

Approved: March 21, 2006
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Tim Huelskamp at 1:30 P.M. on February 16, 2006 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department
Mike Heim, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes
Zoie Kern, Committee Secretary

Conferees appearing before the committee:

Tony Scott, Kansas Society of Certified Public Accountants

Others attending:

See attached list.

Ken Wilke, Revisor of Statutes Office, presented explanation and exceptions to SB 499 (Attachments 1 & 2).

Tony Scott testified in favor of SB 499 and exceptions (Attachment 3).

With no further discussion the hearing on SB 499 was closed.

Senator Donovan moved favorably to send SB 499 and exceptions to Senate. It was seconded by Senator Betts.

Motion carried.

Senator Petersen moved to adapt SB 498. Senator Donovan seconded.

Motion carried.

Discussion on SB 456.

Senator Betts moved to change the language in SB 456 to include all drivers of commercial transportation that involves children.

The motion was tabled.

Meeting adjourned.

Respectfully submitted,

Zoie C. Kern, Committee Secretary

Senate Elections & Local Government Committee
Daily, 1:30 - 2:30 p.m. Room 423-S
Senator Tim Huelskamp, Chair

Guest List for February 16, 2006

Please sign in with **BLACK Ink**.

Name	Representing
Tony A. Scott	KSCPA
Jennifer Lyon	Prager, Smith, and Associates
Ali Bamworn	Sen. Derek Schmidt
Mark Tomb	League of Kansas Municipalities
Jeanne Goodwin	City of Wichita
Brad Bryant et al	Sec. of State
Richard Gannon	KPA
Harriet Lange	KAB
Steven Shock	USD 259
Elden J. Chumley	USD 259

OPEN RECORDS REVIEW – SUBSTANTIALLY AMENDED AND NEW EXCEPTIONS
2001 LEGISLATIVE SESSION

RE: K.S.A. 45-229
Certified June 1, 2005
Exceptions Expire July 1, 2006

Substantially Amended Exceptions – 2001 Legislative Session

1-501	C.P.A. peer review
12-4516a	Expungement – municipal courts
38-1692	Infectious disease – testing
65-525	Maternity centers – child care facilities – records
65-6016	Infectious disease – disclosure
65-6017	Infectious disease – disclosure

New Exceptions – 2001 Legislative Session

9-1303	Bank Commissioner – exchange of information
39-970	Adult care home operators – criminal history records info
40-4913	Uniform act – insurance agent licensing
65-5117	Home health agency operator – criminal history record info
74-7508	Behavioral science regulatory board – investigations

OPEN RECORDS EXCEPTIONS CERTIFIED JUNE 1, 2005, UNDER
K.S.A. 45-229

1-501. Peer review; firm registration; board oversight; waivers; privileged information; closed sessions of the board; immunity. Commencing with firm registrations scheduled for renewal on December 31, 2001, and thereafter:

(a) The board of accountancy may require as a condition for renewal of a firm registration that a firm that provides attest services undergo a peer review and submit evidence of such so that the board may determine the degree of the firm's compliance with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards. The reviews shall occur at least once every three years with the cost of such review to be borne by the firm.

(b) The firms' completion of a peer review program endorsed or supported by the American institute of certified public accountants or other substantially similar programs shall satisfy the requirements of this section. The board shall provide for oversight of these programs by adoption of rules and regulations.

(c) A firm at the time of application, may request in writing upon forms provided by the board, a waiver from the review requirement. The board may grant a waiver if the firm does not perform or has not performed any attest services during the twelve-month period preceding the date of application or for good cause as determined by the board.

A firm granted a waiver on the basis that the firm does not perform or intend to perform attest services shall immediately notify the board if the firm engages in such practice and thus becomes subject to the review.

(d) Except as provided by K.S.A. 60-437, and amendments thereto, and subsections (e) and (f) of this section, any reports, statements, memoranda, transcripts, findings, records, or working papers prepared and any opinions formulated, in connection with any peer review shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding, except that such privilege shall not exist when the material in question is involved in a dispute between a reviewer and the person or firm being reviewed.

