

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

October 22-23, 2009
Room 143-N—Statehouse

Members Present

Representative Lance Kinzer, Chairperson
Senator Tim Owens, Vice-chairperson
Senator David Haley
Senator Julia Lynn
Representative Elaine Bowers
Representative Sydney Carlin
Representative Steve Huebert
Representative Connie O'Brien
Representative Annie Tietze

Staff Present

Jerry Ann Donaldson, Kansas Legislative Research Department
Lauren Douglas, Kansas Legislative Research Department
Norm Furse, Office of the Revisor of Statutes
Gordon Self, Office of the Revisor of Statutes
Sue VonFeldt, Committee Assistant

Conferees

Tim Madden, Kansas Department of Corrections
Mark Galbraith, State Librarian, State Library
John Badger, Department of Social and Rehabilitation Services
Dave Starkey, Kansas Department of Agriculture
Julia Mowers, Board of Healing Arts
Tom Day, Kansas Corporation Commission
Diane Bellquist, State Bank Commissioner
Ed Bryan, Kansas High Performance Incentive Program
Susan Andrews, Kansas Department of Aging
Richard Cram, Kansas Department of Revenue

Others Attending

See attached list.

Thursday, October 22

The meeting was called to order by Chairperson Lance Kinzer at 9:00 a.m. in Room 143-N.

Following introductions by the Chairperson, Norm Furse, Revisor Emeritus, and Gordon Self, Office of the Revisor of Statutes, gave an overview of the Interim Study (Attachment 1). They explained that the Legislative Coordinating Council (LCC) assigned the review of the "Kansas Open Records Act" to the Special Committee on Judiciary, which includes a review of existing exceptions to the Kansas Open Records Act that are scheduled for expiration July 1, 2010. They explained that in recent years, the Legislature has undertaken a comprehensive review of the Open Records Act in order to determine if any statutory exceptions to the law are unnecessary and could be discontinued. In 2009, SB 34 extended the existence of 30 statutory exceptions to the Kansas Open Records Act until July 1, 2014.

They also provided the following documents:

- Legislative Review of Statutory Exceptions.. "Legislative Review of Statutory Exceptions to Disclosure of Public Records - 2009" (Attachment 2);
- Review of KSA 45-229 (Attachment 3);
- Review of the Preparation for Identifying Exceptions (Attachment 4);
- Open Records Review List. A Matrix Summary list of the Open Records Act Exception (Attachment 5), pages 1 thru 44; and
- Open Records Act Exclusion Section (Attachment 6). This section, KSA45-221, is summarized on pages 45 thru 53.

Norm Furse and Gordon Self provided answers to the Committee members' questions after the presentation and review by the Committee of all the Open Record Statutes scheduled to expire July 1, 2010.

Richard Gannon, Kansas Press Association, addressed the Committee, regarding Statute KSA 21-2511, with the question: "if after a DNA sample is provided and subsequently the person is not charged or no further probable cause exists, should or is the record expunged." It was explained that if a specific request is made to expunge the record, it will be removed otherwise the record remains. This was a compromise due to concern for clerical resources to review and expunge all such records.

After a Committee member's question, it was determined that on page 21 of 53 (see Attachment 3, Matrix Listing of Exceptions Summary), the wording referencing KSA 60-3333, should be changed to read the "environmental audit report is ***not*** subject to discovery procedures," due to a typographical error.

There was discussion regarding the various exception statutes concerning the Gaming Agency with regard to whether they have been changed or updated due to the new gaming casinos in the state.

Chairperson Kinzer asked the staff to contact and invite various department representatives, if available, to the Committee meeting the next day at 9:00 a.m., instead of 10:00 a.m., to give their presentations and provide additional answers to questions by the Committee.

The meeting was adjourned at 3:30 p.m.

Friday, October 23 Morning Session

The meeting was called to order by Chairperson Lance Kinzer 9:00 a.m.

Tim Madden, Chief Legal Counsel, Kansas Department of Corrections, spoke to Committee members in support of the retention of the exception from disclosure of pre-sentence reports, pre-parole reports, post-release supervision reports and supervision history reports provided by KSA 22-3711. He explained these reports contain personal information regarding family and friends of inmates relevant to decisions regarding the possible residence, employment and associations of offenders proposed to be released, released or persons awaiting sentencing and, these records may also contain medical and mental health information as well as crime victim information. While these records are also exempted from public disclosure pursuant to the provisions of the Open Records Act of KSA 45-221(a)(30) regarding information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of personal privacy, KSA 22-3711 serves the additional purpose of providing authorization for the release of those records to the parole board, judges, attorney general and others entitled to receive the information in the performance of their duties. Therefore, KSA 22-3711 not only reiterates the confidential nature of those records but also provides for the limited release of that information to criminal justice personnel in the performance of their duties (Attachment 7).

Mr. Madden spoke in support of the retention of the exception from disclosure for psychiatric evaluation reports, by correctional facilities provided by KSA 75-5266. He again explained while the statute reiterates the confidential nature of those records, it also serves the additional purpose of providing authorization to the secretary of corrections to disclose those records to courts, prosecutors, defense counsel, the parole board, wardens and correctional facility classification Committees (Attachment 8).

In addition, Mr. Madden addressed a question regarding KSA 74-7405a which excepted the disclosure of confidential information from the records of the office of ombudsman of corrections or corrections ombudsman board relating to complaints by correctional inmates or employees. Mr. Madden confirmed the position of Ombudsman of Corrections was abolished during the 2003 Legislative Session and 2005 HB 2242 was written to repeal the statute that required the records of the Ombudsman of Corrections be confidential.

Marc Galbraith, Interim State Librarian, State Library, addressed the Committee regarding KSA 45-221(23) in support of the exception to the Open Records Act, because it provides that library patrons and circulation records, which pertain to identifiable individuals, shall not be disclosed. He stated 48 states have passed laws that protect the privacy of library users and the right to privacy

has been recognized as being essential to the exercise of free speech and free thought, and, as such, is guaranteed by the First Amendment. He also supported KSA 45-221 (7), which provides that limitations put on gifts to libraries, archives, and museums not be required to be disclosed (Attachment 9).

John Badger, General Counsel, Kansas Department of Social and Rehabilitation Services, spoke in support of the retention of exception from disclosure for several statutes (as named in sections 38, 39, 59, 65, 72-4311, 75, and 76).

A question and answer session followed. In response to a question regarding KSA 72-4311 regarding rules and regulations, Mr. Badger advised that, since this is 98 percent federally funded, they follow the federal rules and regulations. There also was discussion regarding KSA 38-1664 and if the information excepted should be changed to include reports submitted by a guardian ad litem.

Dave Starkey, Chief Counsel, Kansas Department of Agriculture, addressed the Committee in support of KSA 34-251, which protects certain grain warehouse records from disclosure under the Kansas Grain Warehouse Act. He explained that in carrying out their duties and responsibilities, employees and inspectors obtain information related to the business affairs and transactions of grain warehouses. This information cannot be disclosed except upon written permission of the grain warehouseman, the determination by the Secretary of Agriculture that the requestor is entitled to it, or pursuant to a court order. Any inspector or employee who discloses information except as permitted by this statute is guilty of a misdemeanor.

Mr. Starkey responded to a previous question regarding why a farmer who has a legitimate interest in an insolvent grain elevator has to follow the statute to obtain information. He explained any farmer who has grain in storage at an insolvent elevator, or who is a creditor of the elevator, is entitled to relevant information as authorized by KSA 34-25. (c). Also, if a grain warehouse is deemed to be insolvent, or does not have sufficient grain in storage, the Secretary is required to petition the district court to appoint a temporary and permanent receiver as provided in KSA 34-2,104. The receivership proceeding is under the supervision of a district court judge and relevant information is available to a farmer from the receiver and court filings. Mr. Starkey stated these procedures appear adequate for all concerned and he did not see a need for any changes (Attachment 10).

Julia Mowers, Legislative Analyst, Kansas State Board of Healing Arts (KSBHA), spoke in support of retaining eight separate Kansas statutes, KSA 40-1128, 45-221 (a), 65-118, 65-436, 65-2836, 65-2839a, 65-2898a, and 65-4925. She stated the purpose of the Healing Arts Act is to protect the public against the unprofessional, improper, unauthorized, and unqualified practice of medicine. These statutes ensure the KSBHA's ability to protect the public from the unsafe and unauthorized practice of medicine and also protects the privacy of licensees. According to Ms. Mowers, it is critical the KSBHA has the authority to assure these individuals and licensees that any sensitive, personal, medical information that is provided will remain confidential and that their identities will remain concealed from the public (Attachment 11).

Tom Day, Kansas Corporation Commission, spoke to the Committee to help clarify some various confidentiality questions by Committee members, specifically regarding KSA 55-1,102, 66-151, 66-1,190, and 66-1220a. Mr. Day stated the Corporation Commission uses the same four guidelines Mr. Furse and Mr. Self of the Office of the Revisor of Statutes shared when considering who makes the decisions and what criteria is used to determine confidentiality:

- Whether disclosure will significantly aide the Commission in fulfilling its functions;
- Whether disclosure will cause harm or benefit to the public interest;

- Whether disclosure will cause harm to the corporation, partnership, or sole proprietorship; and
- Whether there are alternatives to disclosure that will serve the public interest and protect the corporation, partnership, or sole proprietorship.

Mr. Day confirmed there are specific rules, regulations and procedures that cover the confidentiality issue and also assured the Committee that they also perform regular reviews of the confidentiality regulations. He explained that sometimes companies provide detailed information as confidential under seal and yet, if this same information has been filed with the Securities Commission and therefore is already public information, they can release that document. He also explained that if a company claims "trade secrets" regarding some information, then they respect that. If other parties dispute that, then a further review would be made. He also stated that while rates may be public information, the details and work papers themselves may be confidential. Most of the time communication contracts have rates, including what they are paying to other companies or contractors, and that information is confidential, but they may provide the contract in a redacted format in order to make the document public.

Diane Bellquist, General Counsel, Office of the State Bank Commissioner, presented testimony on behalf of Tom Thull, Bank Commissioner, in support of retaining the following exceptions to the Kansas Open Records Act, KSA 9-1712, 9-1137, 9-2217, and 16a-2-304. Their office is responsible for regulating a wide range of financial service providers, including state-chartered banks, trust companies, finance companies, mortgage brokers and lenders. The confidentiality is critical due to inclusion of information generated, including data such as social security and tax identification numbers, loan numbers, and audit information, that could increase the risk of identify theft and loss or damage to the customers as well as the businesses themselves (Attachment 12).

Ed Bryan, Program Director of the Kansas High Performance Incentive Program (HPIP), spoke on behalf of the Kansas Department of Commerce in support of the exception covered by KSA74-50,13. He stated the HPIP program is one of the state's most effective economic development tools and provides generous tax credit incentives to those companies that are willing to pay higher than average wages, invest in employee training, and make significant capital investments in either expansion or relocation from another state. He told the Committee the proprietary information supplied to the Department of Commerce by an entity, for the purpose of qualifying for this program, is of such highly confidential nature that if it were made public, current business advantages would be lost resulting in injury to the company in the competitive marketplace. In order to get companies to participate in this program, they must be able to guarantee confidentiality to their clients (Attachment 13).

Susan Andrews, Legal Counsel, Department on Aging, spoke in support of the confidentiality exception covered under KSA 39-934. The Department receives information for adult care homes that includes licensing information, field reports, inspection reports, surveys and complaint programs that includes confidential information of residents as well as other family members or individuals. These residents as well as the others must be assured of the confidentiality of information included in the information that is provided the agency.

Richard Cram, Director, Office of Policy and Research, Kansas Department of Revenue, addressed the Committee in support of retaining the various statutes that must be retained to assure individuals and companies of confidentiality protection. He explained the state also exchanges tax information with the Internal Revenue Service, and if they could not assure confidentiality, the program would come to a halt. Mr. Cram also explained to the Committee that in order to provide strict

confidentiality, the Department has an elaborate system in place that tracks who is accessing any tax records and all employees must sign an oath (Attachment 14).

There was a question and answer session after the final presentation to ensure all questions from the Committee had been addressed.

Chairperson Kinzer told the Committee he was advised by Carol Williams, Executive Director, Kansas Governmental Ethics Commission, that they are supportive of legislation that actually would alter the existing KAR 19-6-1, which deals with the Governmental Ethics Commission regarding disclosure and confidentiality procedure. There was discussion on KSA 25-4161 and KSA 25-4165 regarding the Ethics Commission. In the discussion, it was stated that whomever makes the complaint has a First Amendment right to disclose that they made a complaint and so there were questions by the Committee if this changed the exception status.

Chairperson Kinzer suggested the Committee proceed with two separate votes, one to request a bill be drafted and the other to prepare a list of items the Committee is recommending for further study.

