

[As Amended by House Committee of the Whole]

Session of 2004

Substitute for HOUSE BILL No. 2593

By Committee on Agriculture

2-24

10 AN ACT concerning food safety and agriculture; relating to animal iden-
11 tification program; powers and duties of livestock commissioner;
12 amending K.S.A. 2003 Supp. 45-221 and repealing the existing section.
13

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

15 New Section 1. (a) Consistent with the provisions of any federal an-
16 imal identification program, the livestock commissioner is authorized and
17 directed to develop and implement an animal identification program of
18 data collection, animal identification and premise registration for the pur-
19 pose of providing safe and secure food resources and preventing, tracking,
20 controlling and eradicating animal health threats in Kansas.

21 (b) With the implementation of a federal animal identification pro-
22 gram, the livestock commissioner may require: (1) Identification of in-
23 dividual animals, herds and lots; (2) registration of premises where the
24 animals are located; and (3) tracking of animal movement within Kansas
25 and animals entering or leaving Kansas, as the livestock commissioner
26 deems necessary to carry out the purposes of this act, insure the safety
27 of the food supply and safeguard the health of animals in Kansas. ~~Nothing~~
28 ~~in this section shall prevent the livestock commissioner from performing~~
29 ~~all acts~~ **[The livestock commissioner is authorized to perform any**
30 **functions necessary]** in preparation for implementing the animal iden-
31 tification program prior to implementation of the federal animal iden-
32 tification program. Such acts in preparation shall include, but not be limited
33 to, public hearings, educational meetings, development of proposed rules
34 and regulations and development of infrastructure necessary for such
35 implementation.

36 (c) With the implementation of a federal animal identification pro-
37 gram, the livestock commissioner is authorized to adopt rules and regu-
38 lations as necessary, and in cooperation with the United States depart-
39 ment of agriculture to carry out and enforce the provisions of this act.
40 The rules and regulations may include, but not be limited to, definitions
41 of any relevant terms; applicability of the provisions to particular prem-
42 ises, animals, herds or lots; procedures for identifying individual animals,
43 herds or lots; deadlines for compliance with provisions of the program;

1 and requirements for records on movement of animals within Kansas and
2 on animals entering or leaving Kansas. The livestock commissioner is
3 authorized to incorporate by reference in rules and regulations adopted
4 by the livestock commissioner in accordance with state law, any regula-
5 tions promulgated by an agency of the federal government relating to
6 state programs for animal identification.

7 (d) Subject to appropriations therefor, the livestock commissioner is
8 authorized to hire, in accordance with the civil service act, such employees
9 as may be needed, in the judgment of the livestock commissioner, to carry
10 out the provisions of this act. The livestock commissioner and the em-
11 ployees under the control and supervision of the livestock commissioner
12 shall perform such acts as necessary to insure compliance with this act,
13 including investigations, conducting inspections of premises and animals
14 and reviewing animal records.

15 (e) The livestock commissioner is authorized to enter into any agree-
16 ments with federal agencies or officials, other state agencies or officials
17 or the owner of animals or such owner's authorized agent to coordinate
18 efforts and share records and data systems pursuant to law to maximize
19 the efficiency and effectiveness of this act.

20 (f) The livestock commissioner may establish a uniform system of
21 data collection for the receipt and processing of all records filed with the
22 Kansas animal health department pursuant to this act. Such records shall
23 be deemed confidential and not subject to disclosure under the Kansas
24 open records act, except as provided in K.S.A. 45-221, and amendments
25 thereto.

26 (g) Any federal financial aid or assistance, grants, gifts, bequests,
27 money or aid of any kind for animal identification in Kansas, shall be
28 remitted to the state treasurer in accordance with the provisions of K.S.A.
29 75-4215, and amendments thereto. Upon receipt of each such remittance
30 the state treasurer shall deposit the entire amount in the state treasury
31 to the credit of the animal identification fund, which fund is hereby cre-
32 ated. All expenditures from such fund shall be made in accordance with
33 appropriations acts upon warrants of the director of accounts and reports
34 issued pursuant to vouchers approved by the livestock commissioner or
35 by a person designated by the livestock commissioner and shall be used
36 solely for the administration of the animal identification program.

