

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 10:30 A.M. on February 18, 2005, in Room 519-S of the Capitol.

All members were present except:
Dwayne Umbarger- excused

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Others attending:
See attached list.

Chairman Vratil announced the first order of business would be to hear the Sub-Committee report from Senator Donovan.

Senator Donovan stated that the Sub-Committee was assigned to consider five bills:

SB 135 Cruelty to animals, certain crimes a felony
SB 136 Transfer of certain real property in Wyandotte County upon death of owner to certain heirs
SB 137 Deprivation of rights under color of law
SB 171 Elimination of out of home services for youth ages 16 and up
SB 179 Enhancing penalties for offenses against children

Senator Donovan stated that the Sub-Committee did not take up **SB 135**, so there was no recommendation on the bill. The Sub-Committee had no recommendation for action on **SB136** and **SB 137**.

Senator Donovan reported that **SB 171** took the most time to review, as there was a long list of opponents, including several judges who testified. Senator Donovan stated it was a \$3.8 million dollar budget saving maneuver to take 16 and 17 year olds out of home service programs. The Sub-Committee unanimously recommended that **SB 171** be tabled.

Senator Donovan stated that the Sub-Committee recommended that **SB 179** be passed. The bill addressed the crime of pornography in regards to what crimes may be charged for pornographic pictures and information stored on a computer hard drive.

Chairman Vratil stated that these bills would be considered for final action during the following week. The Chairman asked the committee to consider final action on **SB 24**.

Final Action:
SB 24 Enhancing penalties for offenses against children

Chairman Vratil stated that this was a Homeland Security bill dealing with confidentiality of security records and information. The bill also contains some cleanup language and reconciliation of three open records bills passed last year. Chairman Vratil handed out a balloon amendment which deleted all the open records amendments made last year and returned the statute to where it was at the end of the 2003 legislative session. (Attachment 1) The Chairman stated the legislature needed a clean starting place where the law was consistent and there was no confusion as to what the law was, so the legislature could deal with the open records amendments and the exceptions to the Open Records Act contained in **SB 34**, currently in the Elections and Local Government Committee. **SB 34** will be the vehicle for the Senate to make a determination as to what exceptions to the Open Records Act it wants to continue in effect after July 1, 2005. A motion was made to adopt the balloon amendment to **SB24**. Senator O'Connor moved, seconded by Senator Bruce, and the

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motion carried. A motion was made to recommend the bill favorably as amended. Senator O'Connor moved, seconded by Senator Goodwin, and the motion carried.

Chairman Vratil announced that regarding **SB 75**, the interested parties were working on compromise language and will have an agreement the first of the week, or will identify the one thing that they cannot agree upon. The Chairman stated the Committee would plan to take action on the bill next week.

Chairman Vratil asked the Committee to consider final action on **SB 82**.

Final Action:

SB 82 Previous sexual conduct of complaining witness in sex offense prosecutions not admissible in any court proceeding

Chairman Vratil stated that this was the bill commonly referred to as an extension of the Rape Shield law. Currently, Kansas has a Rape Shield law which precludes the admission of evidence of previous sexual conduct of a complaining witness to a jury, but that law does not cover any pre-trial hearings or any other court proceedings. This bill would expand the scope of the Rape Shield law to prohibit the admission of any evidence of prior sexual conduct of a complaining witness in any court proceedings, including pre-trial hearings and arraignments. A motion was made to recommend the bill favorably. Senator Goodwin moved, seconded by Senator Betts, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **SB 83**.

Final Action:

SB 83 Sexual battery; striking the spousal exemption

Chairman Vratil stated that currently there is a sexual battery statute which excludes a spouse as an offender and gives immunity to the spouse. The bill would exclude that language and also make a spouse subject to the sexual battery statute.

Senator O'Connor questioned whether touching, could be construed as sexual battery. Senator Bruce noted that K.S.A. 21-3518, aggravated sexual battery, is a very serious person felony, a level 5. If a spouse goes beyond the point of mere touching, than that behavior should be covered by other sexual and rape laws.

Senator Donovan asked about a bed space impact. Chairman Vratil stated that it was a Class A misdemeanor, which is a prison sentence of up to a year in the county jail. Senator Journey stated that if two people cohabit, they don't have the protection of the law, but bad behavior would be covered under other laws. Senator Donovan asked about common-law situations, which are covered with this bill.