Representative Hubert made the motion to draft a bill in support of extending the items scheduled for expiration in the coming year with the exception of the following:

- *KSA 74-7405a referring to Ombudsman of Corrections since this position no longer exists;*
- *KSA 79-1437f, Kansas Department of Revenue testified these records regarding real estate appraisal validation should be public information; and*
- *Correcting language to include guardian ad litem to KSA 38-1664.*

The motion was seconded by Senator Haley. The motion carried.

Senator Owens made a motion that a list be prepared of items recommended by the Committee for further study. Representative Carlin seconded the motion. The motion carried.

Norm Furse advised he will prepare a field draft listing these items and forward it to the Committee members.

Meeting was adjourned at 11:45 a.m.

Prepared by Sue VonFeldt
Edited by Jerry Donaldson

Approved by Committee on:

April 23, 2010

(Date)

MEMORANDUM

TO: Special Committee on Judiciary
FROM: Norm Furse, Revisor Emeritus
DATE: October 22, 2009
RE: Public Records Exceptions Review

- I. 2009 Interim Study. The Legislative Coordinating Council assigned the following study topic for review by the Special Committee on Judiciary: "*Kansas Open Records Act*. Conduct any statutorily required legislative review of existing exceptions to the Kansas Open Records Act that are scheduled for expiration in the coming year. In recent years, the Legislature has undertaken a comprehensive review of the Open Records Act in order to determine if any statutory exceptions to the law are unnecessary and could be discontinued. 2009 SB 34 extended the existence of 30 statutory exceptions to the Kansas Open Records Act until July 1, 2014."
- II. Legislative Review of Statutory Exceptions. See the attached document "Legislative Review of Statutory Exceptions to Disclosure of Public Records – 2009."
- III. Review of K.S.A. 45-229. See attached copy of K.S.A. 45-229.
- IV. Review of the Preparation Process for Identifying Exceptions. Revisor Emeritus review.
- V. Open Records Review List. An example of the latest list certified to the President and the Speaker is attached..
- VI. Open Records Act Exclusion Section. This section, 45-221, is summarized at the back of the columned handout.

Legislative Review of Statutory Exceptions to Disclosure of Public Records – 2009

- Under K.S.A. 45-229, all statutory exemptions to disclosure of public records in existence on July 1, 2000, expire on July 1, 2005, unless the legislature acts to reenact the exception.
- New exemptions to disclosure of public records expire on July 1 of the fifth year after enactment unless the legislature acts to reenact the exception.
- In the year before the expiration of an exception, the Revisor of Statutes certifies to the President of the Senate and the Speaker of the House by July 15 the statutory language and statutory citation of each exception which will expire the following year.
- The first such certification of the Revisor of Statutes was in 2004, for the sections which expire July 1, 2005. Thereafter, certifications are made annually.
- Under subsection (h) of K.S.A. 45-229, and amendments thereto, the legislature is directed to “review the exception before its scheduled expiration....”
- Exceptions to disclosure under the open records act which are not subject to review and expiration are exceptions required by federal law and exceptions which apply solely to the legislature or the state court system.

Prepared by Norm Furse, Revisor Emeritus

Special Committee on Judiciary
10/22-23/09
Attachment 2

(a) It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only 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.

The maintenance or creation of an exception to disclosure must be compelled as measured by these criteria. Further, the legislature finds that the public has a right to have access to public records unless the criteria in this section for restricting such access to a public record are met and the criteria are considered during legislative review in connection with the particular exception to disclosure to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the legislature shall consider the criteria in this section before enacting an exception to disclosure.

(b) Subject to the provisions of subsection (h), all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.

(c) For purposes of this section, an exception is substantially amended if the amendment expands the scope of the exception to include more records or information. An exception is not substantially amended if the amendment narrows the scope of the exception.

(d) This section is not intended to repeal an exception that has been amended following legislative review before the scheduled repeal of the exception if the exception is not substantially amended as a result of the review.

(e) In the year before the expiration of an exception, the revisor of statutes shall certify to the president of the senate and the speaker of the house of representatives, by July 15, the language and statutory citation of each exception which will expire in the following year which meets the criteria of an exception as defined in this section. Any exception that is not identified and certified to the president of the senate and the speaker of the house of representatives is not subject to legislative review and shall not expire. If the revisor of statutes fails to certify an exception that the revisor subsequently determines should have been certified, the revisor shall include the exception in the following year's certification after that determination.

(f) "Exception" means any provision of law which creates an exception to disclosure or limits disclosure under the open records act pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any other provision of law.

(g) A provision of law which creates or amends an exception to disclosure under the open records law shall not be subject to review and expiration under this act if such provision:

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10/22/09 Attachment 3*

(1) Is required by federal law;
(2) applies solely to the legislature or to the state court system.

(h) (1) The legislature shall review the exception before its scheduled expiration and consider as part of the review process the following:

(A) What specific records are affected by the exception;
(B) whom does the exception uniquely affect, as opposed to the general public;
(C) what is the identifiable public purpose or goal of the exception;

(D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.

(i) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2004, are hereby continued in existence until July 1, 2010, at which time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7503, 17-7505, 17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-1508, 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43) of 45-221, 46-256, 46-259,

46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406
49-427, 55-1,102, 56-1a606, 56-1a607, 56a-1201, 56a-1202,
58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3336,
65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106,
65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168,
65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525,
65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d,
65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447,
65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-4925,
65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05,
65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203,
66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106,
72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909,
74-50,131, 74-5515, 74-7308, 74-7338, 74-7405a, 74-8104, 74-8307,
74-8705, 74-8804, 74-9805, 75-104, 75-712, 75-7b15, 75-1267,
75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-5665, 75-5666,
75-7310, 76-355, 76-359, 76-493, 76-12b11, 76-3305, 79-1119,
79-1437f, 79-15,118, 79-3234, 79-3395, 79-3420, 79-3499,
79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

(j) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2005, are hereby continued in existence until July 1, 2011, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 38-1692, 39-970, 40-4913, 65-525, 65-5117, 65-6016, 65-6017 and 74-7508.

(k) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-50,184, 74-8134, 74-99b06 and 82a-2210.

OPEN RECORDS REVIEW – SUBSTANTIALLY AMENDED AND NEW
EXCEPTIONS
2005 LEGISLATIVE SESSION

RE: K.S.A. 45-229
Certified for Calendar Year 2009
Exceptions Expire July 1, 2010

Substantially Amended Exceptions

17-2036 Business trust extension for filing income tax
17-76,139 Limited liability company extension for filing income tax
45-221 (a) (45) and (46) Open records exceptions statute
75-5266 Psychiatric evaluation reports correctional facilities

New Exceptions

40-5301 Interstate Insurance Product Regulation Compact
72-972a Due process school hearing complaint notice
74-99d05 Kansas electric transmission authority
75-53,105 SRS programs for vulnerable children

New Exceptions – Expiration by Separate Statute

60-3351 Self-audits by insurance companies

*Special Committee on Judiciary
10-22-23-2009
Attachment 4*

OPEN RECORDS ACT EXCEPTIONS SUMMARY

October 22, 2009 Revised Summary

original prepared in 2004 by Diana Lee,
revised in 2009 by Norm Furse, Revisor Emeritus, and Gordon Seir, First Assistant Revisor

Judiciary Special Committee
Date 11/22/09 & 11/23/09
Attachment # 5

section	who exception covers (provides protection to):	government program affected:	type of information excepted:	notes & comments
1-401	CPAs and their clients	Board of Accountancy	all working papers made by a CPA or employee of a CPA in course of providing professional services to clients	
2-1202	parties who register as custom blenders of fertilizer	Department of Ag	all registration information, if divulging such information would divulge the registered party's operations	
5-512	parties to a dispute resolution proceeding	dispute resolution act	all verbal or written information transmitted between a party and a neutral person conducting dispute resolution proceeding	
9-1137	bank compliance review committee proceeding	bank compliance review	compliance review documents, unless information in possession of government agency expressly authorized for disclosure under applicable law	<i>specific exceptions</i>
9-1712	parties being investigated by state bank commissioner	bank commissioner	all information gathered in investigation by bank commissioner, unless commissioner gives written approval for release	

9-2217	parties being examined by the state bank commissioner	bank commissioner	all examination reports and correspondence except in connection with disciplinary proceeding conducted by commissioner, liquidation proceeding, or criminal investigation or proceeding	5-2
10-630	parties owning or pledging bonds	entities issuing bonds	all registration records of bond issuers; records of ownership or pledge	
11-306	individuals	secretary of state, colleges or universities, military personnel	all forms and other personally identifiable data obtained in conjunction with redistricting census	
12-189	parties responsible for paying retail sales taxes	cities and counties collecting information about retail sales taxes	any information collected by cities or counties regarding retail sales taxes	
12-1,108	any person filing a statement or list with a return or statement of tax liability	county clerks, county treasurers, directors of taxation	any list or statement filed with any return or statement of tax liability, unless director of taxation, county clerk, or county treasurer or court of competent jurisdiction opens	
12-1694	parties responsible for paying transient guest tax	<u>cities and counties</u>	all information <u>received by city or county pursuant to this section</u>	This info available upon request to Div. of Taxation
12-1698	parties responsible for paying transient guest tax	<u>cities and counties</u>	all information received <u>by city or county pursuant to this section</u>	

<p>12-2819 <i>Public Transp.</i></p>	<p>parties involved in negotiations, actions or proceedings with public boards</p>	<p>any public board</p>	<p>documents and records kept or prepared by board</p>	<p><i>5-2</i></p>
<p>12-4516 <i>expungement of records</i></p>	<p>recipients of expungement of certain convictions, arrest records or diversions</p>	<p>custodian of such expungement records</p>	<p>such records shall not be disclosed unless requested by person whose record was expunged and other specified parties</p>	<p><i>copy of list</i></p>
<p>16-715</p>	<p>precious metals dealers <i>Pawn Brokers required to make report of in-out items</i></p>	<p>cities and counties</p>	<p>reports closed except to law enforcement officers and county and district attorneys or their employees for law enforcement purposes</p>	<p><i>This info available only upon request to Dir. of Taxation.</i></p>
<p>16a-2-304</p>	<p>parties to consumer credit transactions</p>	<p>Consumer Credit Commission</p>	<p>info. contained in reports, except in composite form</p>	
<p>17-1312e</p>	<p>cemetery corporations</p>	<p>Secretary of State</p>	<p>all info. gathered in making an investigation or examination, except to the officers of corp. or AG when, in the opinion of the secretary, disclosure should be made; upon request of any person, may disclose whether maintains certain funds</p>	
<p>17-2227</p>	<p>credit unions and their customers</p>	<p>Department of Credit Unions</p>	<p>all info. secured or produced by the administrator in making an investigation or examination, except on written approval of administrator, to federal or state agencies, to private insurer of credit union in performance of official duties, to third parties if good cause, or under court order</p>	

17-5832	savings & loan compliance review committee	State Banking Commissioner	all compliance review documents	5-4
17-7503 (exception deleted)	for-profit domestic corporations	Secretary of State	amount of any franchise tax paid by corporation as reported to Sec.	L. 2004, ch. 171, sec. 20 deleted the open records exception
17-7505 (exception deleted)	for-profit foreign corporations	Secretary of State	amount of any franchise tax paid by corporation as reported to Sec.	L. 2004, ch. 171, sec. 22 deleted the open records exception
17-7511	corporations	Secretary of State	any information obtained from review of corporation's income tax return	
17-7514	business entities required to file an annual report w/ the Sec. of State	Secretary of State	copies of requests for extension for time to file annual report, except as authorized pursuant to 79-3234 or subsection ©)	
17-76,139	limited liability companies	Secretary of State	the amount of franchise tax paid to the secretary by the limited liability company	
19-4321	public employees	County Civil Service Board	employee ratings and reports, to the extent prescribed by the board by rule	
21-2511	persons whose DNA has been tested	KBI	DNA records, except to criminal justice agencies	

22-3711	prisoners and parolees	Kansas Parole Board, Department of Corrections	pre-sentence report; pre-report, pre-post-release report, and supervision history, except to parole board, judge, AG, <u>others entitled to receive info.</u> ; parole board, Sec. may permit inspection by person having proper interest in when in best interest of defendant/inmate	Sen. Owens questioned who are "others"; 5-5
22-4707	persons with criminal records	criminal justice agencies; central repository for criminal history information	criminal history record information, except in strict accordance with applicable rules and regs; may only be requested by criminal justice agency if there is a legitimate need for info.	
22-4909	crime victims	sheriff's offices, KBI	name, address, telephone number, or other information that specifically/individually identifies victim of offender required to register, other than to law enforcement agencies	
22a-243	interested parties in child death investigations (families)	State Child Death Review Board	information acquired by and records of the state review board, except to legislators or legislative committees with responsibility for enabling appropriate legislation or carrying out official functions; shall receive info. in closed/executive session of committee	