37 (h) The livestock commissioner shall form study groups representing
38 the various animal species to be affected by the provisions of this act.
39 Each such study group shall include representatives for each such specie
40 selected by the livestock commissioner and shall include assistance from
41 the secretary of agriculture or the secretary's designees. Each such study
42 group shall make recommendations to the livestock commissioner re-
43 garding the definition of premise for purposes of the program, appropri-

1 ations and fees necessary in administration of the program, enforcement
2 provisions necessary in administration of the program and other issues
3 related to the administration of the program.

4 (i) The livestock commissioner shall prepare a report and present
5 such report to the legislature by February 1, 2005, on the status of the
6 animal identification program. Such report shall include the recommen-
7 dations of the livestock commissioner as to the definition of premise for
8 purposes of the program, appropriations and fees necessary in adminis-
9 tration of the program, enforcement provisions necessary in administra-
10 tion of the program and any other recommendation deemed necessary
11 by the livestock commissioner to carry out the provisions of this act.

12 Sec. 2. K.S.A. 2003 Supp. 45-221 is hereby amended to read as fol-
13 lows: 45-221. (a) Except to the extent disclosure is otherwise required by
14 law, a public agency shall not be required to disclose:

15 (1) Records the disclosure of which is specifically prohibited or re-
16 stricted by federal law, state statute or rule of the Kansas supreme court
17 or the disclosure of which is prohibited or restricted pursuant to specific
18 authorization of federal law, state statute or rule of the Kansas supreme
19 court to restrict or prohibit disclosure.

20 (2) Records which are privileged under the rules of evidence, unless
21 the holder of the privilege consents to the disclosure.

22 (3) Medical, psychiatric, psychological or alcoholism or drug depend-
23 ency treatment records which pertain to identifiable patients.

24 (4) Personnel records, performance ratings or individually identifica-
25 ble records pertaining to employees or applicants for employment, except
26 that this exemption shall not apply to the names, positions, salaries and
27 lengths of service of officers and employees of public agencies once they
28 are employed as such.

29 (5) Information which would reveal the identity of any undercover
30 agent or any informant reporting a specific violation of law.

31 (6) Letters of reference or recommendation pertaining to the char-
32 acter or qualifications of an identifiable individual.

33 (7) Library, archive and museum materials contributed by private
34 persons, to the extent of any limitations imposed as conditions of the
35 contribution.

36 (8) Information which would reveal the identity of an individual who
37 lawfully makes a donation to a public agency, if anonymity of the donor
38 is a condition of the donation.

39 (9) Testing and examination materials, before the test or examination
40 is given or if it is to be given again, or records of individual test or ex-
41 amination scores, other than records which show only passage or failure
42 and not specific scores.

43 (10) Criminal investigation records, except that the district court, in

1 an action brought pursuant to K.S.A. 45-222, and amendments thereto,
2 may order disclosure of such records, subject to such conditions as the
3 court may impose, if the court finds that disclosure:

- 4 (A) Is in the public interest;
- 5 (B) would not interfere with any prospective law enforcement action;
- 6 (C) would not reveal the identity of any confidential source or un-
7 dercover agent;
- 8 (D) would not reveal confidential investigative techniques or proce-
9 dures not known to the general public;
- 10 (E) would not endanger the life or physical safety of any person; and
- 11 (F) would not reveal the name, address, phone number or any other
12 information which specifically and individually identifies the victim of any
13 sexual offense in article 35 of chapter 21 of the Kansas Statutes Anno-
14 tated, and amendments thereto.

