

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by Representative Robert H. Miller at
Chairperson

1:30 a.m./p.m. on February 28, 1984 in room 526S of the Capitol.

All members were present except:

Representatives Peterson & Vancrum - E

Committee staff present:

Russ Mills, Research Department
Mary Torrence, Revisor's Office

Conferees appearing before the committee:

Representative Louis

The meeting was called to order by Chairman Miller.

Attention was called to the revised agenda and the hearing to be held on Wednesday on HB2901.

Representative Hensley made a motion, seconded by Representative Fuller, to approve the minutes of the February 27 meeting. The motion carried.

HB2915 - Sweepstakes contests not prohibited as lotteries

Representative Louis explained the bill which would include in the definition of "lottery" to exclude any sweepstakes or similar contest for which no purchase of goods or services or other consideration is required for the opportunity to win a prize. According to the Attorney General, sweepstakes are permissible, but the statutes relating to them are confusing and companies almost always void them in Kansas because they don't want to read the statute.

Hearings were concluded on HB2915.

HB2865- Access to division of vehicles records

There was discussion about the amendments to HB2865. See attachment A.

Representative Aylward made a motion, seconded by Representative Ramirez, to report HB2865 as amended. The motion carried.

The meeting was adjourned.

HOUSE BILL No. 2865

By Committee on Federal and State Affairs

2-7

0017 AN ACT concerning records of the division of vehicles of the
0018 state department of revenue; amending K.S.A. 1983 Supp.
0019 74-2012 and ~~section 11~~ of 1984 House Bill No. 2668, and sections 5, 6 and 7
0020 repealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1983 Supp. 74-2012 is hereby amended to
0023 read as follows: 74-2012. (a) All records of the division of vehi-
0024 cles pertaining to title, registration, licenses, dealers, drivers'
0025 licenses and accident reports shall be public records and open to
0026 inspection by the public. Other records relating to the physical
0027 or mental condition of any person, or to expungement or diver-
0028 sion agreements, shall be confidential. Copies of information
0029 contained in public records relating to any person shall be
0030 provided by the division to such person upon request. Copies of
0031 such information shall be provided to any person, firm, corpora-
0032 tion, partnership or association either upon the written authori-
0033 zation of the person to whom such information relates or upon
0034 the requesting party's written certification that:

0035 (a) The requesting party has a security interest in a motor
0036 vehicle owned by such person; or such person has offered to
0037 pledge such motor vehicle to the requesting party as security for
0038 a loan; or

0039 (b) the requesting party is an employer or prospective em-
0040 ployer of such person who, as a condition of such employment,
0041 will be engaged in the operation of motor vehicles owned by the
0042 requesting party; or

0043 (c) the information relates to an application for or renewal or
0044 cancellation of a casualty insurance policy issued by the re-
0045 questing party or through its authorized agent; and that the

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0046 requesting party and any such agent is fully licensed by the
0047 Kansas insurance department. All other records of the division of
0048 vehicles shall be subject to the provisions of 1984 House Bill No.
0049 2668 except as otherwise provided by this section.

~~0050 (b) Copies of records of the division of vehicles shall not be
0051 released, or information contained therein divulged, to any
0052 person unless the person provides written certification to the
0053 division that the person does not intend to, and will not, sell,
0054 give or receive any list of names and addresses contained in or
0055 derived from the records or information for the purpose of
0056 selling or offering for sale any property or service to persons
0057 listed therein. Any person who uses a name or address which the
0058 person knows was derived from a public record obtained under
0059 the provisions of this section to sell or offer for sale any property
0060 or service, or who provides such a name or address to another
0061 person for that purpose, is guilty of a class C misdemeanor.
0062 In addition, (c) The director of vehicles may furnish infor-
0063 mation in any of its public records to a requesting party who
0064 submits proof satisfactory to the director that the information
0065 requested is to be used by the requesting party for the purpose of
0066 providing information to a manufacturer of motor vehicles regis-
0067 tered in this state purposes of assisting manufacturers of motor
0068 vehicles in notifying owners of vehicles believed to have safety-
0069 related defects and compiling statistical reports.~~

0070 (d) [A fee in an amount fixed by the secretary of revenue and
0071 approved by the director of accounts and reports under K.S.A.
0072 45-204 pursuant to subsection (c)(5) of section 5 of 1984 House
0073 Bill No. 2668, for each request for information in the public
0074 records of the division concerning any vehicle or licensed driver
0075 shall be charged by the division, except that the director may
0076 charge a lesser fee pursuant to a contract between the secretary
0077 of revenue and any person to whom the director is authorized or
0078 required to furnish information under this section subsection (c),
0079 and such fee shall not be less than the cost of production or
0080 reproduction of any information requested.

0081 (e) The secretary of revenue may adopt such rules and regu-
0082 lations as are necessary to implement the provisions of this

(e)

(f)

(b) Lists of persons' names and addresses contained in or derived from records of the division of vehicles shall not be sold, given or received for the purposes prohibited by section 11 of 1984 House Bill No. 2668 except that:

(1) The director of vehicles may sell or give to a requesting party, and a requesting party may receive, such a list and accompanying information from public records of the division upon written certification that the requesting party shall use the list solely for the purpose of (A) assisting manufacturers of motor vehicles in compiling statistical reports or in notifying owners of vehicles believed to (i) have safety-related defects, (ii) fail to comply with emission standards or (iii) have any defect to be remedied at the expense of the manufacturer; or (B) assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(2) Any law enforcement agency of this state which has access to public records of the division may furnish to a requesting party, and a requesting party may receive, such a list upon written certification that the requesting party shall use the list solely for the purpose of assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(c) If a law enforcement agency of this state furnishes information to a requesting party pursuant to subsection (b)(2), the law enforcement agency shall charge the fee prescribed by the secretary of revenue and approved by the director of accounts and reports pursuant to K.S.A. 45-204 and amendments thereto for any copies furnished and may charge an additional fee to be retained by the law enforcement agency to cover its cost of providing such copies. The fee prescribed pursuant to K.S.A. 45-204 and amendments thereto shall be paid monthly to the secretary of revenue.