(e) Nothing in subsection (d) shall limit the authority of the board to require a person whose work is the subject of a peer review or a firm to provide a copy of an adverse or modified peer review report and any documents that contain comments from peer reviewers, responses to comments from the person or firm and any document identifying follow-up requirements for the purpose of determining the person's or firm's compliance with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards, provided however, the board may not request or require a person or firm subject to a peer review to provide a peer review report or any other document contained in this section unless the peer review report has been accepted by a report acceptance committee under the peer review program after December 31, 2001.

(f) In any proceeding before the board in which discussion or admission into evidence of peer review report documents identified in subsection (e) is proposed, the board or presiding officer shall conduct that portion of the proceeding in closed session. In closing a portion of such proceeding, the board or presiding officer may exclude any person from the proceeding except the

person whose work is the subject of peer review, members of the permit holder's firm, the attorneys representing the parties, the board's attorneys, necessary witnesses and a court reporter. The board or presiding officer shall make the portions of the agency record in which such documents are disclosed subject to a protective order prohibiting further disclosure. Documents that are privileged under subsection (d) and that are considered during a closed proceeding shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity. No person in attendance at a closed portion of such proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a document privileged under subsection (d) which was disclosed in a closed portion of a proceeding, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. All other evidence shall be presented as part of the proceeding in an open meeting. Offering any testimony or records in the open portion of a proceeding shall not be deemed a waiver of the peer review privilege created in subsection (d).

(g) No person who participates in the conduct of any peer review within the scope of this section shall be liable in damages to any person for any action taken or recommendation made in connection with the peer review process.

History: L. 1987, ch. 2, § 1; L. 1990, ch. 2, § 1; L. 1993, ch. 103, § 3; L. 2001, ch. 120, § 6; July 1.

9-1303. Exchange of examinations and reports. (a) The state bank commissioner is hereby authorized to accept any report of examination of a state bank or trust company made within a reasonable period by the federal deposit insurance corporation or its successor, by the federal reserve bank or by the certified public accountant or independent auditor auditing the accounts of any bank or trust company insured by a private insurer, as authorized under the provisions of this act, but only one such report of examination shall be accepted in lieu of any examination required by this act in any one calendar year. The commissioner also may accept any report obtained by the insurance corporation, the federal reserve bank or private insurer within a reasonable time relative to the condition of any bank or trust company in lieu of any report required by this act.

(b) The commissioner shall furnish to the insurance corporation or private insurer, or to any officer or examiner thereof, a copy of any or all examination reports made by the commissioner, or the commissioner's examiners, of any bank or trust company insured by the corporation or insurer. The commissioner may disclose to the insurance corporation or private insurer, or any official or examiner thereof, any and all information contained in the commissioner's office concerning the condition of affairs of any bank or trust company insured by such corporation or insurer.

(c) The commissioner may disclose to the federal reserve bank, office of the comptroller of currency, the federal home loan bank, and other state bank regulatory agencies and savings and loan regulatory agencies or any officer or examiner thereof, any and all information contained in the commissioner's office concerning the condition of affairs of any bank or trust company.

(d) The commissioner may furnish to the state treasurer a copy of any or all examination information relating specifically to apparent violations of the uniform unclaimed property act, K.S.A. 58-3934 through 58-3978, and amendments thereto.

(e) The commissioner, by agreement, may establish an information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the department, with respect to all or part of an affiliated group that includes a financial institution, to reduce the potential for duplicative and burdensome filings, examinations and other regulatory activities. Each agency party to such an agreement shall agree to maintain confidentiality of

information that is confidential under applicable statute or federal law and to take all reasonable steps to oppose any effort to secure disclosure of the information by such agency.

(f) Disclosure of information by or to the commissioner pursuant to this section shall not constitute a waiver of or otherwise affect or diminish a privilege to which the information is otherwise subject, whether or not the disclosure is governed by a confidentiality agreement.

(g) As used in this section: (1) "Affiliated group" means two or more persons affiliated through common ownership or a contractual common undertaking involving the sharing of customer information among such persons;

(2) "agency" means a department or agency of this state, another state, the United States or any related agency or instrumentality;

(3) "functional regulatory agency" means an agency that regulates and charters, licenses or registers persons engaged in activities that are financial in nature, incidental to financial activities, or complementary to financial activities, as those terms are used in the Gramm-Leach Bliley act of 1999 (P.L. 106-102), including activities related to banking, insurance or securities, within the jurisdiction of the agency;

(4) "privilege" includes any work product, attorney client or other privilege recognized under federal or state law.