15 (11) Records of agencies involved in administrative adjudication or
16 civil litigation, compiled in the process of detecting or investigating vio-
17 lations of civil law or administrative rules and regulations, if disclosure
18 would interfere with a prospective administrative adjudication or civil
19 litigation or reveal the identity of a confidential source or undercover
20 agent.

21 (12) Records of emergency or security information or procedures of
22 a public agency, or plans, drawings, specifications or related information
23 for any building or facility which is used for purposes requiring security
24 measures in or around the building or facility or which is used for the
25 generation or transmission of power, water, fuels or communications, if
26 disclosure would jeopardize security of the public agency, building or
27 facility.

28 (13) The contents of appraisals or engineering or feasibility estimates
29 or evaluations made by or for a public agency relative to the acquisition
30 of property, prior to the award of formal contracts therefor.

31 (14) Correspondence between a public agency and a private individ-
32 ual, other than correspondence which is intended to give notice of an
33 action, policy or determination relating to any regulatory, supervisory or
34 enforcement responsibility of the public agency or which is widely dis-
35 tributed to the public by a public agency and is not specifically in response
36 to communications from such a private individual.

37 (15) Records pertaining to employer-employee negotiations, if dis-
38 closure would reveal information discussed in a lawful executive session
39 under K.S.A. 75-4319, and amendments thereto.

40 (16) Software programs for electronic data processing and documen-
41 tation thereof, but each public agency shall maintain a register, open to
42 the public, that describes:

- 43 (A) The information which the agency maintains on computer facil-

1 ities; and

2 (B) the form in which the information can be made available using
3 existing computer programs.

4 (17) Applications, financial statements and other information sub-
5 mitted in connection with applications for student financial assistance
6 where financial need is a consideration for the award.

7 (18) Plans, designs, drawings or specifications which are prepared by
8 a person other than an employee of a public agency or records which are
9 the property of a private person.

10 (19) Well samples, logs or surveys which the state corporation com-
11 mission requires to be filed by persons who have drilled or caused to be
12 drilled, or are drilling or causing to be drilled, holes for the purpose of
13 discovery or production of oil or gas, to the extent that disclosure is limited
14 by rules and regulations of the state corporation commission.

15 (20) Notes, preliminary drafts, research data in the process of anal-
16 ysis, unfunded grant proposals, memoranda, recommendations or other
17 records in which opinions are expressed or policies or actions are pro-
18 posed, except that this exemption shall not apply when such records are
19 publicly cited or identified in an open meeting or in an agenda of an open
20 meeting.

21 (21) Records of a public agency having legislative powers, which re-
22 cords pertain to proposed legislation or amendments to proposed legis-
23 lation, except that this exemption shall not apply when such records are:

24 (A) Publicly cited or identified in an open meeting or in an agenda
25 of an open meeting; or

26 (B) distributed to a majority of a quorum of any body which has au-
27 thority to take action or make recommendations to the public agency with
28 regard to the matters to which such records pertain.

29 (22) Records of a public agency having legislative powers, which re-
30 cords pertain to research prepared for one or more members of such
31 agency, except that this exemption shall not apply when such records are:

32 (A) Publicly cited or identified in an open meeting or in an agenda
33 of an open meeting; or

34 (B) distributed to a majority of a quorum of any body which has au-
35 thority to take action or make recommendations to the public agency with
36 regard to the matters to which such records pertain.

37 (23) Library patron and circulation records which pertain to identi-
38 fiable individuals.

39 (24) Records which are compiled for census or research purposes and
40 which pertain to identifiable individuals.

41 (25) Records which represent and constitute the work product of an
42 attorney.

43 (26) Records of a utility or other public service pertaining to individ-

1 ually identifiable residential customers of the utility or service, except that
2 information concerning billings for specific individual customers named
3 by the requester shall be subject to disclosure as provided by this act.

4 (27) Specifications for competitive bidding, until the specifications
5 are officially approved by the public agency.

6 (28) Sealed bids and related documents, until a bid is accepted or all
7 bids rejected.