Senator Goodwin asked whether any other states have enacted a statute similar to the proposed bill. Sandy Barnett, Director of the Kansas Coalition Against Sexual and Domestic Violence (KCADSV) and a guest in the meeting, stated that states call the issue by various labels, so it would be difficult to clearly answer. Ms. Grover, legal counsel for the KCADSV, and a guest in the meeting, stated that some states call it first, second, or third degree sexual assault. Senator Goodwin stated that her concern was intentional touching. Chairman Vratil stated that unless there were an overzealous prosecutor, there would not be a problem with normal touching.

A motion was made to table the bill. Senator Donovan moved, seconded by Senator Goodwin, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **SB 96**.

Final Action:

SB 96 Punitive damage awards; splitting awards

Chairman Vratil stated that the bill would give punitive damage awards to the state. Under current law,

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punitive damages go to the successful plaintiff.

Senator O'Connor questioned whether there was a fiscal estimate of what revenue might be generated for the state if the bill were passed. Chairman Vratil suggested that the Committee review the information previously provided by the Kansas Trial Lawyers Association (KTLA). According to the KTLA, the recent punitive damage awards in Kansas were: \$75,001 in 2000; \$30,250 in 2001; \$170,000-\$180,000 in 2002.

Chairman Vratil stated that the bill was probably not intended to be a revenue generator. It was an issue of public policy. Senator Bruce stated that a plaintiff's attorney may not seek any punitive award for a client if there were no incentive for the plaintiff or attorney to seek the damages.

Chairman Vratil stated that some states have passed laws where at least a portion of the punitive damages goes to the state. However, he knew of no state where 100 percent of the damages went to the state.

Senator Allen noted that no proponents testified in support of the bill, and there was only one written testimony. Senator Allen stated she opposed the bill.

Senator Donovan asked for clarification: if an attorney did not ask for punitive damages, then a judge could not award damages. Chairman Vratil stated that under Kansas law, a plaintiff is prohibited from alleging a cause of action for punitive damages and requesting punitive damages in the filing of their original petition. The law requires, after discovery has been concluded, that a motion be filed with the court asking for an award of punitive damages. The plaintiff must satisfy certain statutory requirements in order to file the motion.

Senator Journey stated that punitive damages are only awarded in egregious cases where there was intentional and willful conduct that caused the injury. A motion was made to table the bill. Senator Journey moved, seconded by Senator Allen, and more discussion followed.

Senator Schmidt stated that part of the purpose of hearing the bill was to have this discussion. There is something of a disconnect with the general public's perception about what is happening with respect to punitive damage awards in Kansas and what the evidence shows. With regards to public policy, the punitive damage award is to punish wrongdoing, not to compensate or enrich either the plaintiff or the plaintiff's counsel.

Senator Journey withdrew his motion to table the bill and Senator Allen withdrew her second on the motion.

Senator Schmidt proposed two amendments to the bill. (Attachment 2). In the first amendment, the first sum amount of a punitive award up to \$15,000 would be paid to the plaintiff. There would be a second category of punitive award, between \$15,000 to \$50,000, which would be split between the plaintiff and the state. Senator Schmidt stated that the second proposed amendment could be considered in addition to or in lieu of the first proposed amendment. It required all of the punitive damage award to go to the injured party and none to the attorney fees.

Senator Bruce stated he is in support of punitive damages. He believes it is strong policy to give the plaintiff the award, as the plaintiff was the injured party and bears the court costs and attorney fees.

Senator Donovan stated the Committee should keep in mind that punitive awards kick in only after damage awards are made. Also, punitives do not change the damage award amount a plaintiff receives for personal injuries. It is a step above actual damages awarded and is intended to punish the individual or corporation, as the case may be.

Chairman Vratil stated that under Kansas law, one may insure for actual damages, but it is against public policy in this state to insure against punitive damages.

Senator O'Connor stated that if the law were passed with the second amendment proposed by Senator Schmidt, there would be no incentive for the lawyer to seek a punitive award if the injured party wanted to seek punitive damages. Chairman Vratil stated that if an attorney is working on an hourly basis, he could still

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be paid for his time.

A motion was made to amend the bill to adopt the first proposed amendment offered by Senator Schmidt. Senator Schmidt moved, seconded by Senator Donovan, but the motion failed.

A motion was made to amend the bill with the second proposed amendment offered by Senator Schmidt. Senator Schmidt moved, but the motion failed for lack of a second.

A motion was made to table the bill. Senator Journey moved, seconded by Senator Haley, and the motion carried.