(h) Nothing in this act shall be construed to limit the powers of the commissioner with reference to examinations and reports required by this act.

History: L. 1947, ch. 102, § 61; L. 1975, ch. 44, § 23; L. 1975, ch. 45, § 5; L. 1985, ch. 56, § 4; L. 1987, ch. 54, § 7; L. 1995, ch. 17, § 1; L. 2001, ch. 35, § 1; July 1.

12-4516a. Expungement of city ordinance violations; disclosure limited upon filing of petition. (a) Any person who has been arrested on a violation of a city ordinance of this state may petition the court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. The petition shall state: (1) The petitioner's full name;

(2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;

(3) the petitioner's sex, race and date of birth;

(4) the crime for which the petitioner was arrested;

(5) the date of the petitioner's arrest, and

(6) the identity of the arresting law enforcement agency.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;

(2) a court has found that there was no probable cause for the arrest;

(3) the petitioner was found not guilty in court proceedings; or

(4) the expungement would be in the best interests of justice and (A) charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interest of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142 and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(g) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

History: L. 1998, ch. 131, § 2; L. 2001, ch. 69, § 1; July 1.

38-1692. Testing for infectious disease and counseling of certain offenders and victims.

(a) As used in this section:

(1) "Adjudicated person" means a person adjudged to be a juvenile offender or a person not

adjudicated because of mental disease or defect.

(2) "Laboratory confirmation of HIV or hepatitis B infection" means positive test results from a confirmation test approved by the secretary of health and environment.

(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) "Test for HIV or hepatitis B infection" means a test approved by the secretary of health and environment to detect the etiologic agent for the disease acquired immune deficiency syndrome or hepatitis B.

(5) "Body fluids" means blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.

(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the judge shall inform the person or the parent or legal guardian of the person of the availability of testing for HIV or hepatitis B infection and counseling and shall cause each alleged victim of the offense, if any, to be notified that testing for HIV or hepatitis B infection and counseling is available.

(c) If the victim of the offense requests the court to order infectious disease tests of the alleged offender or if the person charged with the offense stated to law enforcement officers that the person charged with the offense has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the person charged with the offense to submit to infectious disease tests as defined in K.S.A. 65-6001 and amendments thereto.

(d) For any offense by an adjudicated person which the court determines, from the facts of the case, involved or was likely to have involved the transmission of body fluids from one person to another or involved a sexual act, the court: (1) May order the adjudicated person to submit to a test for HIV or hepatitis B infection; or (2) shall order the adjudicated person to submit to a test for HIV or hepatitis B infection if a victim of the offense, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If a test for HIV or hepatitis B infection is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If the test results in a negative reaction, the court shall order the adjudicated person to submit to another test for HIV or hepatitis B infection six months after the first test was administered.

(e) The results of any test for HIV or hepatitis B infection ordered under this section shall be disclosed to the court which ordered the test, to the adjudicated person, or the parent or legal guardian of the adjudicated person, and to each person designated under subsection (d) by a victim or by the parent or legal guardian of a victim. If a test for HIV or hepatitis B infection ordered under this section results in a laboratory confirmation of HIV or hepatitis B infection, the results shall be reported to the secretary of health and environment and to: (1) The commissioner of juvenile justice, in the case of a juvenile offender or a person not adjudicated because of mental disease or defect, for inclusion in such offender's or person's medical file; or (2) the secretary of corrections, in the case of a person under 16 years of age who has been convicted as an adult, for inclusion in such person's medical file. The secretary of health and environment shall provide to each victim of the crime or

sexual act, at the option of such victim, counseling regarding the human immunodeficiency virus and hepatitis B, testing for HIV or hepatitis B infection in accordance with K.S.A. 65-6001 et seq. and amendments thereto and referral for appropriate health care and services.

(f) The costs of any counseling and testing provided under subsection (e) by the secretary of health and environment shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

(g) When a court orders an adjudicated person to submit to a test for HIV or hepatitis B infection under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the test for HIV or hepatitis B infection nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the test is performed in a reasonable manner according to generally accepted medical practices.