22a-244	interested parties in child death investigations (families)	State Child Death Review Board	books, records, papers received by state review board pursuant to subpoena; may disclose conclusions, but not info. not subject to public disclosure	5-4
23-605	parties to domestic dispute resolution	mediation of domestic disputes	all verbal and written info. transmitted between parties and mediator; subject to <u>specifically enumerated exceptions</u> (5)	Sen. Owens
23-9,312	children	courts	address of child or party upon finding that disclosure that health, safety, or liberty of child would be put unreasonably at risk (may be ex parte)	Interstate
25-4161	candidates for public office	Governmental Ethics Commission	complaint, except as provided in campaign finance act; if finding of probable cause, no longer confidential	
25-4165	candidates for public office	Governmental Ethics Commission	records, complaints, documents, reports filed w/ or submitted to commission, and records or transcripts of investigations, inquiries, or hearings; except open to member of commission, employee of commission, or state officer or employee designated by commission	
31-405	interested parties with respect to arson investigation	AG's office, law enforcement	info. received regarding arson investigation until its release is required pursuant to criminal or civil proceeding	

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<p>34-251</p>	<p>grain warehouses & their customers</p>	<p>Department of Agriculture</p>	<p>info. obtained by department related to affairs or transactions other than as permitted by act, without first obtaining express permission in writing of warehouse or secretary, unless under court order; upon order of Sec. after person applies</p>	<p><i>Concerns elevators going out of business - Rep Kenzer requests Research to check with Dept of Ag.</i></p>
<p>38-1508</p>	<p>children, interested parties in child abuse or neglect proceedings</p>	<p>law enforcement agencies</p>	<p>all records and reports concerning child abuse or neglect received by law enforcement agencies, except to judge and members of court staff designated by judge, guardian ad litem, parties and attorneys, SRS, any individual or public or private agency with authority to care for or treat child, law enforcement, county or district attorneys, any member of standing house or senate committees on judiciary, house committee on appropriations, senate committee on ways and means, legislative post audit committee, and joint committee on children and families in carrying out of member's official functions, and any juvenile intake or assessment worker</p>	<p>Section transferred to 38-2212</p> <p><i>Director Quern Rep questioned if these people should be exceptions.</i></p>

38-1520 (Repealed)	children, interested parties in CINC proceedings	juvenile justice agencies	CINC info. maintained in the CINC info. system in a manner that allows for identification of any individual, except that info. may be inspected by SRS or upon order of a judge of a district or appellate court	Repealed, L. 2006, ch. 200 § 120
38-1565 (Repealed)	children, other interested parties in reintegration plan	Department of Social and Rehabilitation Services	report submitted by foster parent(s), except may be reviewed by court and guardian ad litem	Repealed, L. 2006, ch. 200 § 120
38-1609 (Repealed)	juvenile offenders	juvenile justice agencies	diagnostic, treatment, or medical records of juvenile offenders, except to specified parties under circumstances enumerated in statute	Repealed, L. 2006, ch. 169 § 140

<p>38-1610 (Repealed)</p>	<p>juvenile offenders</p>	<p>juvenile justice agencies</p>	<p>expunged records, except when record requested by party whose record was expunged, private detective agency in connection w/ application for employment, court, upon showing of subsequent conviction of person, Secretary of SRS or Secretary's designee, person entitled to receive info. under terms of expungement order, Kansas Lottery to determine eligibility for employment in sensitive positions, Governor or Kansas Racing Commission to determine eligibility for employment in sensitive positions or licensure, or the Kansas Sentencing Commission</p>	<p>Repealed, L. 2006, ch. 169 § 140</p> <p style="text-align: right;">5-9</p>
<p>38-1618 (Repealed)</p>	<p>juvenile offenders</p>	<p>juvenile justice agencies</p>	<p>juvenile offender info. to extent identifies individual, SRS if related to person in SRS control, JJA, if related to person in custody, Dept. of Corrections if related to person in custody, educational institutions to extent necessary to ensure safety, offers of public institution to which person committed, county and district attorneys, attorneys for parties, and intake and assessment worker or upon order of judge</p>	<p>Repealed, L. 2006, ch. 169 § 140</p>

38-1664	juvenile offenders	Juvenile Justice Authority	report submitted by juvenile offender's foster parents, except as to court and child's attorney	Rep Owens - takes precedence over child in need of care or the guardian of rights
39-709b	applicants for and recipients of public assistance	Department of Social and Rehabilitation Services	info. containing applicants for and recipients of public assistance, except to Secretary and the Secretary's employees as set forth in section	
39-719e	medical assistance recipients	Department of Social and Rehabilitation Services	info. provided by medical benefit plan providers	
39-934	parties licensed by state agencies	state agencies with licensing authority	info. received by licensing authorities through filed reports or inspections in way that identifies individual	Noting Home specific Adult Care Homes OK
39-1434	interested parties in reports, assessments, etc. maintained by SRS	Department of Social and Rehabilitation Services	report, assessment, or written evaluation; name of person making report or mentioned in report, unless person specifically requests or agrees in writing to disclosure or a judicial proceeding results therefrom; info. contained in statewide registry in way that identifies an individual	
39-1704	interested parties to SRS cases	Department of Social and Rehabilitation Services	confidential info. received by Regional Interagency Councils	SRS - Questions - Do these Councils still exist?

40-222	insurance companies	Commissioner of Insurance – examination of financial condition of insurance companies	examination report confidential for 30 days, except to extent otherwise provided in section; thereafter, open unless court has stayed release; all working papers, recorded info., documents, and copies thereof obtained by or disclosed to commissioner in course of examination are confidential, except as provided by statute or to NAIC if has agreed in writing to maintain confidentiality	<p><i>Regarding Fiscal Condition Fiscal</i></p> <p><i>5-11</i></p>
40-2,156	insurance companies	Department of Insurance	all reports obtained by or disclosed to commissioner, except with prior written consent of insurer; or unless commissioner, after notice and hearing, determines the interests of policyholders, shareholders, or the public would be served	
40-2c20	insurance companies	Department of Insurance – Risk Based Capital reports of insurance companies	all Risk Based Capital reports, plans, or corrective orders, including working papers and results of any analysis of insurer, except for purpose of enforcement actions by commissioner	
40-2c21	insurance companies	Department of Insurance	RBC levels or any component derived in calculation of any insurer, agent, broker, or other person engaged in insurance business in any manner	

40-2d20	health insurance organizations	Department of Insurance – Risk Based Capital reports of health insurance companies	RBC reports, plans, or corrective orders, including working papers and results of any analysis of health organization, except for purpose of enforcement action by commissioner or sharing with NAIC, or other federal, state, or international regulatory agencies or law enforcement	5-18
40-2d21	health insurance organizations	Department of Insurance	RBC levels or any component derived in the calculation of any health organization, agent, broker, or person engaged in the insurance business	
40-409	life insurance companies	Department of Insurance – certified valuation of policies in force	any memo or other info. in support of required actuarial opinion; except w/ written consent of company, to American academy of actuaries for disciplinary proceeding, or once any part released by co.	
40-956	insurance rating organizations	Department of Insurance	all info. submitted for examination by insurance commissioner	
40-1128	insurers of health care providers	Board of Healing Arts	the names of any people or facilities involved in reports by insurers of any actions to the board of healing arts	

40-2807	insurance companies	Department of Insurance <i>Tax Reports</i>	the amount of income or other particulars set forth in any required report or return, except in accordance with proper judicial order or as otherwise provided by law	<i>12-13</i>
40-3012	insurance companies	Department of Insurance	reports and recommendations by boards of directors to insurance commissioner regarding the solvency, liquidation, rehabilitation, or conservation of any member insurer or any company seeking to do business in the state	<i>Life + Health Assoc.</i>
40-3304	domestic insurance companies	Department of Insurance	if the source of consideration for a merger or other acquisition of control is loan made in ordinary course of business, identity of the lender, if so requested	
40-3308	insurance companies	Department of Insurance – opinion of certified actuary on reserve	all info., documents, and copies obtained in support of the actuarial report	<i>Ins. Holding Co.</i>
40-3403b	health care organizations & providers	<u>Health Care Stabilization Fund</u> – <u>Legislative Coordinating Council actuarial report</u>	information or materials provided to actuarial firm by the Health Care Stabilization Fund	
40-3421	health care providers	Health Care Stabilization Fund – reports by insurers of medical malpractice claims	reports of claims and actions for medical malpractice required to be filed by this section	
40-3613	insurance companies	Department of Insurance	orders necessary to correct, eliminate, or remedy the conduct, condition, or ground of a domestic insurer, at commissioner's discretion	

40-3805	insurance companies having agreements with administrators	Department of Insurance	any trade secrets contained in books or records, including, but not limited to, the identity and addresses of policy holders and certificate holders, except for use in any proceedings instituted against insurer	5-14
40-4205	insurance companies providing prepaid plans	Department of Insurance	any trade secrets contained in books or records, except for use in any proceedings instituted against the insurer	
44-510j	employer insurance companies or self-insured employers	workers compensation – medical benefits section	except as provided in 60-437 (waiver of a privilege of nondisclosure), findings and records related to utilization and peer review conducted pursuant to section	

44-550b	employers and employees	Department of Labor, Division of Workers Compensation	records relating to financial info. submitted by an employer to qualify as self-insured; records related to utilization review or peer review, except to health care provider and as otherwise provided by worker comp act; records relating to private premises safety inspections; medical records, forms, accident reports, and social security numbers, except upon court order, to division, federal or state governmental agencies for fraud or abuse investigations, employer in connection with application for employment, its insurance carrier, or representatives under certain specified conditions, workers comp fund or to the worker upon written release	5-15
44-594	employers	Department of Insurance, Division of Workers Compensation	records filed with or maintained by the commissioner relating to financial info. submitted by an employer to qualify as a member of or maintain membership in a group-funded workers compensation pool	
44-635	employers and employees	Department of Labor, Division of Workers Compensation	the names of individuals, firms, or corporations supplying the info. called for under this act, unless by written permission	

44-714	employers and employees	Department of Labor – employment security law benefits hearing	transcript of benefits hearing not discoverable or admissible in evidence	Rep Kinzer 5-16
X 44-817	employers and employees	Department of Labor – mediators to labor dispute	verbal or written info. transmitted between a party to a labor dispute and a mediator conducting the proceeding, except as to info. necessary for the mediator to establish a defense in an action against the mediator, info. <u>the mediator is required to report</u> , or info. necessary to stop the commission of an ongoing or future crime or fraud	Sen. Owens question: what this could mean. answer: means required to report child abuse or neglect.
44-1005	employers and employees	Human Rights Commission	endeavors at conciliation shall not be received in evidence	
44-1019	employers and employees	Human Rights Commission	conciliation agreements, but only if the aggrieved person and respondent agree and the commission determines that disclosure is not required to further the purposes of the act	
45-221	<i>please see separate table</i>			
46-256	candidates for public office	Governmental Ethics Commission	the filing of a complaint and the allegations therein, except as provided in this act	

<p>46-259</p>	<p>candidates for public office</p>	<p>Governmental Ethics Commission</p>	<p>all records, complaints, documents, & reports filed with, submitted to or made by the commission, and all records and transcripts of any investigations, inquiries, or hearings of the commission, other than members of the commission, employees of the commission, or a state officer or employee designated to assist the commission, except as otherwise specifically stated in this act</p>	<p>5-17</p>
<p>46-2201</p>	<p>individuals</p>	<p>Joint Committee on Pensions, Investments, and Benefits</p>	<p>all info. relating to recommendations, other than conviction data, except to members of joint committee as necessary to determine qualification of such member; the committee shall recess or hold closed or executive meeting to receive or discuss info. received by committee pursuant to subsection</p>	

<p>47-839</p>	<p>veterinarians and their clients</p>	<p>Board of Veterinary Examiners</p>	<p>any info. concerning care of an animal by vets licensed under veterinary practice act, except on written authorization or other waiver by the vet's client or upon appropriate court order or subpoena; waived to extent placed at issue by animal owner in civil or criminal proceeding or in relation to any investigation by board or subsequent administrative disciplinary action</p>	<p><i>human owner?</i></p> <p><i>8/18</i></p>
<p>47-844</p>	<p>veterinarians and their clients</p>	<p>Board of Veterinary Examiners</p>	<p>fine paid in response to finding of violation constitutes satisfactory resolution of matter for purposes of public disclosure</p>	
<p>47-849</p>	<p>veterinarians</p>	<p>Board of Veterinary Examiners - impaired veterinarians</p>	<p>reports and records concerning <u>impaired veterinarians</u>, including executive or review committees of a professional society or organization and by any committee or consultant; committee or officer may report to and discuss its activities with other committees or officers without waiver of privilege, but records of all such committees or officers relating to such report are privileged; persons attending impaired veterinarian committee shall not be compelled to testify in any civil, criminal, or admin. action</p>	<p><i>Question?</i> <i>Definition of impaired?</i></p>