Chairman Vratil adjourned the meeting at 11:30 A.M. The next meeting is scheduled for February 21, 2005.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/18/05

NAME	REPRESENTING
Kevin Brown	KTLA
Ron Heia	AS R. Heia Law Firm, Chf P
Sandy Barnett	KCSDV
Alyce Grover	KCSDV
Brenda Harmon	KSC
Patti Biggs	KSC
Michael White	KCDA
KEVIN GRAHAM	MG
Joshua Andrews	KBA
Lang Wash	OJA
Jeff Bottomog	Polsinelli, Sh. Ho, Wash, Sup Hls
Kathy Danner	YMCA

SENATE BILL No. 24

By Joint Committee on Kansas Security

1-10

Submitted
by CHAIRMAN Vratile

Senate Judiciary
2-18-05
Attachment 1

9 AN ACT relating to confidential security records or information; provid-
10 ing that certain records or information are not subject to subpoena or
11 discovery; amending K.S.A. 2004 Supp. 45-221, 66-1236 and 75-4319
12 and repealing the existing sections; also repealing K.S.A. 2004 Supp.
13 45-221g, 45-221h and 75-4319b.

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

16 Section 1. K.S.A. 2004 Supp. 45-221 is hereby amended to read as
17 follows: 45-221. (a) Except to the extent disclosure is otherwise required
18 by law, a public agency shall not be required to disclose:

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

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

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

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

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

35 (6) Letters of reference or recommendation pertaining to the char-
36 acter or qualifications of an identifiable individual ~~except documents re-~~
37 ~~lating to the appointment of persons to fill a vacancy in an elected office~~

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

41 (8) Information which would reveal the identity of an individual who
42 lawfully makes a donation to a public agency, if anonymity of the donor
43 is a condition of the donation ~~except if the donation is intended for or~~

1-2

1 ~~restricted to providing remuneration or personal tangible benefit to a~~
2 ~~named public officer or employee.~~

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

7 (10) Criminal investigation records, except that as provided herein.
8 The district court, in an action brought pursuant to K.S.A. 45-222, and
9 amendments thereto, may order disclosure of such records, subject to
10 such conditions as the court may impose, if the court finds that disclosure:

11 (A) Is in the public interest;

12 (B) would not interfere with any prospective law enforcement action ~~or~~
13 ~~criminal investigation or prosecution;~~

14 (C) would not reveal the identity of any confidential source or un-
15 dercover agent;

16 (D) would not reveal confidential investigative techniques or proce-
17 dures not known to the general public;

18 (E) would not endanger the life or physical safety of any person; and

19 (F) would not reveal the name, address, phone number or any other
20 information which specifically and individually identifies the victim of any
21 sexual offense in article 35 of chapter 21 of the Kansas Statutes Anno-
22 tated, and amendments thereto.

23 ~~If a public record is discretionarily closed by a public agency pursuant~~
24 ~~to this subsection, the record custodian, upon request, shall provide a~~
25 ~~written citation to the specific provisions of paragraphs (A) through (F)~~
26 ~~that necessitate closure of that public record.~~

27 (11) Records of agencies involved in administrative adjudication or
28 civil litigation, compiled in the process of detecting or investigating vio-
29 lations of civil law or administrative rules and regulations, if disclosure
30 would interfere with a prospective administrative adjudication or civil
31 litigation or reveal the identity of a confidential source or undercover
32 agent.

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

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

43 (14) Correspondence between a public agency and a private individ-

1 ual, other than correspondence which is intended to give notice of an
2 action, policy or determination relating to any regulatory, supervisory or
3 enforcement responsibility of the public agency or which is widely dis-
4 tributed to the public by a public agency and is not specifically in response
5 to communications from such a private individual.

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

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

12 (A) The information which the agency maintains on computer facil-
13 ities; and