~~(h) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the results or information. Any violation of this section is a class C misdemeanor.~~

History: L. 1993, ch. 242, § 1; L. 1995, ch. 251, § 32; L. 1996, ch. 215, § 6; L. 1997, ch. 156, § 76; L. 2001, ch. 102, § 4; July 1.

39-970. Operation of adult care home precluded, when; access of secretary of health and environment to certain records; background check of employees, civil liability, fee for information request; provision of criminal history record information by secretary; licensed or registered professional service providers, volunteers and certain employees exempt; certain persons in custody of secretary of corrections exempt; report of convictions and adjudications by the Kansas bureau of investigation. (a) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1),

pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been found to be in need of a guardian or conservator, or both as provided in K.S.A. 2004 Supp. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be

required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f)(1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 38-1618 and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to

the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(i) No person who has been employed by the same adult care home for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of this section while employed by such adult care home.

(j) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(k) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

(m) This section shall be part of and supplemental to the adult care home licensure act.

History: L. 1997, ch. 161, § 1; L. 1998, ch. 144, § 1; L. 2001, ch. 197, § 1; L. 2002, ch. 114, § 55; L. 2003, ch. 98, § 1; July 1.

40-4913. Same; termination of agent; notification of commissioner; records; maintenance of and availability to commissioner; sharing of records; conditions. (a) (1) Each insurer shall notify the commissioner whenever such insurer terminates a business relationship with an insurance agent if:

(A) The termination is for cause;

(B) such insurance agent has committed any act which would be in violation of any provision of subsection (a) of K.S.A. 2004 Supp. 40-4909, and amendments thereto; or

(C) such insurer has knowledge that such insurance agent is engaged in any activity which would be in violation of any provision of subsection (a) of K.S.A. 2004 Supp. 40-4909, and amendments thereto.

(2) The notification shall:

(A) Be made in a format prescribed by the commissioner;

(B) be submitted to the commissioner within 30 days of the date of the termination of the business relationship; and

(C) contain:

- (i) The name of the insurance agent; and
- (ii) the reason for the termination of the business relationship with such insurer.

(3) Upon receipt of a written request from the commissioner, each insurer shall provide to the commissioner any additional data, documents, records or other information concerning the termination of the insurer's business relationship with such agent.

(4) Whenever an insurer discovers or obtains additional information which would have been reportable under paragraph (1) of this subsection, the insurer shall forward such additional information to the commissioner within 30 days of its discovery.

(b) (1) Each insurer shall notify the commissioner whenever such insurer terminates a business relationship with an insurance agent for any reason not listed in subsection (a).

(2) The notification shall:

(A) Be made in a format prescribed by the commissioner;

(B) be submitted to the commissioner within 30 days of the date of the termination of the business relationship.

(3) Upon receipt of a written request from the commissioner, each insurer shall provide to the commissioner any additional data, documents, records or other information concerning the termination of the insurer's business relationship with such agent.

(4) Whenever an insurer discovers or obtains additional information which would have been reportable under paragraph (1) of this subsection, the insurer shall forward such additional information to the commissioner within 30 days of its discovery.

(c) For the purposes of this section, the term "business relationship" shall include any appointment, employment, contract or other relationship under which such insurance agent represents the insurer.

(d) (1) No insurance entity, or any agent or employee thereof acting on behalf of such insurance entity, regulatory official, law enforcement official or the insurance regulatory official of another state who provides information to the commissioner in good faith pursuant to this section shall be subject to a civil action for damages as a result of reporting such information to the commissioner. For the purposes of this section, insurance entity shall mean any insurer, insurance agent or organization to which the commissioner belongs by virtue of the commissioner's office.

(2) Any document, material or other information in the control or possession of the department that is furnished by an insurance entity or an employee or agent thereof acting on behalf of such insurance entity, or obtained by the insurance commissioner in an investigation pursuant to this section shall be kept confidential by the commissioner. Such information shall not be made public or subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this act or any other provision of the insurance laws of this state.

(3) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be required to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (2).

(4) The commissioner may share or exchange any documents, materials or other information, including confidential and privileged documents referred to in paragraph (2) of subsection (d), received in the performance of the commissioner's duties under this act, with:

(A) The NAIC;

(B) other state, federal or international regulatory agencies; and

(C) other state, federal or international law enforcement authorities.