(d) The secretary of revenue, the secretary's agents or employees, the director of vehicles or the director's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission of a law enforcement agency in furnishing any information obtained from records of the division of vehicles.

0083 tion. see attached

0084 Sec. 2. Section 11 of 1984 House Bill No. 2668 is hereby
0085 amended to read as follows: Sec. 11. (a) Except to the extent
0086 otherwise authorized by law, no person shall knowingly sell,
0087 give or receive, for the purpose of selling or offering for sale any
0088 property or service to persons listed therein, any list of names
0089 and addresses contained in or derived from public records other
0090 than from public records of the division of vehicles obtained for
0091 the exclusive purpose of providing information to manufactur-
0092 ers of motor vehicles registered in this state under K.S.A. 74-
0093 2012 and amendments thereto.

0094 (b) Violation of this section is a class C misdemeanor.

0095 Sec. 3. K.S.A. 1983 Supp. 74-2012 and section 11 of 1984
0096 House Bill No. 2668 are hereby repealed.

0097 Sec. 4. This act shall take effect and be in force from and
0098 after its publication in the Kansas register.

5

sections 5, 6 and 7

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Sec. 2. Section 5 of 1984 House Bill No. 2668 is hereby amended to read as follows: Sec. 5. (a) Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency.

(b) Copies of public records shall be made while the records are in the possession, custody and control of the custodian or a person designated by the custodian and shall be made under the supervision of such custodian or person. When practical, copies shall be made in the place where the records are kept. If it is impractical to do so, the custodian may shall allow arrangements to be made for use of other facilities. If it is necessary to use other facilities for copying, the cost thereof shall be paid by the person desiring a copy of the records. In addition, the public agency may charge the same fee for the services rendered in supervising the copying as for furnishing copies under subsection (c) and may establish a reasonable schedule of times for making copies at other facilities.

(c) Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following:

(1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.

(2) In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.

(3) Fees for access to or copies of public records of public agencies within the legislative branch of the state government shall be established in accordance with K.S.A. 46-1207a and amendments thereto.

(4) Fees for access to or copies of public records of public agencies within the judicial branch of the state government shall be established in accordance with rules of the supreme court.

(5) Fees for access to or copies of public records of a public agency within the executive branch of the state government shall be subject to approval by the director of accounts and reports.

(d) Except as otherwise authorized pursuant to K.S.A. 75-4215 and amendments thereto, each public agency within the executive branch of the state government shall remit all moneys received by or for it from fees charged pursuant to this section to the state treasurer in accordance with K.S.A. 75-4215 and amendments thereto. Unless otherwise specifically provided by law, the state treasurer shall deposit the entire amount thereof in the state treasury and credit the same to the state general fund, except that the cost of charges for the services of the division of computer services may be credited to the fee fund of the agency to defray such cost.

(e) Each public agency of a political or taxing subdivision shall remit all moneys received by or for it from fees charged pursuant to this act to the treasurer of such political or taxing subdivision at least monthly. Upon receipt of any such moneys, such treasurer shall deposit the entire amount thereof in the treasury of the political or taxing subdivision and credit the

same to the general fund thereof, unless otherwise specifically provided by law.

(f) Any person who is a certified shorthand reporter may charge fees for transcripts of such person's notes of judicial or administrative proceedings in accordance with rates established pursuant to rules of the Kansas supreme court.

Sec. 3. Section 6 of 1984 House Bill No. 2668 is hereby amended to read as follows: Sec. 6. (a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to section 7 or 11 of 1984 House Bill No. 2668, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

(1) The requester has a right of access to the records and the basis of that right; or

(2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

~~(d)~~ (d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency's records. The public agency may require that any person desiring to inspect or obtain copies of the agency's records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24 hours prior to the hours established for inspection and obtaining copies.

~~(e)~~ (e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

~~(f)~~ (f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

Sec. 4. Section 7 of 1984 House Bill No. 2668 is hereby amended to read as follows: Sec. 7. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

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

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

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

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

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

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

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

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

(10) Criminal investigation records, except that the district court, in an action brought pursuant to section 8 of 1984 House Bill No. 2668, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public; and

(E) would not endanger the life or physical safety of any person.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

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

building or facility.

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

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

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

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

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

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

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

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

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

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

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

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

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

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

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

(23) Library patron and circulation records which pertain to identifiable individuals.

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

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

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of

the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

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

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

(29) Correctional records pertaining to an identifiable inmate, except that:

(A) The name, sentence data, parole eligibility date, disciplinary record, custody level and location of an inmate shall be subject to disclosure to any person other than another inmate; and

(B) the ombudsman of corrections, the corrections ombudsman board, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of person personal privacy.

(31) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(33) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(34) Financial information submitted by contractors in qualification statements to any public agency.

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

(c) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(d) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

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