

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on January 13, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Marti Crow- excused  
Representative John Grange- excused  
Representative Gene Suellentrop- excused  
Representative Kevin Yoder- excused

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes  
Jason Long, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Randy Hearrell, Kansas Judicial Council

Others attending:

See attached list.

Chairman Kinzer welcomed everyone back for the new 2010 Session.

Chairman Kinzer proposed the Committee adopt the following requests for bill introductions made by Committee members without objection unless a specific request for a motion/vote is made.

Representative Patton requested a bill extending for one year the docket fee increase of \$2, having the money fund the judicial branch budget, not the commission on judicial performance.

Representative Brookens requested a bill concerning the capacity of a settlor of a revocable trust.

Chairman Kinzer requested a bill increasing the judicial branch surcharge from \$10 to \$15 for the fiscal year 2011.

Chairman Kinzer accepted the new bills without objection.

Randy Hearrell, Kansas Judicial Council, requested seven bills be introduced (Attachment 1):

1. A bill amending the Kansas Rules and Regulations Filing Act (K.S.A. 77-415 et seq).  
Representative Whitman made the motion to have the bill introduced as a committee bill.  
Representative Pauls seconded the motion. The motion carried.
2. A bill amending the Kansas Code of Civil Procedure proposing revisions to bring the Kansas code more in line with the Federal Rules of Civil Procedure.  
Representative Whitman made the motion to have the bill introduced as a committee bill.  
Representative Pauls seconded the motion. The motion carried.
3. A bill recodifying of the Kansas Domestic Relations statutes.  
Representative Whitman made the motion to have the bill introduced as a committee bill.  
Representative Pauls seconded the motion. The motion carried.
4. A bill proposing amendments to the Care and Treatment Act for Mentally Ill Persons, the care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem, and the Kansas Sexually Violent Predator Act relating to quarantine of individuals to prevent spread of communicable diseases.  
Representative Whitman made the motion to have the bill introduced as a committee bill.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on January 13, 2010, in Room 346-S of the Capitol.

Representative Ward seconded the motion. The motion carried.

5. A bill amending K.S.A. 59-618 to allow a person to execute an affidavit and to file the decedent's will and preserve it for possible future probate under certain circumstances.

Representative Whitman made the motion to have the bill introduced as a committee bill.

Representative Pauls seconded the motion. The motion carried.

6. A bill to remove reference to the Kansas Inheritance Tax from the statutes. The Kansas Inheritance Tax was repealed in 1998.

Representative Whitman made the motion to have the bill introduced as a committee bill.

Representative Pauls seconded the motion. The motion carried.

7. A bill amending Uniform Principle and Income Act by enacting amendments to the act recommended by the Uniform Law Commissioners in 2008.

Representative Whitman made the motion to have the bill introduced as a committee bill.

Representative Pauls seconded the motion. The motion carried.

The Kansas Legislative Research Department and the Revisor of Statutes Office presented a summary of the Interim study assignment, exceptions that were reviewed by the 2009 Special Committee on Judiciary , and a bill draft of recommended changes, with regard to the Kansas open records act which directs the review by the legislature of exceptions to the disclosure of public records. (Attachment 2)

Chairman Kinzer recommended the committee members review this bill draft and advise him or staff of any specific areas of interest or additional questions.

The next meeting is scheduled for January 19, 2010.

The meeting was adjourned at 04:00 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 1-13-2010 pg1

NAME	REPRESENTING
Richard Gannon	KPA
Randy M. Hearrell	Judicial Council
Scott Heidner	KADC
Sandy Jacquot	LKM
Whitney Gannon	KS Bar Assn.
ERIK SARTORIUS	City of Overland Park
Joseph Molin	KS Bar Assn
LAW WALSH	Judicial Branch
SEAN MILLER	CAPITOL STRATEGIES
Richard Smarwick	Kennedy ASSOC.
Beth Lange	SUS
Jeanne Crispin	KDOA
Yvonne Anderson	KDWE
TRAVIS LOWE	Little Boat Relations
ERNIE KUTZKY	AARP
Courtney Hadley	Legislative Extern - Aaron Jack
JEREMY S BARCLAY	KDOC
Sarah M. Gillooly	PPKM
Ed Kump	KALP / KSA / KPA

Jackson Lindsay

Hein Law





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BRANDY M. WHEELER

### MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Kansas Judicial Council – Randy M. Hearrell  
**DATE:** January 13, 2010  
**RE:** 2010 Bill Requests