(5) (A) The sharing or exchanging of documents, materials or other information under this subsection shall be conditioned upon the recipient's authority and agreement to maintain the confidential and privileged status, if any, of the documents, materials or other information being shared or exchanged.

(B) No waiver of an existing privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized by paragraph (1) of subsection (d).

(6) The commissioner of insurance is hereby authorized to adopt such rules and regulations establishing protocols governing the exchange of information as may be necessary to implement and carry out the provisions of this act.

(e) The provisions of paragraph (2) of subsection (d) shall expire on July 1, 2006, unless the legislature acts to reenact such provision. The provisions of paragraph (2) of subsection (d) shall be reviewed by the legislature prior to July 1, 2006.

(f) For the purposes of this section, insurance entity shall mean any insurer, insurance agent or organization to which the commissioner belongs by virtue of the commissioner's office.

(g) Any insurance entity, including any authorized representative of such insurance entity, that fails to report to the commissioner as required under the provisions of this section or that is found by a court of competent jurisdiction to have failed to report in good faith, after notice and hearing, may have its license or certificate of authority suspended or revoked and may be fined in accordance with K.S.A. 2004 Supp. 40-4909 and amendments thereto.

History: L. 2001, ch. 91, § 13; July 1.

65-525. Disclosure of certain information prohibited, exceptions; consent to disseminate certain information required. (a) Records in the possession of the department of health and environment or its agents regarding child care facilities, maternity centers or family day care homes shall not be released publicly in a manner that would identify individuals, unless required by law.

(b) Records containing the name, address and telephone number of a child care facility, maternity center or family day care home in the possession of the department of health and environment or its agents shall not be released publicly unless required by law.

(c) Records that cannot be released by subsection (a) or (b) may be released to: (1) An agency or organization authorized to receive notice under K.S.A. 65-506, and amendments thereto; (2) a criminal justice agency; (3) any state or federal agency that provides child care services, funding for child care or child protective services; (4) any federal agency for the purposes of compliance with federal funding requirements; (5) any local fire department; (6) any child and adult care food program sponsoring agency; or (7) any local disaster agency.

(d) Any state or federal agency or any person receiving records under subsection (a) or (b) shall not disseminate the records without the consent of the person whose records will be disseminated unless required by law. Any state or federal agency or any person receiving records under subsection (c) may disseminate the information contained in the records without the consent of the person whose records will be disseminated.

(e) The secretary of health and environment may release the name, address and telephone number of a maternity center, child care facility or family day care home when the secretary determines that the release of the information is necessary to protect the health, safety or welfare of the public or the patients or children enrolled in the maternity center, child care facility or family day

care home.

(f) Any records under subsection (a) or (b) shall be available to any member of the standing committee on appropriations of the house of representatives or the standing committee on ways and means of the senate carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto. In a closed or executive meeting. Except in limited conditions established by 2/3 of the members of such committee, records received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate. Such records shall not identify individuals but shall include data and contract information concerning specific facilities.

(g) In any hearings conducted under the licensing or regulation provisions of K.S.A. 65-501 et seq. and amendments thereto, the hearing officer may close the hearing to the public to prevent public disclosure of matters relating to persons restricted by other laws.

History: L. 1985, ch. 201, § 1; L. 1996, ch. 229, § 157; L. 2000, ch. 127, § 2; L. 2001, ch. 190, § 1; July 1.

65-5117. Operation of home health agency precluded, when; access of secretary of health and environment to certain records; background check of employees, civil liability, fee for information request; provision of criminal history record information by secretary; licensed or registered professional service providers, volunteers and certain employees exempt; report of convictions and adjudications by the Kansas bureau of investigation. (a) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is

longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 2004 Supp. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's

compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 38-1618 and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) No person who has been employed by the same home health agency for five consecutive years immediately prior to the effective date of this act shall be subject to the requirements of this section while employed by such home health agency.

(j) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

(k) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

(l) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

History: L. 1997, ch. 161, § 2; L. 1998, ch. 144, § 2; L. 2001, ch. 197, § 2; L. 2002, ch. 114, § 75; L. 2003, ch. 98, § 2; July 1.

