; or
- Knowingly uses a financial card, or the number or description thereof, which has been revoked or canceled; or
- Uses a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

Criminal use of a financial card is a severity level 7, nonperson felony if the money, goods, property, services or communication services obtained within any seven-day period are of the value of \$ 25,000 or more; a level 9 nonperson felony if the value is at least \$1000 but less than \$2500; and a class A nonperson misdemeanor if the value is less than \$1000.

Statute: §21-3729: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=11799>

Scanning Device: State law prohibits the use of a scanning device or re-encoder that is used to obtain or record encoded information from the magnetic strip of a payment card without the authorization of the authorized user and with the intent to defraud the authorized user, the issuer of the card, or a merchant. Scanning devices are defined as a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card. A re-encoder is an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card. Violations are a severity level 6, nonperson felony, punishable by up to 26 months in prison.

Statute: §21-4109: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=11924>

Social Security Numbers: State law places limits on the use and dissemination of Social Security numbers (SSNs) by state agencies. The law prohibits the public display of documents that contain an individual's SSN if the document also contains an individual's personal information, unless required by federal law. Personal information includes name, address, phone number, or e-mail address. These requirements do not apply to certain documents recorded in the official records of any recorder of deeds or to documents filed as official records of the court, such as eviction records, bankruptcies, professional licenses, or convictions or arrests. The law also prohibits businesses from soliciting, requiring, or using for commercial purposes an individual's Social Security number unless that number is necessary and there is a specific use

for the number and no other identifying number could be used. An individual who is aggrieved by a violation may recover a penalty of up to \$1000 per violation.

Statute: §75-3520: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=34776>

Disposal of Records: Unless otherwise required by federal law or regulation, state law requires a person or business to take reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information that is no longer to be retained. Documents should be shredded, erased, or otherwise modified to make the personal information in the records unreadable or undecipherable.

Statute: §50-7a03: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=20952>

Victim Assistance:

Restitution: State law allows judges to order restitution for identity theft victims. The restitution includes, but is not limited to, attorney fees and costs incurred to repair the credit history or rating of the person and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used improperly.

Statute: §21-4603d(9)(b1): <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=12022>

Credit Freeze: State law allows victims of identity theft with a valid police report, investigative report, or complaint filed with a law enforcement agency to place security freezes on their consumer credit reports to prevent identity thieves from opening new accounts in their names. Such a freeze enables the consumer to prevent anyone from looking at his/her credit file for the purpose of granting credit unless the consumer chooses to allow a particular business look at the information. To request a freeze, a consumer must request one in writing by certified mail to the credit reporting agencies. There is no charge for placing or temporarily unlocking the freeze.

The reporting agency must place the freeze within five business days after receiving the request, and within ten days of placing the freeze must send a written confirmation of the freeze and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his credit for a specific party or period of time. Requests for a temporary unlocking of the freeze must be completed within three business days.

Statute: §50-723: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=20948>

§50-724: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=20949>

How to Place a Security Freeze in Kansas:

www.consumersunion.org/pdf/security/securityKS.pdf

Security Breach: State law requires state and local government agencies and businesses operating in the state that collect and maintain computerized records containing consumers' personal information to notify consumers when their personal information is compromised during a security breach, putting them at risk of identity theft. A security breach is defined as the "unauthorized access and acquisition of unencrypted or unredacted computerized data that compromises the security, confidentiality, or integrity of personal information" that causes or

could lead to identity theft to any consumer. Personal identifying information includes a consumer's first name or first initial and last name linked to any one or more of the following data elements, when the elements are neither redacted nor encrypted: Social Security number, driver's license number, or financial account number, credit or debit card number in combination with any required access code. Publicly available information is not included.

Businesses and government agencies are required to conduct an investigation prior to the notification to determine if personal information has been or will be misused, and if misuse has or is likely to occur, they must provide notice as soon as possible to affected Kansas residents. Disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

Notification can be provided to the affected persons by mail or e-mail. If the cost of providing regular notice would exceed \$100,000, the amount of people to be notified exceeds 5,000, or the entity or business does not have sufficient contact information, substitute notice may be provided. When substitute notice is used, it should consist of the following, as applicable: e-mail notice, conspicuous posting on the entity's web site, and notification to statewide media. If more than 1,000 people are affected by the breach, the entity must also notify all consumer reporting agencies.