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

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

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

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

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

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

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

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

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

- 1 (A) Publicly cited or identified in an open meeting or in an agenda
2 of an open meeting; or
- 3 (B) distributed to a majority of a quorum of any body which has au-
4 thority to take action or make recommendations to the public agency with
5 regard to the matters to which such records pertain.
- 6 (23) Library patron and circulation records which pertain to identi-
7 fiable individuals.
- 8 (24) Records which are compiled for census or research purposes and
9 which pertain to identifiable individuals.
- 10 (25) Records which represent and constitute the work product of an
11 attorney.
- 12 (26) Records of a utility or other public service pertaining to individ-
13 ually identifiable residential customers of the utility or service, except that
14 information concerning billings for specific individual customers named
15 by the requester shall be subject to disclosure as provided by this act.
- 16 (27) Specifications for competitive bidding, until the specifications
17 are officially approved by the public agency.
- 18 (28) Sealed bids and related documents, until a bid is accepted or all
19 bids rejected.
- 20 (29) Correctional records pertaining to an identifiable inmate or re-
21 leasee, except that:
- 22 (A) The name; photograph and other identifying information; sen-
23 tence data; parole eligibility date; custody or supervision level; disciplinary
24 record; supervision violations; conditions of supervision, excluding
25 requirements pertaining to mental health or substance abuse counseling;
26 location of facility where incarcerated or location of parole office main-
27 taining supervision and address of a releasee whose crime was committed
28 after the effective date of this act shall be subject to disclosure to any
29 person other than another inmate or releasee, except that the disclosure
30 of the location of an inmate transferred to another state pursuant to the
31 interstate corrections compact shall be at the discretion of the secretary
32 of corrections;
- 33 (B) the ombudsman of corrections, the attorney general, law enforce-
34 ment agencies, counsel for the inmate to whom the record pertains and
35 any county or district attorney shall have access to correctional records to
36 the extent otherwise permitted by law;
- 37 (C) the information provided to the law enforcement agency pursu-
38 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
39 amendments thereto, shall be subject to disclosure to any person, except
40 that the name, address, telephone number or any other information which
41 specifically and individually identifies the victim of any offender required
42 to register as provided by the Kansas offender registration act, K.S.A. 22-
43 4901 *et seq.* and amendments thereto, shall not be disclosed; and

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

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

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

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

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

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

25 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
 26 65-4923 or 65-4924, and amendments thereto, and which is privileged
 27 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

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

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

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

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

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

42 ~~(41)~~ (38) All financial analysis ratios and examination synopses con-
 43 cerning insurance companies that are submitted to the commissioner by

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

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

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

Renumber remaining subsections accordingly

1 the national association of insurance commissioners' insurance regulatory
2 information system.

3 ~~(42)~~ (39) Any records the disclosure of which is restricted or prohib-
4 ited by a tribal-state gaming compact.

5 ~~(43)~~ (40) Market research, market plans, business plans and the terms
6 and conditions of managed care or other third party contracts, developed
7 or entered into by the university of Kansas medical center in the operation
8 and management of the university hospital which the chancellor of the
9 university of Kansas or the chancellor's designee determines would give
10 an unfair advantage to competitors of the university of Kansas medical
11 center.

12 ~~(44)~~ (41) The amount of franchise tax paid to the ~~secretary of revenue~~
13 ~~or the~~ secretary of state by domestic corporations, foreign corporations,
14 domestic limited liability companies, foreign limited liability companies,
15 domestic limited partnership, foreign limited partnership, domestic lim-
16 ited liability partnerships and foreign limited liability partnerships.

17 ~~(45)~~ (42) Records ~~other than criminal investigation records,~~ the dis-
18 closure of which would pose a substantial likelihood of revealing security
19 measures that protect: (A) Systems, facilities or equipment used in the
20 production, transmission or distribution of energy, water or communi-
21 cations services; or (B) *transportation and sewer or wastewater treatment*
22 *systems, facilities or equipment; or (C) private property or persons, if the*
23 *records are submitted to the agency for the purposes of this paragraph.*

24 For purposes of this paragraph, security means measures that protect
25 against criminal acts intended to intimidate or coerce the civilian popu-
26 lation, influence government policy by intimidation or coercion or to af-
27 fect the operation of government by disruption of public services, mass
28 destruction, assassination or kidnapping. *Security measures include, but*
29 *are not limited to, intelligence information, tactical plans, resource de-*
30 *ployment and vulnerability assessments.*

31 ~~(46) Any information or material received by the secretary of state~~
32 ~~pursuant to subsection (b) of K.S.A. 2004 Supp. 44-1518, and amend-~~
33 ~~ments thereto, except when such information is required to be submitted~~
34 ~~in an application pursuant to K.S.A. 2004 Supp. 44-1520, and amend-~~
35 ~~ments thereto.~~

36 ~~(43) Any information or material received by the register of deeds of~~
37 ~~a county from military discharge papers (DD Form 214) except that such~~
38 ~~papers shall be disclosed: To the military discharger; to such discharger's~~
39 ~~immediate family members and lineal descendants; to such discharger's~~
40 ~~heirs, agents or assigns; to the licensed funeral director who has custody~~
41 ~~of the body of the deceased discharger; when required by a department~~
42 ~~or agency of the federal or state government or a political subdivision~~
43 ~~thereof; when the form is required to perfect the claim of military service~~

(46) Any information or material received by the secretary of state pursuant to subsection (b) of K.S.A. 2004 Supp. 44-1518, and amendments thereto, except when such information is required to be submitted in an application pursuant to K.S.A. 2004 Supp. 44-1520, and amendments thereto.