65-6016. Physician authorized to disclose infectious diseases to certain corrections employees; confidentiality; immunity in judicial proceedings. (a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has an infectious disease or has had a positive reaction to an infectious disease test may disclose such information to corrections employees who have been or will be placed in contact with body fluid of such patient. ~~The information shall be confidential and shall not be disclosed by corrections employees except as may be necessary in providing treatment for such patient. Any other disclosure of such information by a corrections employee is a class C misdemeanor.~~

(b) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to an infectious disease.

(c) Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.

History: L. 1993, ch. 221, § 3; L. 2001, ch. 102, § 2; July 1.

65-6017. Court ordered testing of certain offenders in custody of secretary of corrections. (a) If a corrections employee has been placed in contact with body fluid from one or more offenders while performing duties within the scope of such employee's duties as a corrections employee, the secretary of corrections or the secretary's designee upon consultation with a medical care provider may make application to the district court of the county where the offender or offenders are in custody for an order requiring such offender or offenders to submit to tests for infectious diseases. Such application shall include an allegation that the offender or offenders sought to be tested have been requested to voluntarily submit to tests for a specific infectious disease or diseases and have refused the tests and that the corrections employee has agreed to voluntarily testing for the same infectious disease, including appropriate follow-up testing. When any such application is

received, the court shall hold a hearing forthwith and shall issue its order thereon immediately if the court finds that: (1) There is probable cause to believe that the employee involved has been placed in contact with body fluid of the offender or offenders sought to be tested; and (2) the offender or offenders sought to be tested have been requested to submit to the tests and have refused, unless the court makes a further finding that exigent circumstances exist that would, in the court's judgment, excuse the applicant from making such a request. Expenses of the testing shall be assessed as a cost of the proceeding.

(b) If a test for an infectious disease ordered pursuant to this section results in a negative reaction, the court, upon proper application, shall order the offender tested to submit to another test six months after the date the first test was administered.

(c) If a test is ordered pursuant to this section, the corrections employee shall designate a health care provider or counselor to receive the test results on behalf of the corrections employee. The results of the test shall be disclosed to the court that ordered the test, the person tested and the health care provider or counselor designated by the corrections employee. The results shall also be disclosed to the secretary of corrections for inclusion in the offender's medical records. Test results of the corrections employee shall not be disclosed except as specifically authorized in writing by the employee.

(d) When a court orders an offender to submit to tests under this section which require withdrawal of blood, the withdrawal of the blood may be performed only by: (1) A physician or a person acting under the supervision of a physician; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the tests nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.

~~(e) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by law to receive such results, reports or information. Any violation of this subsection is a class C misdemeanor.~~

History: L. 1993, ch. 221, § 4; L. 2001, ch. 102, § 3; July 1.

74-7508. Investigations by board; access to documents and other evidence; oaths and testimony; subpoenas; confidentiality of information; exceptions; client or patient communications; violations; remedies; disciplinary action. (a) In connection with any investigation, based upon a written complaint or other reasonably reliable written information, by the behavioral sciences regulatory board, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record or other physical evidence of any person being investigated, or any document, report, record or other evidence maintained by and in possession of any clinic or office of a practitioner of the behavioral sciences, or other public or private agency if such document, report, record or other physical evidence relates to practices which may be grounds for disciplinary action.

(b) In all matters pending before the behavioral sciences regulatory board, the board shall have the power to administer oaths and take testimony. For the purpose of all investigations and proceedings conducted by the behavioral sciences regulatory board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents, reports, records or any other physical

evidence if such documents, reports, records or other physical evidence relates to practices which may be grounds for disciplinary action. Within five days after the service of the subpoena on any person requiring the production of any documents, reports, records or other physical evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the documents, reports, records or other physical evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the allegation which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the documents, reports, records or other physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such documents, reports, records or other physical evidence.

(2) The district court, upon application by the board or by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the board's duly authorized agent to produce documents, reports, records or other physical evidence relating to the matter under investigation; or

(B) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the allegation which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the documents, reports, records or other physical evidence which is required to be produced.