Statute: §50-7a01: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=20950>;
§50-7a02: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=20951>

State Resources:

“Identity Theft”

(<http://netsafekansas.com/content/page/id/201>)

Office of the Attorney General, “Identity Theft Brochure”

(<http://www.ksag.org/files/shared/IDTheft.pdf>)

This document directs victims to “*File a police report to provide creditors with proof of the crime.*”

“Identity Theft Repair Kit”

(<http://www.ksag.org/files/shared/ID Theft Repair Kit.pdf>)

This document helps victims of identity theft, and explains that victims should first: “*Contact the Police. File a report with your local police department, and, if the identity theft did not take place within your area, file a report with the police from the area where the theft took place. Make sure to get a copy of the police report. You may need that documentation to support your claims to credit bureaus, creditors, debt collection, or other companies. If you are unable to obtain a copy of the police report, be sure to get the report number.*”

“Protect Yourself from Identity Theft” (<http://www.ksag.org/files/shared/Identity.Theft.pdf>)

Kansas Insurance Commission, “Identity Theft Insurance”

(http://www.ksinsurance.org/consumers/id_theft.htm)

Legislation:

2006:

Lawmakers passed a comprehensive identity crime bill (**SB 196**). The bill:

- Increases the punishment for identity theft from a nonperson felony, severity level 8 to severity level 5 when the monetary loss is more than \$100,000.
- Prohibits the possession or use of scanning devices to access or scan the encoded information on any ATM, debit, credit or other payment card, and makes it a crime to use a re-encoder to place the information encoded on the magnetic strip onto a different card without permission. A re-encoder is a device that places encoded information from the magnetic strip of a payment card onto the magnetic strip or stripe of a different payment card.
- Requires notification to consumers after a security breach that compromises personal identifying information, putting consumers at risk of identity theft.
- Creates protections for personal identifying information. It prohibits the public display of documents that contain an individual’s Social Security Number if the document also contains an individual’s personal information, unless required by federal law. Personal information includes the name, address, phone number, or e-mail address. These requirements do not apply to certain documents recorded in the official records of any recorder of deeds or to documents filed as official records of the court, such as eviction records, bankruptcies, professional licenses, or convictions or arrests. It also prohibits businesses from soliciting, requiring, or using for commercial purposes an individual’s Social Security number unless that number is necessary and there is a specific use for the number and no other identifying number could be used. An individual who is aggrieved by a violation may recover a penalty of up to \$1000 per violation.
- Allows victims of identity theft to obtain security freezes on their credit reports.
- Establishes procedures for the destruction of data.
- Provides that a person who has been arrested as a result of being a victim of identity theft will not be charged when petitioning an order of expungement.
- Allows judges to order restitution for identity theft victims. The restitution includes, but is not limited to, attorney fees and costs incurred to repair the credit history or rating of the person and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used improperly.

2005:

HB 2087 establishes two new crimes: vital records identity fraud and identity fraud. The bill also expands the scope of the crime of identity theft to delete the requirement that the crime be committed for an “economic” purpose. Under the bill, committing identity fraud relating to vital records such as birth, death, marriage, and divorce certificates will be a severity level 8, nonperson felony. This includes willfully and knowingly supplying false information intending that the information be used to obtain a certified copy of a vital record; making, counterfeiting, altering, or mutilating any certified copy of a vital record without lawful authority and with the intent to deceive; or willfully and knowingly obtaining, possessing, using, selling, or furnishing or attempting to obtain, possess, or furnish to another for the purpose of deception a certified

copy of a vital record. It does not apply to minors who use the identification of another to buy alcohol or cigarettes underage.

Identity fraud will also be a severity level 8-nonperson felony. This includes willfully and knowingly supplying false information intending that the information be used to obtain an identification document; making, counterfeiting, altering, amending, or mutilating any identification document without lawful authority and with the intent to deceive; or willfully and knowingly obtaining, possessing, using, selling, or furnishing or attempting to obtain, possess, or furnish to another for the purpose of deception an identification document.