

Kansas Consumer Protection Act, Kansas Code of Civil Procedure—Temporary Restraining Orders, Temporary Injunctions, Poverty Affidavits, Redemption of Real Property, and Civil Forfeiture; HB 2081

HB 2081 amends the Kansas Consumer Protection Act (KCPA) and the Kansas Code of Civil Procedure in the areas of temporary restraining orders and temporary injunctions, poverty affidavits, redemption of real property, and civil forfeiture.

KCPA

The bill adds a new section named the “Wayne Owen Law” stating the conduct outlined in the definitions of the crimes of identity theft and identity fraud constitutes unconscionable acts or practices prohibited by the KCPA, and any person who engages in such conduct is subject to the remedies and penalties provided by the KCPA.

Temporary Restraining Orders and Temporary Injunctions

The bill allows a court to issue a temporary restraining order without notice or bond to the adverse party only if:

- Specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard;
- The movant’s attorney certifies in writing any efforts to give notice and why it should not be required; and
- Notice of the issuance of a temporary restraining order is provided to the Attorney General if the adverse party is the State or an agency, officer, or employee thereof, or to the appropriate city clerk or county clerk if the adverse party is a city or county or an agency, officer, or employee thereof.

The bill requires each temporary restraining order issued without notice to include its issuance date and time, information regarding the irreparable injury, and the reason the order was issued without notice. The order must be promptly filed in the clerk’s office and entered in the record. The order expires at the time set by the court, not to exceed 14 days, unless the court extends the order for good cause or the adverse party consents.

If a temporary restraining order is issued without notice, the bill requires the motion for a temporary injunction to be set for hearing at the earliest possible time.

The adverse party can appear before the court to move to dissolve or modify the temporary restraining order, after giving two days’ notice to the party who obtained the order.

Under the bill, the court can issue a temporary injunction or a temporary restraining order only if the movant gives security in an amount the court considers proper to pay the costs

and damages sustained by the party wrongfully enjoined or restrained. Security is not required from the State or an agency, officer, or employee of the State, however, and the court can waive the security requirement for any city or county or an agency, officer, or employee thereof.

Poverty Affidavits

The bill modifies the requirements for poverty affidavits filed by plaintiffs in civil cases who seek to be relieved from paying the docket fee. Such affidavits must include a factual basis for the plaintiff's allegation of poverty, including, but not limited to, the source and amount of the plaintiff's weekly income. The plaintiff must sign and swear to the affidavit, under penalty of perjury. An affidavit in substantial compliance with the form set forth by the Kansas Judicial Council is deemed sufficient.

Upon the filing of a petition with a poverty affidavit, the court must review the petition and, if the court finds the allegation of poverty is untrue, must direct the plaintiff to pay the docket fee or dismiss the petition without prejudice. Service of process will not be made unless the court grants leave following the review.

Redemption of Real Property

The bill amends a provision allowing a mortgagor to agree in the mortgage instrument to a shorter period of redemption than 12 months or wholly waive the period of redemption. The bill clarifies that an existing exception for mortgages covering single- or two-family dwellings owned by or held in trust for natural persons is applicable only when held in trust by natural persons owning or holding the dwelling as their residence.

Civil Forfeiture

The bill adds to the list of conduct and offenses giving rise to forfeiture indecent solicitation of a child, aggravated indecent solicitation of a child, and sexual exploitation of a child. The bill also specifies that, if used during the commission of an offense giving rise to forfeiture, any computer, computer system, computer network, or any software or data owned by the defendant is subject to forfeiture. Previously, these items were forfeited only if used in commission of the crime of unlawful possession of a scanning device or reencoder. Further, the bill provides for forfeiture of an "electronic device" used during the commission of an offense giving rise to forfeiture.