Renumber remaining subsections accordingly

1 ~~or honorable discharge or a claim of a dependent of the dischargee, and~~
2 ~~upon the written approval of the commissioner of veterans affairs, to a~~
3 ~~person conducting research.~~

4 (44) ~~Information that would reveal the location of a shelter or a sa-~~
5 ~~fetthouse or similar place where persons are provided protection from~~
6 ~~abuse.~~

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

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

23 (d) If a public record contains material which is not subject to dis-
24 closure pursuant to this act, the public agency shall separate or delete
25 such material and make available to the requester that material in the
26 public record which is subject to disclosure pursuant to this act. If a public
27 record is not subject to disclosure because it pertains to an identifiable
28 individual, the public agency shall delete the identifying portions of the
29 record and make available to the requester any remaining portions which
30 are subject to disclosure pursuant to this act, unless the request is for a
31 record pertaining to a specific individual or to such a limited group of
32 individuals that the individuals' identities are reasonably ascertainable, the
33 public agency shall not be required to disclose those portions of the record
34 which pertain to such individual or individuals.

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

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

1 (g) Any confidential records or information relating to security meas-
 2 ures provided or received under the provisions of subsection (a)(45) shall
 3 not be subject to subpoena, discovery or other demand in any adminis-
 4 trative, criminal or civil action.

5 Sec. 2. K.S.A. 2004 Supp. 66-1236 is hereby amended to read as
 6 follows: 66-1236. (a) In adopting procedures applicable in proceedings
 7 pursuant to K.S.A. 66-1233, and amendments thereto, the state corpo-
 8 ration commission shall provide for:

9 (1) Confidentiality of information so that the amount of recovery re-
 10 quested, the amount of recovery allowed, the method of cost recovery
 11 requested and the method of cost recovery allowed is not disclosed;

12 (2) protective orders for all filings so that the citizens' utility ratepayer
 13 board may receive and review documents if the board intervenes;

14 (3) procedures to reflect rules of the United States nuclear regulatory
 15 commission or other regulatory bodies that govern the release of infor-
 16 mation and documentation which an applicant is required to submit to
 17 support the application or supply to the commission, commission staff or
 18 intervenors;

19 (4) the security cost recovery charge to be unidentifiable on custom-
 20 ers' bills;

21 (5) the security cost recovery charge shall be allocated and added to
 22 all wholesale and retail rates and future contracts. Any contract existing
 23 on the effective date of this act, which does not specifically prohibit the
 24 addition of such charges, shall have such charges added;

25 (6) review of security-related filings in an expedited manner with ref-
 26 erence only to security-related items to assure that the proposed items
 27 provide enhanced security;

28 (7) denial of any expenditure that the commission determines is not
 29 prudent or is not for security measures and approval of all other expend-
 30 itures; and

31 (8) recovery of capital expenditures over a period equal to not more
 32 than ½ the usable lifetime of the capital investment.

33 (b) A determination by the commission of the prudence of an ex-
 34 penditure for security measures shall not be based on standard regulatory
 35 principles and methods of recovery and shall take fully into account the
 36 findings and intent of the legislature as stated in K.S.A. 2004 Supp. 66-
 37 1235, and amendments thereto.

38 (c) The provisions of this act and K.S.A. 66-1233, and amendments
 39 thereto, shall apply recovery of prudent expenditures for enhanced se-
 40 curity incurred after September 11, 2001.

41 (d) Any confidential records or information relating to security meas-
 42 ures provided or received under the provisions of this act and K.S.A. 66-
 43 1233, and amendments thereto, shall not be subject to subpoena, discovery

[This prior technical amendment is no longer necessary with the additions of
 this balloon.]