47-1709	veterinarians	Board of Veterinary Examiners	any complaint filed with the commissioner, other than to employees of commissioner as necessary to carry out the duties of their employment	5-19
48-1614	individuals and companies engaged in nuclear energy development activities	Department of Health & Environment and any other agency dealing with nuclear energy	any report of investigation or inspection or any info. concerning trade secrets or secret industrial processes obtained by a dept. or agency from any person in carrying out their responsibilities under this act, if person informs such dept. or agency of their claim to a trade secret or secret industrial process, except as may be necessary for the performance of the functions of such agency	Surface or Strip mining
49-406	individuals or companies engaged in mining activities	Department of Health and Environment	info. pertaining only to the analysis of the chemical and physical properties of coal, except info. regarding such mineral or elemental content that is potentially toxic in the environment	
49-427	individuals, businesses	Department of Health & Environment	info. submitted to the department pursuant to this section concerning trade secrets or privileged commercial or financial info. related to competitive rights of person or entity intended to explore the described area	

55-1,102	individuals, businesses	Corporation Commission	any rates, data, or information, except as otherwise required by law	
56-1a606 (exception deleted)	domestic limited partnerships	Secretary of State	amount of franchise tax paid by the limited partnership to the secretary	L. 2004, ch. 171, sec. 31 deleted the open records exception
56-1a607 (exception deleted)	foreign limited partnerships	Secretary of State	amount of franchise tax paid by the limited partnership to the secretary	L. 2004, ch. 171, sec. 32 deleted the open records exception
56a-1201 (exception deleted)	limited liability partnerships	Secretary of State	the amount of franchise tax paid by the limited partnership to the secretary	L. 2004, ch. 171, sec. 34 deleted the open records exception
56a-1202 (exception deleted)	foreign limited liability partnerships	Secretary of State	the amount of franchise tax paid by the foreign limited partnership to the secretary	L. 2004, ch. 171, sec. 35 deleted the open records exception
58-4114	state certified or licensed appraisers	Real Estate Appraisal Board	residential addresses of appraisers on file with board	
59-2135	interested parties with respect to adoptions	Department of Social and Rehabilitation Services	all information pertaining to adoptions of minors required to be provided to the secretary, to the same extent as provided in 59-2122	
59-2802	certain welfare recipients	petition for appointment for personal representative for certain welfare recipients	report containing any info. necessary for court to make findings of fact regarding petition	

<p>59-2979 & 59-29b79</p>	<p>individuals</p>	<p>courts</p>	<p>treatment or medical records of any patient or former patient; except upon written consent of patient or patient's guardian, unless the head of the treatment facility states in writing that disclosure would be injurious to the welfare of the patient or former patient, upon sole consent of head of treatment facility if make written determination that such disclosure is necessary for treatment of patient, or to any state or national accreditation agency or for scholarly study, but head of facility must require <u>a pledge that name of patient will not be disclosed to anyone not authorized to receive info.</u></p>	<p><i>5-21</i></p> <p><i>Disclosure could be harmful to patient</i></p>
<p>60-3333</p>	<p>parties to voluntary environmental audits</p>	<p>environmental audit reports</p>	<p>environmental audit report is not subject to discovery procedures, but is not admissible in any civil, criminal, or administrative proceeding</p>	<p><i>Important</i></p> <p><i>"typo"</i></p> <p><i>Have Jerry Am... verify</i></p>

60-3336	parties interested in environmental audit reports	any governmental entity	audit reports, but not documents, communications, data, reports, or other info. required to be collected, developed, maintained, or reported to a regulatory agency pursuant to federal, state, or local law, info. obtained by observation, sampling, or monitoring of regulatory agency, or info. obtained from source independent of audit	5-22
65-102b	individuals	Department of Health & Environment	info. concerning non-infectious diseases obtained by the secretary, except upon written consent of person or upon request of organization or scholarly investigator for legitimate research purposes, but cannot reveal identity	
65-118	individuals, people licensed by Board of Healing Arts, other health care providers	local health authorities	info. as to infectious or contagious diseases, except if no person can be identified by info. and info. is for statistical purposes, all identifiable people consent in writing, disclosure necessary to protect public health, medical emergency exists and disclosure necessary to treat disease, or required in court abuse proceeding and info. disclosed <i>in camera</i>	

65-119	individuals	county health boards, local health officers	any disclosure or communication of info. relating to infectious or contagious diseases required to be disclosed or communicated, except as otherwise provided by this section or 65-118	65-119
65-153f	individuals	any entity	lab statements, reports, files, and records regarding tests for syphilis and hepatitis, other than to local health officer or their duly authorized reps, except by written consent of patient	
65-170g	individuals, businesses	Department of Health & Environment	records, reports, data, or other info. related to or from source or potential sources of water pollutants if it is shown that release of info. would divulge trade secrets	
65-177	individuals	Department of Health & Environment - study of diseases and death from maternity	all data voluntarily made available to the secretary in connection w/ study of diseases and deaths from maternity	
65-1,106	individuals	Department of Health & Environment	any info. obtained from program of tests for sickle cell anemia, except upon consent of person or to parents if person is 18 or younger	
65-1,113	individuals	Department of Health & Environment - health manpower planning information	info. collected to define the effective distribution of health manpower, to the extent individuals can be identified	

65-1,116	individuals	Department of Health & Environment	info. gathered in testing for diabetes mellitus, except on written consent of person, to person under 18's parent or guardian, or to organization or investigator for legitimate research or data collection purposes if identity of person not revealed	5-24
65-1,157a	individuals	Department of Health & Environment	info. obtained by secretary in course of newborn hearing screening program, except to primary care physician and parents or guardians of child	
65-1,163	individuals	Department of Health & Environment	referral and associated documentation of pregnant women at risk for prenatal substance abuse	
65-1,165	individuals	Department of Social and Rehabilitation Services	referral and associated documentation of pregnant women at risk for prenatal substance abuse	
65-1,168	individuals	Department of Health & Environment	info. collected for cancer registry that permits identification of individuals	
65-1,169	individuals	Department of Health & Environment	secretary ensure confidentiality of cancer registry	
65-1,171	individuals	Department of Health & Environment – cancer registry	info. collected for cancer registry that might be used to identify individual or provider	
65-1,172	individuals	Department of Health & Environment	use of confidential data only for certain, specified purposes	

65-436	individuals	Department of Health & Environment	info. received through filed reports, inspections, or as otherwise authorized by act, but info. received by licensing agency in a proceeding involving question of licensure may be disclosed publicly in a manner that would permit identification of individuals	<i>Generally related Hospitals</i> <i>5-25</i>
65-445	individuals and medical care facilities	Department of Health & Environment	annual report of medical care facilities to secretary, except to board of healing arts upon request for disciplinary action or to AG upon showing reasonable cause exists to believe there has been violation of the act	<i>Termination of Pregnancy</i>
65-507	individuals	Department of Health & Environment, Department of Social and Rehabilitation Services	info. on maternity care and child care facility records submitted to the departments under section, in a manner that would identify individuals	

<p>65-525</p>	<p>individuals</p>	<p>Department of Health & Environment</p>	<p>permissible to release records containing identifying info. to agency or organization to receive notice under 65-506, a criminal justice agency, any state or federal agency that provides child care services, funding, or protective services, any federal agency for purposes of compliance w/ funding req., any local fire dept., any child and adult care food program, or any local disaster agency; any state or federal agency receiving info. may only release w/ written consent of person; secretary may release if necessary to protect safety, health, or welfare of public, patients, or children; <u>all records available to certain legislators.</u> but info. must not identify specific individuals</p>	<p><i>Child Services Day Care Centers Maternity Centers</i></p> <p><i>65-506 certain legislators?? Appropriations Wayst Means</i></p> <p><i>2-26</i></p>
<p>65-531</p>	<p>individuals</p>	<p>Department of Health & Environment</p>	<p>immunization records w/out release of parent or guardian, except to public agencies, health records staff of child care facilities/day cares, people entrusted with care of children, and health care professionals, to the extent need to know such info. to ensure compliance w/ law; written statements of religious objection, w/out parent or guardian's written consent</p>	

65-657	individuals, businesses	Department of Health & Environment	trade secrets	L.R.R.
65-1135	nurses	Board of Nursing	any complaint, report, record, or other info. relating to investigation in manner that identifies person, except in disciplinary proceeding, to proper licensing or disciplinary authority of another jurisdiction, or person subject to investigation	
65-1467	dentists	Dental Board	any complaint, report, record, or other info. relating to investigation in manner that identifies person, except in disciplinary proceeding, to proper licensing or disciplinary authority of another jurisdiction, or person subject to investigation	
65-1627	pharmacists	Board of Pharmacy – impaired pharmacist	info. submitted to the board, all reports, findings, and other records and record of board proceedings involving mental and physical examinations or drug screens	
65-1831	barbers	Board of Barbering	the contents of any document, paper, or record examined in performance of duties under law or info. obtained in course of any investigation except as may be required to carry out purpose of act	

65-2422d	individuals	Department of Health & Environment, Division of Health	data contained in vital statistics records, except as authorized by act and the secretary; no info. pertaining to out of wedlock births in a manner that discloses that child was born out of wedlock except on court order in case where info. necessary for determination of personal or property rights and then only for that purpose; secretary may permit use for research purposes, but no identifying use	82-28 5-28
65-2438	individuals	Department of Health & Environment	any info. relating to an infectious or contagious disease required to be disclosed or communicated, beyond disclosure necessary under subsections (a) and (b)	Transp. of dead body from place of death to coroner or place being transported
65-2836	licensed health care professionals	Board of Healing Arts -- impaired licensee under healing arts act	info. submitted to whole board, review committee of peers, or committee of officers and board's executive director; all reports, findings, and other records; the record of board proceedings involving mental and physical examinations or drug screens	

<p>65-2839a</p>	<p>professionals licensed by the Board</p>	<p>Board of Healing Arts</p>	<p>patient records, including clinical records, medical reports, lab statements, and reports, films, other reports, or oral statements relating to diagnostic findings or treatment of patients, info. from which patient or family might be identified, peer review, or risk management records; info. or records received and records kept by board as result of investigation procedure</p>	<p>65-2839</p>
<p>65-2898a</p>	<p>individuals</p>	<p>Board of Healing Arts</p>	<p>any complaint, report, record, or other info. relating to complaint received, obtained, or maintained by the board that identifies or enables identification of individuals, except to party to proceeding, hospital committee, person subject of investigation, or to state or federal licensing, regulatory, or enforcement agency w/ jurisdiction over subject of info. or to agency w/ jurisdiction over acts and conduct similar to acts or conduct that would constitute grounds for action</p>	

65-3015	individuals, businesses	Department of Health & Environment, Division of Environment Quality Management - air quality control	upon showing satisfactory to the secretary that if released info. would divulge methods or processes entitled to protection <u>as trade secrets</u> , except that such record, report, or info. may be disclosed to officers, employees, or authorized reps of US govt. concerned with carrying out responsibilities under the federal clean air act	5-30
65-3447	individuals, businesses	Department of Health & Environment - solid and hazardous waste	upon satisfactory showing of trade secret status, any records, reports, documents, or other info. required to be submitted by act, except to officers, employees, or authorized reps of the state concerned w/ carrying out this act or authorized reps of EPA in carrying out rules/regs	
65-34,108	individuals, businesses	Department of Health & Environment - storage tanks	upon satisfactory showing of <u>trade secret status</u> , any records, reports, documents, or other info. required to be submitted by act, except to officers, employees, or authorized reps of the state concerned w/ carrying out this act or authorized reps of EPA in carrying out rules/ regs	
65-34,126	individuals	Department of Insurance, Department of Health & Environment - underground storage tank insurance	any confidential info. required to be provided between departments	

65-4019	individuals	Department of Health & Environment; alcohol treatment facilities	info. received by the secretary through filed reports, inspections, or as otherwise authorized by this act, except in proceeding involving licensure or pursuant to court order	18-2
65-4608 (Repealed)	individuals	Department of Health & Environment; drug abuse treatment facilities	info. received by the secretary through filed reports, inspections, or as otherwise authorized by this act, except in proceeding involving licensure or pursuant to court order	Repealed, L. 2007, ch. 95 § 17
65-4922	individuals, businesses	Department of Health & Environment – medical care facilities risk management program	reports and records reviewed or obtained by department and in its possession under 65-4925	
65-4925	individuals, businesses	Department of Health & Environment – medical care facilities risk management program	reports and records made pursuant to 65-4923 or 65-4924, including reports and records of executive or review committees, the chief of the medical staff, chief administrative officer, risk manager, state licensing agency, or impaired provider committee of a professional society; records of licensing agency hearings	