The Judicial Council respectfully requests introduction of the following bills:

- A bill amending the Kansas Rules and Regulations Filing Act (K.S.A. 77-415 *et seq.*).
- A bill amending the Kansas Code of Civil Procedure proposing revisions to bring the Kansas code more in line with the Federal Rules of Civil Procedure. The amendments are based on the extensive set of “style” revisions to the Federal rules of civil procedure that were effective on December 1, 2007, and other changes to the federal rules that have not previously been considered by Kansas.
- A bill recodifying of the Kansas Domestic Relations statutes. As a part of an overall reorganization codification of the domestic relations statutes the Judicial Council requests amendments to several statutes relating to domestic relations. There are no substantive changes.
- A bill proposing amendments to the Care and Treatment Act for Mentally Ill Persons, the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem, and the Kansas Sexually Violent Predator Act relating to quarantine of individuals to prevent spread of communicable diseases.
- A bill amending to K.S.A. 59-618 to allow person to execute an affidavit and to file the decedent’s will and preserve it for possible future probate under certain circumstances.
- A bill to remove reference to the Kansas Inheritance Tax from the statutes. The Kansas Inheritance Tax was repealed in 1998.
- A bill amending Uniform Principle and Income Act by enacting the act recommended by the Uniform Law Commissioners in 2008.

House Judiciary

Date 1-13-10

Attachment # 1

**Office of Revisor of Statutes**  
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Topeka, Kansas 66612-1592  
Telephone: 785-296-2321 FAX: 785-296-6668  
email: Norman.Furse@rs.ks.gov

**MEMORANDUM**

**To:** Special Committee on Judiciary  
**From:** Norm Furse, Revisor Emeritus  
**Date:** December 17, 2009  
**Subject:** Draft Bill Summary (9rs1223)

Accompanying this memorandum is a copy of 9rs1223 which carries out the directions of the committee for a bill draft with regard to the Kansas open records act interim study assignment. I have summarized below the provisions of the bill. If you have any questions on this material please let me know.

Section 1. (45-229) This is the section in the open records act which directs the review by the legislature of exceptions to the disclosure of public records. This section lists those statutes that contain exceptions reviewed by the legislature and the year to which the exceptions have been extended. Subsection (i) of the section contains the exceptions reviewed by the 2009 Special Committee on Judiciary and makes the following changes to the subsection as approved by the committee:

- References L. 2005, sec. 2, ch. 126, the prior enactment of the legislature which continued in existence the current law exceptions found in subsection (i).
- Picks up the reference to the statutory exceptions certified by the revisor of statutes during 2009 which were reviewed by the committee this interim.
- Provides that the exceptions contained in L. 2005, sec.2, ch. 126 and the exceptions certified during 2009 continue until July 1, 2015, with the following changes:

House Judiciary

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Attachment # 2

- Addition of the following statute numbers for statutory exceptions certified during 2009 and not already contained the statutes listed in subsection (i): 17-2036, 40-5301, subsections (a) (45) and (a) (46) of 45-221, 60-3351, 72-972a, 74-99d05 and 75-53,105.
- Deletion of sections repealed from 2005 through 2009: 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 65-4608 and 79-15,118.
- Deletion of sections amended from 2005 through 2009 in which the exemption language was stricken: 17-7503, 17-7505, 56-1a606, 56-1a607, 56a-1201 and 56a-1202.
- Changed the number of a section transferred to another KSA number: 38-1508 was transferred to 38-2212 so in the bill 38-1508 is deleted and the new section number 38-2212 is inserted.
- Two sections were stricken from the list and repealed in the bill: 74-7405a (corrections ombudsman records) and 79-1437f (real estate sales validation questionnaire).

Section 2. As requested by the committee, this section amends K.S.A. 2009 Supp. 38-1664 to add "guardian ad litem" to subsection (d) as a person who may review the confidential report of a foster parent under this subsection.

Section 3. Amends K.S.A. 60-3351 to update the expiration of the exception to the open records provision in that section to July 1, 2015, to be consistent with the committee recommendation in subsection (i) of section 1.

## By Special Committee on Judiciary

AN ACT concerning open records; relating to exceptions to disclosure; amending K.S.A. 60-3351 and K.S.A. 2009 Supp. 38-1664 and 45-229 and repealing the existing sections; also repealing K.S.A. 74-7405a and K.S.A. 2009 Supp. 79-1437f.