(3) (A) If the board determines that an individual has practiced without a valid license a profession regulated by the board for which the practitioners of the profession are required by law to be licensed in order to practice the profession, in addition to any other penalties imposed by law, the board, in accordance with the Kansas administrative procedure act, may issue a cease and desist order against such individual.

(B) Whenever in the judgment of the behavioral sciences regulatory board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, 74-5361 to 74-5374, inclusive, and K.S.A. 2004 Supp. 74-5375, and amendments thereto, the licensure of psychologists act, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act, or any valid rule or regulation of the board, the board may make application to any court of competent jurisdiction for an order enjoining such acts or practices, and upon a showing by the board that such person has engaged, or is about to engage in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

(c) Any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the behavioral sciences regulatory board shall be confidential and shall not be disclosed by the board or its employees in a manner which identifies or enables identification of the person who is the subject or source of the information except the information may be disclosed:

(1) In any proceeding conducted by the board under the law or in an appeal of an order of the board entered in a proceeding, or to any party to a proceeding or appeal or the party's attorney;

(2) to the person who is the subject of the information or to any person or entity when requested by the person who is the subject of the information, but the board may require disclosure

in such a manner that will prevent identification of any other person who is the subject or source of the information; or

(3) to a state or federal licensing, regulatory or enforcement agency with jurisdiction over the subject of the information or to an agency with jurisdiction over acts or conduct similar to acts or conduct which would constitute grounds for action under this act. Any confidential complaint or report, record or other information disclosed by the board as authorized by this section shall not be redisclosed by the receiving agency except as otherwise authorized by law.

(d) Nothing in this section or any other provision of law making communications between a practitioner of one of the behavioral sciences and the practitioner's client or patient a privileged or confidential communication shall apply to investigations or proceedings conducted pursuant to this section. The behavioral sciences regulatory board and its employees, agents and representatives shall keep in confidence the content and the names of any clients or patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

(e) In all matters pending before the behavioral sciences regulatory board, the board shall have the power to revoke the license or registration of any licensee or registrant who voluntarily surrenders such person's license or registration pending investigation of misconduct or while charges of misconduct against the licensee are pending or anticipated.

(f) In all matters pending before the behavioral sciences regulatory board, the board shall have the option to censure the licensee or registrant in lieu of other disciplinary action.

History: L. 1980, ch. 242, § 8; L. 2001, ch. 154, § 1; L. 2004, ch. 16, § 6; July 1.

OPEN RECORDS REVIEW
NEW and SUBSTANTIALLY AMENDED EXCEPTIONS
2001 Legislative Session

New and Substantially Amended Sections

Statute	Who Exception Covers (Provides Protection To)	Governmental Program Affected	Subject Matter	Notes and Comments
K.S.A. 1-501(d)	Cpa's and Firms	Board of Accountancy	Peer Review Records	Substantially Amended
K.S.A. 9-1303	Regulators of Banks and Trust Companies	State Bank Commissioner	Records Exchanged with Regulators of Banks and Trust Companies	New
K.S.A. 12-4516a	Persons Seeking Expungement	Cities (Municipal Courts)	Records in Expungement Proceedings	Substantially Amended
K.S.A. 38-1692	Juvenile Offenders	Juvenile Justice Authority Dept. Of Corrections	Medical Test Records	Substantially Amended
K.S.A. 39-970	Juvenile Offenders	Adult Care Homes and KDHE	Juvenile Criminal Record History Information	New
K.S.A. 2005 Supp. 40-4913	Law Enforcement, Insurance Entities	Insurance Department	Investigative Materials	New

K.S.A. 65-525	Child Care Centers, Maternity Centers, Family Day Care Homes	KDHE	Records concerning listed facilities	Substantially Amended
K.S.A. 65-5117	Home Health Agencies	KDHE	Criminal Record History Information	New
K.S.A. 65-6016	Offenders Physicians	Dept. Of Corrections	Infectious Disease Tests	Substantially Amended
K.S.A. 65-6017	Offenders Physicians	Dept. Of Corrections	Infectious Disease Tests (Court Ordered Tests)	Substantially Amended
K.S.A. 74-7508	Psychologists and Other Professionals Regulated by Behavioral Sciences Board	Behavioral Sciences Board	Complaints and Related Information	New



Kansas Society of Certified Public Accountants

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TESTIMONY

To: The Honorable Tim Huelskamp, Chairman
Members of the Committee on Elections and Local Government

From: Tony A. Scott, Executive Director
Kansas Society of Certified Public Accountants

Re: SB 499 Pertaining to Certain Exception to the Kansas Open Records Act

Date: February 16, 2006

Chairman Huelskamp and Members of the Committee:

Thank you for allowing me this opportunity to appear and present testimony at today's hearing on SB 499.