8 (29) Correctional records pertaining to an identifiable inmate or re-
9 lease, except that:

10 (A) The name; photograph and other identifying information; sen-
11 tence data; parole eligibility date; custody or supervision level; disciplinary
12 record; supervision violations; conditions of supervision, excluding
13 requirements pertaining to mental health or substance abuse counseling;
14 location of facility where incarcerated or location of parole office main-
15 taining supervision and address of a releasee whose crime was committed
16 after the effective date of this act shall be subject to disclosure to any
17 person other than another inmate or releasee, except that the disclosure
18 of the location of an inmate transferred to another state pursuant to the
19 interstate corrections compact shall be at the discretion of the secretary
20 of corrections;

21 (B) the ombudsman of corrections, the attorney general, law enforce-
22 ment agencies, counsel for the inmate to whom the record pertains and
23 any county or district attorney shall have access to correctional records to
24 the extent otherwise permitted by law;

25 (C) the information provided to the law enforcement agency pursu-
26 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
27 amendments thereto, shall be subject to disclosure to any person, except
28 that the name, address, telephone number or any other information which
29 specifically and individually identifies the victim of any offender required
30 to register as provided by the Kansas offender registration act, K.S.A. 22-
31 4901 *et seq.* and amendments thereto, shall not be disclosed; and

32 (D) records of the department of corrections regarding the financial
33 assets of an offender in the custody of the secretary of corrections shall
34 be subject to disclosure to the victim, or such victim's family, of the crime
35 for which the inmate is in custody as set forth in an order of restitution
36 by the sentencing court.

37 (30) Public records containing information of a personal nature
38 where the public disclosure thereof would constitute a clearly unwar-
39 ranted invasion of personal privacy.

40 (31) Public records pertaining to prospective location of a business
41 or industry where no previous public disclosure has been made of the
42 business' or industry's interest in locating in, relocating within or expand-
43 ing within the state. This exception shall not include those records per-

1 taining to application of agencies for permits or licenses necessary to do
2 business or to expand business operations within this state, except as
3 otherwise provided by law.

4 (32) Engineering and architectural estimates made by or for any pub-
5 lic agency relative to public improvements.

6 (33) Financial information submitted by contractors in qualification
7 statements to any public agency.

8 (34) Records involved in the obtaining and processing of intellectual
9 property rights that are expected to be, wholly or partially vested in or
10 owned by a state educational institution, as defined in K.S.A. 76-711, and
11 amendments thereto, or an assignee of the institution organized and ex-
12 isting for the benefit of the institution.

13 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
14 65-4923 or 65-4924, and amendments thereto, and which is privileged
15 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

16 (36) Information which would reveal the precise location of an ar-
17 cheological site.

18 (37) Any financial data or traffic information from a railroad company,
19 to a public agency, concerning the sale, lease or rehabilitation of the
20 railroad's property in Kansas.

21 (38) Risk-based capital reports, risk-based capital plans and corrective
22 orders including the working papers and the results of any analysis filed
23 with the commissioner of insurance in accordance with K.S.A. 40-2c20
24 and 40-2d20 and amendments thereto.

25 (39) Memoranda and related materials required to be used to support
26 the annual actuarial opinions submitted pursuant to subsection (b) of
27 K.S.A. 40-409, and amendments thereto.

28 (40) Disclosure reports filed with the commissioner of insurance un-
29 der subsection (a) of K.S.A. 40-2,156, and amendments thereto.

30 (41) All financial analysis ratios and examination synopses concerning
31 insurance companies that are submitted to the commissioner by the na-
32 tional association of insurance commissioners' insurance regulatory infor-
33 mation system.

34 (42) Any records the disclosure of which is restricted or prohibited
35 by a tribal-state gaming compact.

36 (43) Market research, market plans, business plans and the terms and
37 conditions of managed care or other third party contracts, developed or
38 entered into by the university of Kansas medical center in the operation
39 and management of the university hospital which the chancellor of the
40 university of Kansas or the chancellor's designee determines would give
41 an unfair advantage to competitors of the university of Kansas medical
42 center.