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

Section 1. K.S.A. 2009 Supp. 45-229 is hereby amended to read as follows: 45-229. (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:

(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 continued in existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas and 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 17, 2004,~~ during 2009 are hereby continued in existence until July 1, ~~2010~~ 2015, 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, 17-2036, 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, 38-2212, 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, 40-5301, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43), (a)(45) and (a)(46) 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, 60-3351, 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, 72-972a, 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, 74-99d05, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-53,105, 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.

Sec. 2. K.S.A. 2009 Supp. 38-1664 is hereby amended to read as follows: 38-1664. (a) Prior to placing a juvenile offender in the custody of the commissioner and recommending out-of-home placement, the court shall consider and determine that, where consistent with the need for protection of the community:

(1) Reasonable efforts have been made to maintain the family unit and prevent unnecessary removal of a juvenile offender from the juvenile offender's home, as long as the juvenile offender's safety is assured, or an emergency exists which threatens the safety of the juvenile offender. If the juvenile offender is in the custody of the secretary of social and rehabilitation services under the Kansas code for the care of children, the secretary shall prepare a report for the court documenting such reasonable efforts. If the juvenile offender is in the custody of the commissioner, the commissioner shall prepare a report for the court documenting such reasonable efforts. Otherwise, the predisposition investigation writer shall prepare a report to the court documenting such reasonable efforts. Reasonable efforts are not required prior to removal if the court finds:

(A) A court of competent jurisdiction has determined that the parent has subjected the juvenile offender to aggravated circumstances;

(B) a court of competent jurisdiction has determined that the parent has been convicted of a murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring or soliciting to commit such a murder of such a voluntary manslaughter; or a felony assault that results in serious bodily injury to the juvenile offender or another child of the parent; or

(C) the parental rights of the parent with respect to a sibling have been terminated involuntarily.

Such findings must be included in the court's order.

(2) The juvenile offender's removal from the home must be the result of a judicial determination to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interests, of the juvenile offender. The contrary to the welfare determination must be made in the first court ruling that sanctions the removal of a juvenile offender from the home.

(3) A permanency plan must be presented at disposition or within 30 days thereafter. If a permanency plan is in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. If the juvenile offender is placed in the custody of the commissioner, the commissioner shall prepare the plan. The plan must comply with the requirements of

K.S.A. 2009 Supp. 38-2263, and amendments thereto. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan.

(4) The court must determine that reasonable efforts have been made and what progress has been made to finalize the permanency plan that is in effect within 12 months of the date the juvenile offender is considered to have entered foster care and at least once every 12 months thereafter while the juvenile offender is in foster care.

(5) The court must reflect reasonable efforts and contrary to the welfare findings in orders awarding custody to the commissioner temporarily, at sentencing and at modification hearings. If the juvenile offender is placed in the custody of the commissioner, the court shall provide the commissioner with a written copy of any orders entered upon making the order for the purpose of documenting the orders.

(6) If the juvenile offender is placed in the commissioner's custody, the commissioner shall document in writing the reasonable efforts that have been made and the progress made to finalize the permanency plan, before each hearing reviewing the plan.

(b) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall notify the court in writing of the initial placement of the juvenile offender as soon as the placement has been accomplished. The court shall have no power to direct a specific placement by the commissioner, but may



make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or a community mental health center. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(c) During the time a juvenile offender remains in the custody of the commissioner, the commissioner shall report to the court at least each six months as to the current living arrangement and social and mental development of the juvenile offender and document in writing the reasonable efforts that have been made and the progress made to finalize the permanency plan.

(d) If the juvenile offender is placed outside the juvenile offender's home, a permanency hearing shall be held not more than 12 months after the juvenile offender is placed outside the juvenile offender's home and, if reintegration is a viable alternative, every 12 months thereafter. The court may appoint a guardian ad litem to represent the juvenile offender at the permanency hearing. Juvenile offenders who have been in extended out of home placement shall be provided a permanency hearing within 30 days of a request from the commissioner. If reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile offender the county or district attorney shall file a petition alleging the juvenile is a child in need of care and

requesting termination of parental rights or the appointment of a permanent custodian pursuant to the revised Kansas code for care of children. If the juvenile offender is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the juvenile offender's adjustment, progress and condition. The juvenile justice authority shall notify the foster parent or parents of the foster parents' or parent's duty to submit such report, on a form provided by the juvenile justice authority, at least two weeks prior to the date when the report is due, and the name of the judge and the address of the court to which the report is to be submitted. Such report shall be confidential and shall only be reviewed by the court, the child's guardian ad litem and the child's attorney, if any.