1 *or other demand in any administrative, criminal or civil action.*

2 Sec. 3. K.S.A. 2004 Supp. 75-4319 is hereby amended to read as
3 follows: 75-4319. (a) Upon formal motion made, seconded and carried,
4 all bodies and agencies subject to the open meetings act may recess, but
5 not adjourn, open meetings for closed or executive meetings. Any motion
6 to recess for a closed or executive meeting shall include a statement of
7 (1) the justification for closing the meeting, (2) the subjects to be dis-
8 cussed during the closed or executive meeting and (3) the time and place
9 at which the open meeting shall resume. Such motion, including the re-
10 quired statement, shall be recorded in the minutes of the meeting and
11 shall be maintained as a part of the permanent records of the body or
12 agency. Discussion during the closed or executive meeting shall be limited
13 to those subjects stated in the motion.

14 (b) No subjects shall be discussed at any closed or executive meeting,
15 except the following:

16 (1) Personnel matters of nonelected personnel;

17 (2) consultation with an attorney for the body or agency which would
18 be deemed privileged in the attorney-client relationship;

19 (3) matters relating to employer-employee negotiations whether or
20 not in consultation with the representative or representatives of the body
21 or agency;

22 (4) confidential data relating to financial affairs or trade secrets of
23 corporations, partnerships, trusts, and individual proprietorships;

24 (5) matters relating to actions adversely or favorably affecting a per-
25 son as a student, patient or resident of a public institution, except that
26 any such person shall have the right to a public hearing if requested by
27 the person;

28 (6) preliminary discussions relating to the acquisition of real property;

29 (7) matters permitted to be discussed in a closed or executive meeting
30 pursuant to K.S.A. 74-8804 and amendments thereto;

31 (8) matters permitted to be discussed in a closed or executive meeting
32 pursuant to subsection ~~(e)~~ (d)(1) of K.S.A. 38-1507 and amendments
33 thereto or subsection ~~(f)~~ (e) of K.S.A. 38-1508 and amendments thereto;

34 (9) matters permitted to be discussed in a closed or executive meeting
35 pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

36 (10) matters permitted to be discussed in a closed or executive meet-
37 ing pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

38 (11) matters permitted to be discussed in a closed or executive meet-
39 ing pursuant to subsection (g) of K.S.A. 39-7,119 and amendments
40 thereto;

41 (12) matters required to be discussed in a closed or executive meeting
42 pursuant to a tribal-state gaming compact;

43 (13) matters relating to security measures, if the discussion of such

1 matters at an open meeting would jeopardize such security measures,
2 that protect: (A) Systems, facilities or equipment used in the production,
3 transmission or distribution of energy, water or communications services;
4 (B) transportation and sewer or wastewater treatment systems, facilities
5 or equipment; (C) a public body or agency, public building or facility or
6 the information system of a public body or agency; or (D) private property
7 or persons, if the matter is submitted to the agency for purposes of this
8 paragraph. For purposes of this paragraph, security means measures that
9 protect against criminal acts intended to intimidate or coerce the civilian
10 population, influence government policy by intimidation or coercion or
11 to affect the operation of government by disruption of public services,
12 mass destruction, assassination or kidnapping. Security measures include,
13 but are not limited to, intelligence information, tactical plans, resource
14 deployment and vulnerability assessments; and

15 (14) matters permitted to be discussed in a closed or executive meet-
16 ing pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.

17 (c) No binding action shall be taken during closed or executive re-
18 cesses, and such recesses shall not be used as a subterfuge to defeat the
19 purposes of this act.

20 (d) *Any confidential records or information relating to security meas-*
21 *ures provided or received under the provisions of subsection (b)(13), shall*
22 *not be subject to subpoena, discovery or other demand in any adminis-*
23 *trative, criminal or civil action.*

24 Sec. 4. K.S.A. 2004 Supp. 45-221, 45-221g, 45-221h, 66-1236, 75-
25 4319 and 75-4319b are hereby repealed.

26 Sec. 5. This act shall take effect and be in force from and after its
27 publication in the statute book.

Submitted by
Senator Schmidt

If exemplary or punitive damages are awarded, the entire award up to \$15,000 shall be ordered paid to the plaintiff. For any award of more than \$15,000, the first \$15,000 shall be ordered paid to the plaintiff and 50 percent of the portion exceeding \$15,000 but less than \$50,000 shall be ordered paid to the plaintiff and the remainder shall be ordered to be deposited in the state treasury and credited to the state general fund. For any award exceeding \$50,000, the entire amount that exceeds \$50,000 shall be deposited in the state treasury and credited to the state general fund. If such civil action...(etc. pick up original language, page 2, line 28).

Any amount of exemplary or punitive damages awarded shall not be used in any manner in the calculation of attorney's fees.