65-5602	individuals	alcohol or drug abuse or mental treatment facilities	that the patient has been or is currently receiving treatment; any confidential communications made for the purpose of diagnosis or treatment of patient's mental, alcoholic, drug dependency, or emotional condition; confidential communications include all people present to further the interests of the patient in the consultation, examination, or interview	5-32
65-5603	individuals	coroners	info. obtained by a coroner, unless admitted as evidence by a court or for performing coroner's statutory duties	
65-6002	individuals	Department of Health & Environment – reported information concerning AIDS or HIV infection	info. required to be reported and info. obtained through lab tests conducted by department, beyond disclosure necessary under this section or 65-6003 or to persons specifically designated by the secretary, unless no person can be identified, all reasonably identifiable persons consent in writing, disclosure is necessary as specified by rules and regs to protect public health, to extent necessary to protect health or life of a named party in event of a medical emergency, or in a court proceeding involving a minor, providing the info. is disclosed <i>in camera</i>	

65-6003	individuals	Department of Health & Environment	any info. regarding HIV or AIDS required to be disclosed or communicated under subsection (a) of this section, subsection (a) of 65-6002, or to persons specifically designated by the secretary	5-33
65-6004	individuals	emergency services employees, corrections officers, and law enforcement officers	info. regarding infectious diseases	
65-6010	individuals	courts	results of infectious diseases tests	
65-67a05	individuals	Department of Health & Environment	info. obtained by the secretary in a manner that would reveal identity of person, except to AG upon showing that reasonable cause exists to believe a violation of this act has occurred, solely for purposes of criminal prosecution	
65-6803	individuals	Health Care Data Governing Board	set procedures for ensuring confidentiality and safety of data	
65-6804	individuals	Department of Health & Environment	procedures to be developed to ensure confidentiality of patient records; data and other info. collected pursuant to this act, except for statistical purposes pursuant to rules & regs adopted by the secretary and approved by the board	Health Policy Authority Its okay - legislation passed / section that transferred these functions
66-101c	individuals, businesses	Corporation Commission	contracts entered into, when requested by public utility and its suppliers and customers	

66-117	individuals, businesses	Corporation Commission	copies of tariffs, schedules, and classifications made so under rules and regs	
66-151	individuals, businesses	Corporation Commission	rules and regs limit distribution of any classification, rate, rule, regulation, or order	
66-1,190	individuals, businesses	Corporation Commission	contracts entered into, when requested by telecom public utility and its suppliers and customers	
66-1,203	individuals, businesses	Corporation Commission	contracts entered into, when requested by natural gas public utility and its suppliers and customers	
66-1220a	individuals, businesses	Corporation Commission	any trade secret or confidential commercial info. unless commission finds disclosure is warranted after consideration of specified factors	Kinzer Question
66-2010	individuals, businesses	Corporation Commission, Kansas Universal Service Fund (KUSF)	info. made available or received by the administrator from carriers, utilities, or providers receiving funds or providing funds to KUSF	
72-996	individuals	State Board of Education - dispute resolution through mediation	discussions that occur during mediation process	
72-4311	individuals	Department of Social and Rehabilitation Services	adopt rules & regs for protection of confidential info.	Vocational Rehab Patrick Woods SRS

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72-4452	individuals	State Board of Education	info. transmitted to state board pursuant to subsection (a)(1) <u>in any manner that an individual can be identified</u>	Career Tech Institutions explanation of Gender Satisfactory
72-5214	individuals	schools	info. contained in health assessments, <u>beyond what is necessary,</u> except to school board personnel to extent necessary to administer law and protect health of pupil, to medical personnel if medical emergency exists, with consent of parent or guardian, or if <u>no person can be identified and use is statistical</u>	Health Assessment Forms Rep. Kinzer Rep Owens question
72-53,106	individuals	schools	info. gathered in the course of investigation to establish the identity of child, except to establish identity of child or for criminal prosecution	School Enrollment can only use it if you are only using the info for enrollment purposes

72-5427	individuals	schools – mediation of an impasse in professional negotiations	all verbal or written info. transmitted between any party to a dispute and a mediator or its staff, except as to info. necessary to establish a defense for the mediator in an action against the mediator, info. the mediator is required to report, info. necessary to stop the commission of an ongoing or future crime or fraud, or info. the mediator required to report to comply w/ court order	2-316
72-8903	individuals	schools	report related to expulsion, to everyone but the parent or guardian, counsel, or other advisor of pupil	
73-1228	individuals	Commission on Veterans Affairs – survey of physical and mental condition of veterans and their families	info. obtained through survey, except if no person can be identified, all identifiable persons consent in writing, disclosure is necessary to protect public health, or necessary to protect health or life of named party in a medical emergency	
74-2424	individuals, businesses	Department of Revenue	tax info, other than for administration of state or federal tax laws	
74-2433f	individuals, businesses	State Board of Tax Appeals	documents provided to hearing officer, except as otherwise specifically provided	

74-4905	individuals	KPERS	all info. other than conviction data, except to members and employees of committee as necessary to determine qualifications of such member	<i>J-31</i>
74-4909	individuals	KPERS	member accounts and records, unless release authorized in writing by the member, except to employer or other state or federal agencies, as the board deems appropriate	
74-50,131	individuals, businesses	Department of Commerce and Housing	info. obtained under this section	<i>eligibility for income tax bracket</i>
74-5515	individuals, businesses	Department of Commerce and Housing	records obtained under this section to same extent as required by facility, agency, person, or other entity from which such records are obtained	<i>Dvlp. disabilities</i>
74-7308	individuals	Crime Victims Compensation Board	all records and info. given to board to process crime victim claim, except for appeal from board decision or on <u>strict showing</u> to court in civil or criminal action that particular info. not obtainable after diligent effort from any independent source	<i>by facilities served the client with dvlp. disabilities</i> <i>Rep. King's question</i>

74-7338	individuals	Department of Corrections	record of victims and their addresses maintained by secretary, other than to victim or victim's family	
74-7405a	individuals	Department of Corrections	records of office of ombudsman of corrections or corrections ombudsman board relating to complaints by correctional inmates or employees, except as authorized by a majority vote//	No longer a position by a Ombudsman Important
74-8104	individuals, businesses	Kansas Technology Enterprise Corporation	documents and other materials submitted to the corporation that are determined to be trade or business secrets	Under the Uniform Trade Secret Act. Trade Secret Act
74-8307	individuals, businesses	Department of Revenue	documents and other materials submitted to the corporation that are determined to be trade or business secrets	or Secretary of Commerce
74-8705	individuals	Department of Revenue, Kansas Lottery	background investigation info., other than conviction data, except as provided in this section	
74-8804	individuals	Department of Revenue, Racing Commission	background investigation info., other than conviction data, except as provided in this section	

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74-9805	individuals	Gaming Agency	background investigation info., other than conviction data, except to executive director, employees of agency, and members and employees of <u>tribal gaming commission</u> as necessary to achieve purposes set forth in this section	How this been changed or updated with the new gaming casinos by State Agencies. They need to Research that
75-104	individuals	governor and former governors KEEPERS	all records, correspondence, or other papers not required to be disclosed under 45-221 during governor's lifetime, except on consent of former governor	Rep Kinzer asked them to look at & see if this reference to 45-221 is meaningful
75-712	individuals	Kansas Bureau of Investigation	info. received pursuant to section regarding criminal info., except to governor or members of governor's staff as necessary to determine appointee's qualifications	Rep Kinzer asked them to look at.
75-7b15	individuals	Attorney General	any info. obtained by the AG, except as necessary to commence and prosecute any legal proceeding	Private Detective or Detective Agency
75-1267	individuals	Department of Administration	documents related to <u>correctional institutions</u> or other <u>facilities</u> under the jurisdiction or control of the secretary of corrections	Drawings, Blueprints Change orders, etc.

75-2943	individuals	Department of Administration	secretary shall adopt rules & regs that determine extent to which ratings, reports are open	5-1-10
75-4332	public employers and employees	Department of Administration, public employers – impasse in public employee and employer negotiations	all verbal & written info. transmitted between any party and a mediator, except info. necessary to establish defense for mediator in an action against the mediator, info. mediator required to report, any info. necessary to stop commission of an ongoing or future crime or fraud, or info. mediator required to report under court order	
75-4362	individuals	Department of Administration	results of drug tests, except in hearings before state civil service board	Rich Gannon, question
75-5133	individuals, businesses	Department of Revenue	all info. received by director of taxation from applications for licensure or registration, returns or reports filed under provisions of law imposing excise tax, or any investigation, except as otherwise provided by law or court order	
75-5266	individuals	Department of Corrections	psychiatric evaluations, except as provided in section	
75-5665	individuals, businesses	Department of Health & Environment	proprietary and personal info.	

75-5666	individuals	Department of Health & Environment – statewide trauma registry	info. obtained by trauma registry, except if no person can be identified and use is statistical, all identifiable persons consent in writing, disclosure is necessary to protect public health and does not identify providers or facilities, or info. is to be disclosed in child abuse hearing <i>in camera</i>	5-4-09
75-7310	individuals, businesses	Department of Health & Environment	all info., records, and reports received or developed by an ombudsman related to residential facility, except on court order, written consent of ombudsman, and in report submitted to facility by ombudsman	
76-355	individuals	University of Kansas – School of Medicine and Medical Center Hospital	info. in which identity of patient is not protected and records, reports, statements, memoranda, movies, videos, and other teaching devises for discovery purposes or before any agency proceeding	
76-359	individuals	universities	info. concerning patient during course of medical study that would otherwise be privileged under 60-427	

76-493	individuals	Kansas State University – Veterinary Medical Center peer review	reports, statements, memoranda, proceedings, filings, and other records of peer review committees or officers	<i>PH-2</i>
76-12b11	individuals	state institutions for the mentally retarded	records of any proposed resident, resident, or former resident, except w/ consent of superintendent, under court order, written consent of person	
76-3305	individuals, businesses	University of Kansas	proprietary info. in possession of third parties who have promised confidentiality, contract cost estimates, data, records, or other info. of a proprietary nature produced or collected by the medical or teaching staff; identity, accounts, or account status of any customer; consulting or other reports paid for by university	
79-1119	individuals, businesses	Department of Revenue	amount of income or any other particulars set forth in any report, statement, return, federal return, or other info.	
79-1437f	individuals, businesses	county officials	real estate sales validation questionnaire, except for purposes specified in section	<i>Required transfer of title "Sales Validation questionnaire"</i>
79-15,118 (Repealed)	individuals, businesses	Department of Revenue, any other state agencies or employees	value of any estate or particulars set forth in any report, return, federal return, or other info.	Repealed, L. 2006, ch. 199 § 54

79-3234	individuals, businesses	Department of Revenue, gaming agency, and Kansas Inc.	all tax reports and returns, except as specified in section	
79-3395	individuals, businesses	Attorney General	statement signed under penalty of perjury re importation of cigarettes	? AG office needs to answer
79-3420	individuals, businesses	Department of Revenue	info. gained by director, deputies, or agents as a result of reports, investigations, and verifications, except as provided in this section; director may publish gallons received by each licensed distributor	
79-3499	individuals, businesses	Department of Revenue	any info. gained by director, secretary, deputies, or agents, except as necessary in administration and enforcement of this act and rules & regs, or as provided in this act	
79-34,113	individuals, businesses	Department of Revenue	info. gained by director, representatives, or agents as result of any audit or from filed reports, except as necessary in administration of this act or rules & regs	
79-3614	individuals, businesses	Department of Revenue	info. received by director from returns filed or from investigations, except by court order	

2/1/02

79-3657	individuals, businesses	Department of Revenue and its contractors	return info. submitted to any party acting for or on behalf of state on same level as dept.	5-14-11
79-4301	individuals, businesses	Department of Revenue	info. obtained pursuant to this article, other than for tax purposes to other states, their subdivisions, or the US	
79-5206	individuals, businesses	Department of Revenue	facts contained in a report or return required by this act, unless independently obtained, except in connection w/ a proceeding involving taxes due under act from taxpayer	

OPEN RECORDS ACT (K.S.A. 45-221) EXCEPTIONS SUMMARY:
 (with date subsection enacted and amended)

October 7, 2009

original prepared in 2004 by Diana Lee

revised in 2009 by Norm Furse, Revisor Emeritus, and Gordon Self, First Assistant Revisor

*Special Committee
 on Judiciary
 10/27-28/09
 Attachment 4*

section	who exception covers (provides protection to):	government program affected:	type of information:	notes and comments:
(a)(1)	individuals, entities, businesses	any agency/branch dealing w/ records closed or restricted by federal law, state statute, Supreme Court rule or rule of the senate committee on confirmation oversight	any record parties are specifically prohibited from disclosing or that has restricted disclosure requirements	1984, A 2008
(a)(2)	individuals, entities, businesses	courts	info. privileged under rules of evidence	1984
(a)(3)	individuals	agencies involved with health care or regulation	medical, psychiatric, psychological, or drug dependency records	1984
(a)(4)	individuals	personnel records, dept. of administration, any other agencies w/ employees	personnel records, performance ratings, etc., except names, positions, salaries, lengths of service, employment-related contracts	1984, A 2005