43 (44) The amount of franchise tax paid to the secretary of state by

1 domestic corporations, foreign corporations, domestic limited liability
2 companies, foreign limited liability companies, domestic limited partner-
3 ship, foreign limited partnership, domestic limited liability partnerships
4 and foreign limited liability partnerships.

5 (45) Records the disclosure of which would pose a substantial likeli-
6 hood of revealing security measures that protect: (A) Systems, facilities
7 or equipment used in the production, transmission or distribution of en-
8 ergy, water or communications services; or (B) sewer or wastewater treat-
9 ment systems, facilities or equipment. For purposes of this paragraph,
10 security means measures that protect against criminal acts intended to
11 intimidate or coerce the civilian population, influence government policy
12 by intimidation or coercion or to affect the operation of government by
13 disruption of public services, mass destruction, assassination or
14 kidnapping.

15 (46) Any information or material received by the secretary of state
16 pursuant to subsection (b) of K.S.A. 2003 Supp. 44-1518, and amend-
17 ments thereto, except when such information is required to be submitted
18 in an application pursuant to K.S.A. 2003 Supp. 44-1520, and amend-
19 ments thereto.

20 (47) *Records filed with the Kansas animal health department and the*
21 *livestock commissioner pursuant to the animal identification program as*
22 *provided in section 1, and amendments thereto, except that this exception*
23 *shall not apply when in the livestock commissioner's judgment, the sharing*
24 *of such records and data with other state and federal animal health offi-*
25 *cial is necessary to carry out the provisions of section 1, and amendments*
26 *thereto.*

27 (b) Except to the extent disclosure is otherwise required by law or as
28 appropriate during the course of an administrative proceeding or on ap-
29 peal from agency action, a public agency or officer shall not disclose fi-
30 nancial information of a taxpayer which may be required or requested by
31 a county appraiser or the director of property valuation to assist in the
32 determination of the value of the taxpayer's property for ad valorem tax-
33 ation purposes; or any financial information of a personal nature required
34 or requested by a public agency or officer, including a name, job descrip-
35 tion or title revealing the salary or other compensation of officers, em-
36 ployees or applicants for employment with a firm, corporation or agency,
37 except a public agency. Nothing contained herein shall be construed to
38 prohibit the publication of statistics, so classified as to prevent identifi-
39 cation of particular reports or returns and the items thereof.

40 (c) As used in this section, the term "cited or identified" shall not
41 include a request to an employee of a public agency that a document be
42 prepared.

43 (d) If a public record contains material which is not subject to dis-

1 closure pursuant to this act, the public agency shall separate or delete
2 such material and make available to the requester that material in the
3 public record which is subject to disclosure pursuant to this act. If a public
4 record is not subject to disclosure because it pertains to an identifiable
5 individual, the public agency shall delete the identifying portions of the
6 record and make available to the requester any remaining portions which
7 are subject to disclosure pursuant to this act, unless the request is for a
8 record pertaining to a specific individual or to such a limited group of
9 individuals that the individuals' identities are reasonably ascertainable, the
10 public agency shall not be required to disclose those portions of the record
11 which pertain to such individual or individuals.

12 (e) The provisions of this section shall not be construed to exempt
13 from public disclosure statistical information not descriptive of any iden-
14 tifiable person.

15 (f) Notwithstanding the provisions of subsection (a), any public rec-
16 ord which has been in existence more than 70 years shall be open for
17 inspection by any person unless disclosure of the record is specifically
18 prohibited or restricted by federal law, state statute or rule of the Kansas
19 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
20 amendments thereto.

21 Sec. 3. K.S.A. 2003 Supp. 45-221 is hereby repealed.

22 Sec. 4. This act shall take effect and be in force from and after its
23 publication in the Kansas register.