My name is Tony A. Scott. I am Executive Director of the Kansas Society of Certified Public Accountants ("KSCPA"), a statewide association of 2,600 members dedicated to implementing strategies that enhance the well-being of our members, the accounting profession and the general public we serve.

I am testifying today as a proponent of SB 499 and, in particular, for the continuation of the long-standing peer review confidentiality provision found in K.S.A. 1-501.

Peer review confidentiality relates to documents prepared and maintained in connection with peer reviews performed by and for Certified Public Accountants in the State of Kansas. Peer review is an educational, mentoring and quality control program for CPAs who perform attestation services, meaning audits, financial reviews and financial compilations. The KSCPA is the official administrator of the Kansas Peer Review Program for both the Kansas Board of Accountancy and the American Institute of Certified Public Accountants.

The stated intent of the Kansas legislature is to provide certain exceptions to disclosure under the Kansas Open Records Act if:

- 1) The public record is of a sensitive or personal nature concerning individuals;
- 2) the public record is necessary for the effective and efficient administration of a governmental program; or
- 3) the public record affects confidential information.

In the case of peer review confidentiality found in K.S.A. 1-501, all three exceptions are satisfied.

Senate Elections and Local
Government Committee
Attachment 3
2-16-06

TESTIMONY of Tony A. Scott Re: SB 499
The Honorable Tim Huelskamp, Chairman
Members of the Committee on Elections and Local Government
February 16, 2006
Page 2 of 2

First, **peer review records are both sensitive and personal as it relates to the reviewed CPA and/or the reviewed CPA's firm.** During the course of a peer review, the reviewer completes dozens of pages of detailed questions, and prepares numerous memorandums and other working papers, relating to the reviewed CPA's system of professional quality control. The reviewed CPA is professionally bound to provide equally detailed, sensitive, personal and professional information regarding his or her CPA practice. Confidential review and/or documentation of sensitive and personal client information is also part of the peer review process and must also be protected from public scrutiny.

Second, **the development of peer review-related records is necessary for the effective and efficient administration of the peer review program.** The development and maintenance of detailed documentation are fundamental elements of a CPAs work. While the KSCPA and the peer review program are not *per se* "governmental," as official Peer Review Program Administrator for and on behalf of the Kansas Board of Accountancy and the American Institute of CPAs the KSCPA and Peer Review Program certainly operate in a quasi-governmental capacity.

Third, **records created in the course of a peer review affect confidential information on multiple levels.** Peer review-related confidentiality involves privileged communications between the reviewing CPA and the reviewed CPA as well as privileged communications between the reviewed CPA and his or her clients. As previously stated, during the peer review process the reviewing CPA documents the most intimate details of the reviewed CPA's professional practice, including client-related details, which, if disclosed to the public, would harm the reviewed CPA and potentially harm his or her clients.

Finally, disclosure of peer review records is not necessary either to inform the public about, or to protect the public from, a CPA who may perform substandard professional attestation services. To the extent the public wishes to be informed of a particular CPA's professional competence vis-à-vis formal disciplinary measures taken by the Kansas Board of Accountancy, those records are a matter of public record and are available from the Board.

Financial accounting involves massive numbers of transactions and tremendous amounts of data, and CPAs operate in an incredibly complex and ever-increasing regulatory environment. A CPA's work also requires substantial professional judgment and professional estimations. From time-to-time even the most professionally competent, capable and integrity-minded CPA will make a mistake. Peer review helps CPAs minimize those mistakes through a system of quality control and by providing educational and mentoring feedback in a candid and confidential way.

We encourage the continuation of peer review confidentiality found in K.S.A. 1-501 and respectfully request this Committee approve SB 499.

Thank you again for allowing me this opportunity to testify here today. I will now stand for questions.

TAS/mmi

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