(a)(5)	individuals	law enforcement	identity of undercover agents or informants	1984
(a)(6)	individuals	dept. of administration, any other agency w/ employees	letters of recommendation, references	1984, A 2004, A 2005
(a)(7)	individuals	state historical society, libraries, museums	library, archive and museum materials contributed by individuals to extent of limitation given as condition on contribution	1984
(a)(8)	individuals	public agencies	identity of donors to agencies to extent of limitation give as condition on contribution	1984, A 2004, A 2005
(a)(9)	individuals, administrator of exam	schools, colleges & universities, agencies administering professional exams	testing materials before test given or if test to be given again; record of scores, other than pass/fail	1984
(a)(10)	individuals	law enforcement, courts	criminal investigation records	1984, A 1995, A 2004, A 2005
(a)(11)	individuals	agencies involved in administrative adjudications or civil litigation	records of agency in dispute if disclosure would interfere w/ dispute or reveal identity of confidential source or undercover agent	1984

(a)(12)	individuals	agencies with emergency plans, security information or procedures, building security information	records of emergency plans if disclosure would jeopardize the security of the agency, building or facility	1984	6-3
(a)(13)	businesses	agencies acquiring property or contracting	appraisals, engineering or feasibility estimates related to acquisition of property before award of formal contract	1984	
(a)(14)	individuals	agencies corresponding w/ private individuals	correspondence between public agency & private individual, unless to give notice of action or is specifically in response to communication from private individual	1984	
(a)(15)	individuals	agencies engaged in employer/employee negotiations	records pertaining to employer/employee negotiations if disclosure would reveal info. disclosed in executive session	1984	
(a)(16)	individuals, businesses, entities	agencies using software for electronic data processing	software programs, but must maintain detailed open register of information maintained and form available	1984	

(a)(17)	individuals	colleges and universities	info. submitted in connection w/ student aid applications	1984	6-4
(a)(18)	individuals, businesses	agencies handling plans, drawings or specifications	plans, drawings or specifications prepared by someone outside agency	1984	
(a)(19)	businesses	state corp. commission well samples, logs or surveys of drilling for oil or gas	well samples, logs or surveys drilled for purpose of finding oil or gas to extent disclosure limited by state corp. commission	1984	
(a)(20)	individuals	any agency	records that express an opinion or express proposed policies or actions, unless part of open meeting	1984	
(a)(21)	individuals, businesses, entities	agencies w/ legislative powers	records that pertain to proposed legislation, unless part of open meeting or distributed to majority of quorum	1984	
(a)(22)	individuals, businesses, entities	agencies w/ legislative powers	records pertaining to research prepared for members of agency, unless part of open meeting or distributed to majority of quorum	1984	

(a)(23)	individuals	libraries	library patron and circulation records pertaining to identifiable individuals	1984	5-9
(a)(24)	individuals	agencies maintaining census or research records	census or research records pertaining to identifiable individuals	1984	
(a)(25)	individuals	agencies that employ attorneys	attorney work product	1984	
(a)(26)	individuals	agencies maintaining utility or public service records	utility or public service records pertaining to individually identifiable customers, except requested information concerning billing for specific, individually named customers	1984	
(a)(27)	businesses	agencies engaging in competitive bidding	unapproved competitive bidding specifications	1984	
(a)(28)	businesses	agencies receiving bids	sealed bids and related documents until a bid is accepted or all bids are rejected	1984	

(a)(29)	individuals	correctional institutions	correctional records pertaining to specific individuals, subject to four exceptions	1984, A 1994, A 1995, A 1997
(a)(30)	individuals	agencies maintaining records containing personal information of a private nature	records containing personal information of a private nature	1984
(a)(31)	businesses	agencies maintaining records regarding prospective business or industry locations	records regarding prospective business or industry locations if information has not been publicly disclosed; does not apply to applications for permits or licenses	1984
(a)(32)	businesses	agencies maintaining engineering or architectural estimates related to public improvements	engineering or architectural estimates related to public improvements	1984
(a)(33)	businesses	agencies maintaining records containing this financial information	financial information submitted by contractors in qualification statements	1984
(a)(34)	entities	state educational institutions	records involved in obtaining and processing intellectual property rights vested in or owned by state educational institutions	1984

(a)(35)	individuals	medical care facilities, health care providers	records related to risk management, reportable incidents, impaired provider reports and privileged records	1987	6-7
(a)(36)	individuals	agencies maintaining records of precise locations of archeological sites	records that would reveal the precise location of an archeological site	1989	
(a)(37)	businesses	agencies maintaining records of railroad company financial or traffic data	records of railroad company financial or traffic data concerning railroad property	1991	
(a)(38)	businesses	insurance commissioner	risk based capital reports, plans and corrective orders filed with commissioner of insurance	1995	
(a)(39)	businesses	insurance commissioner	memoranda used to support annual actuarial opinions	1995	
(a)(40)	businesses	insurance commissioner	disclosure reports filed with the commissioner of insurance	1995	
(a)(41)	businesses	insurance commissioner / department of insurance	insurance company financial analysis ratios and examination synopses submitted by national association	1995	

(a)(42)	entities	agencies maintaining records related to tribal gaming	records restricted from disclosure by state-tribal gaming compact	1996	8-9 6-9
(a)(43)	entities, businesses	University of Kansas Medical Center	records that would give KU Med competitors an unfair advantage	1997	
(a)(44)	entities, businesses	secretary of revenue or secretary of state	amount of franchise tax paid	2001, A 2004	
(a)(45)	individuals, entities, businesses	any agency	records revealing security measures	2002, A 2005	
(a)(46)	individuals	register of deeds	information received from military discharge papers	2003, A 2005	
(a)(47)	individuals	agencies with information on location of shelters from abuse	information on location of a shelter from abuse	2005, A 2009	
(a)(48)	entities, businesses	insurance commissioner	certain policy information provided by an insurance carrier under workers comp. act	2009	
(b)	individuals, entities, businesses	any agency	financial information of a taxpayer or personal financial information	1986	

OPEN RECORDS ACT – 2009 CERTIFIED EXCEPTIONS

October 7, 2009

prepared by Norm Furse, Revisor Emeritus, and Gordon Self, First Assistant Revisor

6-9

section	who exception covers (provides protection to):	government program affected:	type of information:	notes and comments:
17-2036	businesses	secretary of state	business trust extension for filing income tax	
17-76,139	businesses	secretary of state	limited liability company extension for filing income tax	
40-5301	individuals, entities, businesses	compacting states	interstate insurance product regulation compact	
45-221, (a)(45) and (46)	See separate table ante			
60-3351	entities, businesses	commissioner of insurance	self-audits by insurance companies	
72-972a	individuals	school districts	due process school hearing complaint notice	
74-99d05	individuals, entities, businesses	KS electric transmission authority	KS electric transmission authority records	
75-5266	individuals	correctional facilities	psychiatric evaluation reports correctional facilities	
75-53,105	individuals	secretary of SRS	criminal history record information re vulnerable children or adults	

**Special Committee on Judiciary
Interim Committee- Exceptions to Kansas Open Records Act
October 22, 2009**

K.S.A. 22-3711 (Presentencing and Prerelease Reports)

The Department of Corrections supports the retention of the exception from disclosure of presentence reports, preparole reports, pre-postrelease supervision reports, and supervision history reports provided by K.S.A. 22-3711. These reports contain personal information regarding family and friends of inmates relevant to decisions regarding the possible residence, employment and associations of offenders proposed to be released, released or persons awaiting sentencing.. These records may also contain medical and mental health information as well as crime victim information. While these records are also exempted from public disclosure pursuant to the provisions of the Open Records Act at K.S.A. 45-221(a)(30) regarding information of a personal nature where the public disclosure where of would constitute a clearly unwarranted invasion of person privacy, K.S.A. 22-3711 serves the additional purpose of providing authorization for the release of those records to the parole board, judges, attorney general and others entitled to receive the information in the performance of their duties. Therefore, K.S.A. 22-3711 not only reiterates the confidential nature of those records but also provides for the limited release of that information to criminal justice personnel in the performance of their duties.

The Department urges retention of K.S.A. 22-3711.

**Special Committee on Judiciary
Interim Committee- Exceptions to Kansas Open Records Act
October 22, 2009**

K.S.A. 75-5266 (Psychiatric Evaluation Reports of the Department of Corrections)

The Department of Corrections supports the retention of the exception from disclosure for psychiatric evaluation reports prepared by correctional facilities provided by K.S.A. 75-5266. The psychiatric records of inmates contain personal information of individuals regarding the diagnosis and treatment of those persons and should remain confidential. While these records are also exempted from public disclosure pursuant to the provisions of the Open Records Act at K.S.A. 45-221(a)(3) regarding medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients, K.S.A. 75-5266 serves the additional purpose of providing authorization to the secretary of corrections to disclose those records to courts, prosecutors, defense counsel, the parole board, wardens and correctional facility classification committees. Therefore, K.S.A. 75-5266 not only reiterates the confidential nature of those records but also provides for the limited release of that information to criminal justice personnel in the performance of their duties.

The Department urges retention of K.S.A. 75-5266.

October 22, 2009

To: 2009 Special Committee on Judiciary

Representative Lance Kinzer, Chair
Representative Elaine Bowers
Representative Sydney Carlin
Representative Steve Huebert
Representative Connie O'Brien
Representative Annie Tietze
Senator Tim Owens
Senator David Haley
Senator Julia Lynn

From: Marc Galbraith, Interim State Librarian of Kansas

Re: Kansas Open Records Act Review

Mr. Chairman, committee members, thank you for the opportunity to address you regarding this important exception to the Kansas Open Records Act. The State Library, and libraries all across the state, support the Open Records Act, as we believe a transparent government is the best government.

Having said that, we ask you to extend the exception to the Open Record Act found in K.S.A. 45-221 (23) because it provides that library patron and circulation records, which pertain to identifiable individuals, shall not be required to be disclosed.

We believe the provisions are a very important exception to the Open Records Act in that they help libraries protect the privacy of library users. That right to privacy has been recognized as being essential to the exercise of free speech and free thought and as such is guaranteed by the First Amendment.

Kansas is not alone in offering such protections. While states take different statutory approaches, 48 states have passed laws that protect the privacy of library users.

We encourage you to continue to allow us to provide that protection.

We also encourage you to continue the exception to the Kansas Open Records Act found in K.S.A. 45-221 (7) which provides that limitations put on gifts to libraries, archives and museums not be required to be disclosed.

Judiciary Special Committee
Date 11/22/09 & 11/23/09
Attachment # - 9 -

**Testimony on disclosure of records under the Kansas Grain Warehouse Act
to
the Special Committee on Judiciary**

**by H. David Starkey
Chief Counsel
Kansas Department of Agriculture**

October 23, 2009

Good morning, chairman Kinzer and members of the committee. I am Dave Starkey and I am here today to testify in response to your questions about whether certain grain warehouse records are protected from disclosure under the Kansas Grain Warehouse Act.

The Kansas Department of Agriculture supervises and regulates all grain warehouses operating under the Grain Warehouse Law, K.S.A. 34-101 *et seq.* In carrying out our duties and responsibilities, employees and inspectors obtain information related to the business affairs and transactions of grain warehouses.

K.S.A. 34-251 provides that any information relative to business affairs and transactions of grain warehouses obtained by Kansas Department of Agriculture employees and inspectors performing official duties cannot be disclosed except upon written permission of the grain warehouseman, the determination by the secretary of agriculture that the requestor is entitled to it, or pursuant to a court order. An inspector or employee who discloses information except as permitted by this statute is guilty of a misdemeanor.

At yesterday's committee hearing, it was asked why a farmer who has a legitimate interest in an insolvent grain elevator has to follow the statute to obtain information.

Any farmer who has grain in storage at an insolvent elevator, or who is a creditor of the elevator, is entitled to relevant information as authorized by K.S.A. 34-251(c). Moreover, if a grain warehouse is deemed to be insolvent, or does not have sufficient grain in storage, the secretary is required to petition the district court to appoint a temporary and permanent receiver as provided in K.S.A. 34-2,104. The receivership proceeding is under the supervision of a district court judge. Relevant information is available to a farmer from the receiver and court filings.

Judiciary Special Committee
Date 11/22/09 & 11/23/09
Attachment # 10

KANSAS

STATE BOARD OF HEALING ARTS

MARK PARKINSON
GOVERNOR

October 23, 2009

To: Special Committee on Judiciary

(Rep. Lance Kinzer, Chairperson; Sen. Tim Owens, Vice-Chairperson;
Sen. David Haley; Sen. Julia Lynn; Rep. Elaine Bowers, Rep. Sydney
Carlin; Rep. Steve Huebert; Rep. Connie O'Brein; Rep. Annie Tietze)

From: Julia Mowers, J.D., Legislative Analyst
Kansas State Board of Healing Arts

RE: Opposition to the deletion of KORA-related statutes

The Kansas State Board of Healing Arts opposes the deletion of the following Kansas Statutes Annotated:

40-1128	65-2836
45-221(a)	65-2839a
65-118	65-2898a
65-436	65-4925

These statutes are attached to this testimony to aid the Committee in its deliberations.

The purpose of the Healing Arts Act is to protect the public against unprofessional, improper, unauthorized and unqualified practice of the healing arts. K.S.A. 65-2801.

One of the most essential core functions of the Kansas Board of Healing Arts involves the receipt of highly personal, sensitive, and confidential information. Incoming patient complaints customarily include sensitive and personal details, medical records and information submitted with the understanding that it would not be disclosed or used for any purpose other than to facilitate the investigative process. Medical records are obtained under subpoena from health care providers, hospitals and other facilities with the same expressed understanding of confidentiality. Highly sensitive and confidential information related to individual health care providers in the form of peer review, physical and mental health impairment and or treatment and chemical impairment and treatment are also among the information the agency receives on a regular basis in the performance of our regulatory obligation.

If the above listed statutes are eliminated, not only would this agency's ability to protect the public be limited, such elimination would also adversely affect our licensees' privacy.

I. The abovementioned statutes ensure KSBHA's ability to protect the public from the unsafe and unauthorized practice of medicine.

In order to continue to protect the public, and our licensees it is essential that these statutes are not eliminated. Virtually every piece of information that the Kansas State Board of Healing Arts relies on in an investigation is personal, health related, and/or confidential information.

When KSBHA conducts an investigation as a result of an allegation, typical information the Board gathers includes individual patients' medical records and personal testimony. Oftentimes these individuals feel

BOARD MEMBERS: MICHAEL J. BEEZLEY, M.D., PRESIDENT, Lenexa - M. MYRON LEINWETTER, D.O., VICE PRESIDENT, Topeka - FRANK J. CHRISTOPHER, Public Member, Fairway - RAY N. CONLEY, D.C., Overland Park - GARY L. COUNSELMAN, D.C., Topeka - FRANK MERLE J. "BOO" HODGES, M.D., Salina - SUE ICE, Public Member, Newton - BETTY McBRIDE, Public Member, Columbus - GARY CAROLINA M. SORIA, D.O., Wichita - KIMBERLY J. TEMPLETON, M.D., Leawood - TERRY L. WEBB, D.C., Hutchinson - NANCY J. WELSH, M.D.,

Judiciary Special Committee

Date 11/22/09 & 11/23/09

Attachment # — // —

235 SW TOPEKA BLVD., TOPEKA, KS 66603
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Hearing Impaired Callers Dial 711 or 800-766-3777/voice/TTY

extremely vulnerable and are hesitant to share such information. The abovementioned statutes, give KSBHA the authority to assure these individuals that any sensitive, personal, medical information that they provide to us will remain confidential. Additionally, through these statutes, KSBHA can assure these individuals that their identities will remain concealed from the public.

Without these statutes in place, every time KSBHA conducts an investigation, potentially patients' most intimate and confidential healthcare information could be compromised and shared with the general public. Without the authority of these statutes to reassure patients that their private information will be kept confidential, KSBHA's investigative process would be stifled. No one would want to turn over such information without such assurance that information would be kept in the upmost confidence.

Without these statutes in place it would be extremely difficult for KSBHA to conduct investigations on allegations of the unsafe or unauthorized practice of medicine. The information received in these investigations helps the agency to ensure that the public is protected from the unsafe and unauthorized practice of medicine. It is important that these statutes remain in effect so that KSBHA can continue its duty to protect the citizens of Kansas.

II. The abovementioned statutes protect the privacy of KSBHA's licensees.

In addition to protecting the citizens of Kansas from the unsafe and unauthorized practice of medicine, the abovementioned statutes protect the privacy of KSBHA's licensees.

When a licensee is charged with an allegation of the unsafe or improper practice of medicine, sometimes this licensee is battling with personal issues, sometimes related to physical or drug-related impairment, or mental illnesses. This information, while essential for the Board to know in order to protect the public, is highly confidential information which there is no reason for the public to know.

Additionally, in K.S.A. 65-28,122, it mandates that if a licensee has personally committed, or has knowledge that another licensee has committed violations of the Healing Arts Act, this information must be reported to the Board. The abovementioned statutes protect the information reported and the confidentiality of the reporting party. Without such statutes in place, there would be a chilling effect on reporting of these issues.

Furthermore, in the investigatory process, on certain occasions panels of the licensees' peers review the allegation either on an internal basis, or externally at the facility where the alleged event occurred in order to determine whether the licensee deviated from the acceptable standard of care. Under the current statute, K.S.A. 65-2839a(d), the conclusions of the peer review and their work product must remain confidential. This allows the members of the peer review committee to openly and honestly examine the allegation without fear of repercussion from the licensee or other party.

While the abovementioned statutes are essential to the Kansas State Board of Healing Arts to protect the public from the unsafe practice of medicine, they are also needed to protect the privacy of this agency's licensees.

It is for these reasons that the Kansas State Board of Healing Arts opposes the elimination of the following statutes: K.S.A. 40-1128; K.S.A. 45-221(a); K.S.A. 65-118; K.S.A. 65-436; K.S.A. 65-2836; K.S.A. 65-2898a; and K.S.A. 65-4925.

40-1128

Chapter 40.--INSURANCE

Article 11.--GENERAL PROVISIONS RELATIVE TO CASUALTY, SURETY AND FIDELITY COMPANIES

40-1128. Same; disclosure. The state board of healing arts shall make such reports available to the public in a manner which will not reveal the names of any person or facility involved.

History: L. 1975, ch. 241, § 3; L. 1976, ch. 216, § 3; L. 1996, ch. 65, § 2; July 1.

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION
Article 2.--RECORDS OPEN TO PUBLIC

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2008 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2008 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

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

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

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

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

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

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

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

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

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

(A) Is in the public interest;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

individuals.

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

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

(36) Information which would reveal the precise location of an archeological site.

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

(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.

(41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

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

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

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-118. Reporting to local health authority as to infectious or contagious diseases; persons reporting; immunity from liability; confidentiality of information; disclosure. (a) Whenever any person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse administrator of a hospital, licensed adult care home-administrator, licensed physician assistant, licensed social worker, teacher or school administrator knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer, together with the name and address of the person who has or is suspected of having the infectious or contagious disease, or the name and former address of the deceased individual who had or was suspected of having such a disease. In the case of a licensed hospital or adult care home, the administrator may designate an individual to receive and make such reports. The secretary of health and environment shall, through rules and regulations, make provision for the consolidation of reports required to be made under this section when the person required to make the report is working in a licensed hospital or adult care home. Laboratories certified under the federal clinical laboratories improvement act pursuant to 42 code of federal regulations, 493 shall report the results of microbiologic cultures, examinations, immunologic essays for the presence of antigens and antibodies and any other laboratory tests which are indicative of the presence of a reportable infectious or contagious disease to the department of health and environment. The director of the division of health may use information from death certificates for disease investigation purposes.

(b) Any person who is an individual member of a class of persons designated under subsection (a) of this section and who reports the information required to be reported under such subsection in good faith and without malice to a county or joint board of health, a local health officer or the department of health and environment shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(c) Information required to be reported under subsection (a) of this section shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the requirements of subsection (a) of this section or subsection (a) of K.S.A. 65-119, except such information may be disclosed: (1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;

(2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;

(3) if the disclosure is necessary, and only to the extent necessary, to protect the public health;

(4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat infectious or contagious diseases. Any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or

(5) if the information to be disclosed is required in a court proceeding involving child abuse and the information is disclosed *in camera*.

History: L. 1901, ch. 285, § 2; R.S. 1923, 65-118; L. 1953, ch. 283, § 1; L. 1976, ch. 262, § 1; L. 1979, ch. 189, § 1; L. 1998, ch. 35, § 1; L. 2000, ch. 162, § 17; Feb. 1, 2001.

65-436
Chapter 65.--PUBLIC HEALTH
Article 4.--HOSPITALS AND OTHER FACILITIES

65-436. Information confidential; exceptions. (a) Except as provided in subsection (b), information received by the licensing agency through filed reports, inspections or as otherwise authorized under this act, shall not be disclosed publicly in such manner as to identify individuals.

(b) Notwithstanding the provisions of subsection (a) to the contrary, the following information may be disclosed publicly in such a manner as to identify individuals or medical care facilities: Information received by the licensing agency through filed reports, inspections or as otherwise authorized under this act, in a proceeding involving the question of licensure.

History: L. 1947, ch. 329, § 12; L. 1973, ch. 248, § 8; L. 1979, ch. 191, § 15; L. 1985, ch. 208, § 5; L. 1987, ch. 232, § 1; L. 1994, ch. 284, § 1; May 5.

65-2836
Chapter 65.--PUBLIC HEALTH
Article 28.--HEALING ARTS

65-2836. Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a 2/3 majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.

(i) The licensee has the inability to practice the healing arts with reasonable skill and safety to patients by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. In determining whether or not such inability exists, the board, upon reasonable suspicion of such inability, shall have authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate either in the course of an investigation or a disciplinary proceeding. To determine whether reasonable suspicion of such inability exists, the investigative information shall be presented to the board as a whole, to a review committee of professional peers of the licensee established pursuant to K.S.A. 65-2840c and amendments thereto or to a committee consisting of the officers of the board elected pursuant to

K.S.A. 65-2818 and amendments thereto and the executive director appointed pursuant to K.S.A. 65-2878 and amendments thereto or to a presiding officer authorized pursuant to K.S.A. 77-514 and amendments thereto. The determination shall be made by a majority vote of the entity which reviewed the investigative information. Information submitted to the board as a whole or a review committee of peers or a committee of the officers and executive director of the board and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of the healing arts with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice the healing arts and who shall accept the privilege to practice the healing arts in this state by so practicing or by the making and filing of a renewal to practice the healing arts in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122 and amendments thereto.

(m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.

(n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

(q) The licensee has violated a federal law or regulation relating to controlled substances.

(r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional

association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(y) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a and amendments thereto.

(z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404 and amendments thereto.

(aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

(bb) The licensee as the responsible physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.

(cc) The licensee has assisted suicide in violation of K.S.A. 21-3406, and amendments thereto, as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.

History: L. 1957, ch. 343, § 36; L. 1969, ch. 299, § 10; L. 1972, ch. 231, § 8; L. 1976, ch. 273, § 14; L. 1976, ch. 275, § 1; L. 1979, ch. 198, § 3; L. 1983, ch. 214, § 1; L. 1983, ch. 213, § 7; L. 1984, ch. 236, § 1; L. 1986, ch. 234, § 5; L. 1986, ch. 229, § 41; L. 1986, ch. 239, § 2; L. 1987, ch. 176, § 5; L. 1987, ch. 239, § 3; L. 1987, ch. 242, § 3; L. 1989, ch. 196, § 1; L. 1991, ch. 192, § 2; L. 1995, ch. 251, § 36; L. 1998, ch. 142, § 12; L. 2000, ch. 141, § 5; L. 2001, ch. 31, § 2; L. 2008, ch. 154, § 6; July 1.

65-2839a
Chapter 65.--PUBLIC HEALTH
Article 28.--HEALING ARTS

65-2839a. Investigations and proceedings conducted by board; access to evidence; subpoenas; access to criminal history; confidentiality of information. (a) In connection with any investigation by the 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, office of a practitioner of the healing arts, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record or evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts.

(b) For the purpose of all investigations and proceedings conducted by the board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts. Within five days after the service of the subpoena on any person requiring the production of any 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 evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the 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 evidence.

(2) Any person appearing before the board shall have the right to be represented by counsel.

(3) 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 boards duly authorized agent to produce 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 charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(c) The board may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining initial and continuing qualifications of licensees and registrants of and applicants for licensure and registration by the board. Disclosure or use of any such information received by the board or of any record containing such information, for any purpose other than that provided by this subsection is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license or registration issued under this act. Nothing in this subsection shall be construed to make unlawful the disclosure of any such information by the board in a hearing held pursuant to this act.

(d) Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by the board as a result of the investigation procedure outlined in this section shall be confidential and shall not be disclosed.

(e) Nothing in this section or any other provision of law making communications between a physician

and the physician's patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this section. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

History: L. 1986, ch. 229, § 39; L. 1992, ch. 253, § 3; July 1.

65-2898a
Chapter 65.--PUBLIC HEALTH
Article 28.--HEALING ARTS

65-2898a. Confidentiality of complaints and reports relating thereto; disclosure, when. (a) Any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the 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 a hospital committee which is authorized to grant, limit or deny hospital privileges, if any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto has at any time been taken against the licensee or if the board has at any time denied a license to the person;

(3) 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

(4) 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.

(b) This section shall be part of and supplemental to the Kansas healing arts act.

History: L. 1979, ch. 198, § 9; L. 1986, ch. 229, § 45; L. 1992, ch. 253, § 4; July 1.

65-4925
Chapter 65.--PUBLIC HEALTH
Article 49.--HEALTH CARE PROVIDERS

65-4925. Reports, records and proceedings confidential and privileged; licensing agency disciplinary proceedings. (a) The reports and records made pursuant to K.S.A. 65-4923 or 65-4924, and amendments thereto, shall be confidential and privileged, including:

- (1) Reports and records of executive or review committees of medical care facilities or of a professional society or organization;
- (2) reports and records of the chief of the medical staff, chief administrative officer or risk manager of a medical care facility;
- (3) reports and records of any state licensing agency or impaired provider committee of a professional society or organization; and
- (4) reports made pursuant to this act to or by a medical care facility risk manager, any committee, the board of directors, administrative officer or any consultant.

Such reports and records shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action other than a disciplinary proceeding by the appropriate state licensing agency.

(b) No person in attendance at any meeting of an executive or review committee of a medical care facility or of a professional society or organization while such committee is engaged in the duties imposed by K.S.A. 65-4923 shall be compelled to testify in any civil, criminal or administrative action, other than a disciplinary proceeding by the appropriate licensing agency, as to any committee discussions or proceedings.

(c) No person in attendance at any meeting of an impaired provider committee shall be required to testify, nor shall the testimony of such person be admitted into evidence, in any civil, criminal or administrative action, other than a disciplinary proceeding by the appropriate state licensing agency, as to any committee discussions or proceedings.

(d) Any person or committee performing any duty pursuant to this act shall be designated a peer review committee or officer pursuant to K.S.A. 65-4915 and amendments thereto.

(e) A licensing agency in conducting a disciplinary proceeding in which admission of any peer review committee report, record or testimony is proposed shall hold the hearing in closed session when any such report, record or testimony is disclosed. Unless otherwise provided by law, a licensing agency conducting a disciplinary proceeding may close only that portion of the hearing in which disclosure of a report or record privileged under this section is proposed. In closing a portion of a hearing as provided by this section, the presiding officer may exclude any person from the hearing location except the licensee, the licensee's attorney, the agency's attorney, the witness, the court reporter and appropriate staff support for either counsel. The licensing agency shall make the portions of the agency record in which such report or record is disclosed subject to a protective order prohibiting further disclosure of such report or record. Such report or record 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 a disciplinary proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a report or record privileged under this section which was disclosed in a closed portion of a hearing, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. A licensing agency conducting a disciplinary proceeding may review peer review committee records, testimony or reports but must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding in open meeting of the licensing agency. Offering such testimony or records in an open public hearing shall not be deemed a waiver of the peer review privilege relating to any peer review committee testimony, records or report.

History: L. 1986, ch. 229, § 6; L. 1987, ch. 176, § 11; L. 1997, ch. 149, § 2; May 1.

OFFICE OF THE STATE BANK COMMISSIONER
J. THOMAS THULL, Bank Commissioner

October 23, 2009

SPECIAL COMMITTEE ON JUDICIARY

Mr. Chairman and Members of the Committee:

Good Morning. I am Tom Thull, Bank Commissioner, for the Office of the State Bank Commissioner ("OSBC") and I am here today to offer testimony in favor of retaining the following exceptions to the Kansas Open Records Act ("KORA"): K.S.A. 9-1712, 9-1137, 9-2217 and 16a-2-304.

The OSBC is responsible for regulating a wide range of financial service providers, including state-chartered banks, trust companies, finance companies, mortgage brokers and lenders.

The Kansas Banking Code, K.S.A. 9-1712, provides that all information generated during examinations of state chartered banks and trust companies shall be confidential. The information generated in an examination includes individual customer deposit and loan files, including social security numbers and tax identification numbers that could increase the risk of identity theft, loss or other damage to the customers. Additionally, examination information may also include the bank's business plan, strategic plan, and internal policies. This information is proprietary to each bank and the public sharing of this information could create a competitive advantage or disadvantage, depending on who is utilizing the information. Other confidential information could pertain to the bank's capital, assets, management, earnings, liquidity and sensitivity to market risk. Concerning the aforementioned, regulatory agencies assign confidential ratings to each of these categories and these rating are kept confidential by all industry regulators, both state and federal. Regulatory Reports of Examination also comment on the capabilities of bank personnel and the disclosure of this information could cause irreparable harm to the employee, bank and/or community. If information regarding the financial status of a bank or trust company were released to the general public it could erode the business advantage and jeopardize the bank or trust company's position in the marketplace. Banks are required to submit certain public data to federal agencies on a quarterly basis and this submitted data is easily accessible for public viewing. Maintaining the confidentiality of the information gathered and created during examinations is important to the effective and efficient regulation of state chartered banks and trust companies.

In accordance with the Banking Code, K.S.A. 9-1137, a bank's board of directors may appoint an audit, loan review or compliance review committee. All documents prepared or created by an audit, loan review, or compliance review committee are confidential. Any such confidential documents delivered to a federal or state agency remain confidential and are not admissible in a civil action, except as expressly authorized under applicable law. The purpose of such provision is to encourage banks to conduct voluntary audits and reviews of their compliance with federal and state regulatory requirements. If the information were open to the public, banks may be deterred from conducting such reviews. As such, it is in the public interest to maintain this exception.

The Kansas Mortgage Business Act, K.S.A. 9-2217, provides that all examination reports and correspondence regarding such reports are confidential and protected from disclosure except as provided in the statute. The information generated during an examination of mortgage companies includes individual customer loan files, as well as informa

Judiciary Special Committee
Date 11/22/09 & 11/23/09.

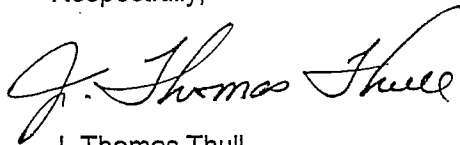
Attachment # 12

mortgage company's business internal processes and procedures. If customers' personal information were released to the general public it could increase the risk of identity theft, loss or other damage to the customers. If information regarding a mortgage company's internal processes and procedures were released to the general public it could erode the business advantage and jeopardize the mortgage company's position in the marketplace. Maintaining the confidentiality of the information gathered and created during examinations is important to the effective and efficient regulation of mortgage companies.

Pursuant to the Uniform Consumer Credit Code, K.S.A. 16a-2-304(2), supervised lenders are required to submit an annual report disclosing the number of supervised loans made during the past year and the dollar amount of each. These reports may be used to compile general statistics, but a specific licensee's information shall not be released. The release of a specific licensee's information would erode the business advantage over those who are not otherwise privy to such information and it could possibly injure a licensee's position in the marketplace.

These exceptions to KORA provide identifiable public purposes, the exceptions are no broader than necessary, and they are sufficiently compelling to overcome the public policy in favor of open government. I would respectfully request that all the above referenced statutory exceptions be maintained.

Respectfully,

A handwritten signature in cursive script that reads "J. Thomas Thull". The signature is written in black ink and is positioned above the printed name and title.

J. Thomas Thull
Bank Commissioner

**KANSAS**
DEPARTMENT OF COMMERCE

October 23, 2009

Special Committee on Judiciary
Kansas Legislature
Rep. Lance Kinzer, Chairperson

Dear Chairperson Kinzer and members of the committee:

K.S.A. 45-229a (i) currently contains an exception to the state Open Records Act for companies that seek to become classified as a "qualified firm" for the purpose of becoming certified under the state's High Performance Incentive Program (HPIP). The exception--which is in effect until July 1, 2010--specifically identifies K.S.A. 74-50,131, a statute that sets out the requirements to become a "qualified firm" for the purposes of HPIP.

The Kansas HPIP program is one of the state's most effective economic development tools and provides generous tax credit incentives to those companies that are willing to pay higher than average wages, invest in employee training, and make significant capital investments in either expansion or relocation from another state. We feel that the proprietary information supplied to the Department of Commerce by an entity, for the purpose of qualifying for this program, is of such a highly confidential nature that if it were to be made public, current business advantages would be lost resulting in injury to the company in the competitive marketplace. And it follows that if businesses thought their confidential information could end up in the public domain, participation in the program would plummet and we will have lost one of our most valuable tools.

Some of the proprietary information which the Department of Commerce currently requires from companies to determine program eligibility includes the dates, locations and scope of intended capital investment plans regarding future expansions and relocations. Information that is also required includes: current employee headcounts, future anticipated headcounts and specific wage information for all worksite employees.

This type of highly confidential information which we require to determine program eligibility is information which a company would never willingly allow to be made public under any circumstances. In addition, we currently guarantee confidentiality to our clients and we need to be able to continue to do so.

Ed R. Bryan, Manager
Kansas High Performance Incentive Program

*on tape called himself
Program Director*

Judiciary Special Committee
Date 11/22/09 & 11/23/09
Attachment # 13

Special Committee on Judiciary

Richard Cram

October 23, 2009

KORA Exceptions Needed to be Retained

Representative Kinzer, Chair, and Members of the Committee:

The Department of Revenue strongly recommends that the exceptions to public disclosure in the statutes listed below be retained indefinitely. The exceptions to public disclosure contained in these statutes provide strict confidentiality protection for the tax information and records that taxpayers routinely provide to the Department of Revenue in the course of paying taxes and complying with the State's tax laws. We depend in large measure on voluntary compliance, in order for our state taxation system to efficiently generate needed revenues to fund governmental operations. Without assurance to taxpayers that strict confidentiality protection exists—and will continue to exist—concerning the information they must report to the Department, voluntary compliance will be severely jeopardized. Taxpayers must be assured that the information they provide to the Department will be safeguarded from public disclosure. In addition, unless the Department provides strict confidentiality protection for tax records in its position, the Department is unable to exchange taxpayer information with the Internal Revenue Service. The Department has collected approximately \$17 million through the data matching program with the Internal Revenue Service, which facilitates recovery of unpaid Kansas income taxes through federal tax refunds. This funding source will be jeopardized if the Department can no longer provide confidentiality protection for tax records.

The following statutes provide confidentiality protection to tax records described below, which must be retained:

- K.S.A. 12-189—sales tax information on retail businesses provided by the Department to certain city and county financial officials
- K.S.A. 12-1,108—intangibles tax returns and information
- K.S.A. 12-1694 and 12-1698—transient guest tax returns and information
- K.S.A. 17-7511—corporate income tax returns provided to the Secretary of State
- K.S.A. 17-7514—income tax return extension requests submitted to the Secretary of State
- K.S.A. 17-2036—business trust extension for filing income tax return
- K.S.A. 17-76,139—limited liability company extension for filing income tax return
- K.S.A. 74-2424—tax information shared with other state taxing authorities, the IRS, or the Kansas Lottery or Kansas Racing Commission

K.S.A. 74-2433f—documents provided by the taxpayer, county or district appraiser in a hearing in the small claims division of the Court of Tax Appeals

K.S.A. 74-50,131—information obtained by the Secretary of Commerce from the taxpayer in determining whether the taxpayer meets the criteria to qualify for the High Performance Incentive Program tax credits.

K.S.A. 75-5133—sales tax and several other types of excise tax information and returns

K.S.A. 79-1119—bank privilege tax returns and information

K.S.A. 79-3234—income tax returns and information

K.S.A. 79-3395—monthly cigarette wholesaler reports on imports from foreign sources

K.S.A. 79-3420—motor fuel tax distributor returns and information

K.S.A. 79-3499—LP gas dealer motor fuel tax returns and information

K.S.A. 79-34,113—interstate motor carrier motor fuel tax returns

K.S.A. 79-3614—sales tax returns and information (references K.S.A. 75-5133)

K.S.A. 79-3657—sales tax information shared with other state taxing officials

participating in the Streamlined Sales Tax Project

K.S.A. 79-4301—tax information shared with other state taxing officials participating in the Multistate Tax Compact

K.S.A. 79-5206—drug tax returns and information

The Department also recommends that the current exceptions to public disclosure contained in K.S.A. 45-221 (a) listed below be retained. These preserve standard privileges against disclosure vital to a state agency's ability to defend itself in litigation or protect the privacy of individuals, specifically, the following:

- (1)—records disclosure prohibited or restricted by federal or state law
- (2)—privileged records
- (3)—medical, psychiatric, psychological or alcoholism or drug dependency treatment records
- (4)—personnel records
- (14)—correspondence between a public agency and a private individual
- (16)—software programs for electronic data processing and documentation
- (20)—notes, preliminary drafts, research data in the process of analysis, memoranda, recommendations or other records in which opinions are expressed or policies or actions proposed
- (25)—attorney work product
- (27)—competitive bidding specifications
- (28)—sealed bids
- (30)—public records containing personal information where disclosure would constitute invasion of privacy
- (33)—financial information submitted by contractors
- (44)—amount of franchise tax paid

14-2