(e) The report made by foster parents and provided by the commissioner of juvenile justice, pursuant to this section, shall be in substantially the following form:

REPORT FROM FOSTER PARENTS

CONFIDENTIAL

_____	_____
Child's Name	Current Address
_____	_____
Parent's Name	Foster Parents
_____	
Primary Social Worker	

Please circle the word which best describes the child's progress

1. Child's adjustment in the home

excellent          good          satisfactory          needs improvement

- 2. Child's interaction with foster parents and family members  
 excellent            good            satisfactory            needs improvement
- 3. Child's interaction with others  
 excellent            good            satisfactory            needs improvement
- 4. Child's respect for property  
 excellent            good            satisfactory            needs improvement
- 5. Physical and emotional condition of the child  
 excellent            good            satisfactory            needs improvement
- 6. Social worker's interaction with the child and foster family  
 excellent            good            satisfactory            needs improvement
- 7. School status of child:

School	Grade		
Grades	Good _____	Fair _____	Poor _____
Attendance	Good _____	Fair _____	Poor _____
Behavior	Good _____	Fair _____	Poor _____

8. If visitation with parents has occurred, describe the frequency of visits, with whom, supervised or unsupervised, and any significant events which have occurred. \_\_\_\_\_

9. Your opinion regarding the overall adjustment, progress and condition of the child: \_\_\_\_\_

10. Do you have any special concerns or comments with regard to the child not addressed by this form? Please specify. \_\_\_\_\_

Sec. 3. K.S.A. 60-3351 is hereby amended to read as follows:  
 60-3351. (a) Except as provided in K.S.A. 60-3352 and 60-3353, and amendments thereto, an insurance compliance self-evaluative audit document is privileged information and is not discoverable, or admissible as evidence in any legal action in any civil,

criminal or administrative proceeding. The privilege created herein is a matter of substantive law of this state and is not merely a procedural matter governing civil or criminal procedures in the courts of this state.

(b) If any insurance company, person, or entity performs or directs the performance of an insurance compliance audit, an officer, employee or agent involved with the insurance compliance audit, or any consultant who is hired for the purpose of performing the insurance compliance audit, may not be examined in any civil, criminal or administrative proceeding as to the insurance compliance audit or any insurance compliance self-evaluative audit document, as defined in this section. This subsection (b) shall not apply if the privilege set forth in subsection (a) of this section is determined under K.S.A. 60-3352 and 60-3353, and amendments thereto, not to apply.

(c) Any insurance company may voluntarily submit, in connection with any examination conducted under chapter 40 of the Kansas Statutes Annotated, and amendments thereto, an insurance compliance self-evaluative audit document to the commissioner as a confidential document in the same manner as provided in chapter 40 of the Kansas Statutes Annotated, and amendments thereto, for documents required to be provided to the commissioner in the course of an examination by the commissioner without waiving the privilege set forth in this section to which the insurance company would otherwise be entitled. Any provision in chapter 40 of the Kansas Statutes Annotated, and amendments thereto,

permitting the commissioner to make confidential documents public or to grant the national association of insurance commissioners access to confidential documents shall not apply to the insurance compliance self-evaluative audit document voluntarily submitted by an insurance company. To the extent that the commissioner has the authority to compel the disclosure of an insurance compliance self-evaluative audit document under other provisions of applicable law, any such report furnished to the commissioner shall not be provided to any other persons or entities and shall be accorded the same confidentiality and other protections as provided above for voluntarily submitted documents. Any use of an insurance compliance self-evaluative audit document furnished as a result of a request of the commissioner under a claim of authority to compel disclosure shall be limited to determining whether or not any disclosed defects in an insurers' policies and procedures or inappropriate treatment of customers has been remedied or that an appropriate plan for their remedy is in place.

(1) Any insurance company's insurance compliance self-evaluative audit document submitted to the commissioner shall remain subject to all applicable statutory or common law privileges including, but not limited to, the work product doctrine, attorney-client privilege, or the subsequent remedial measures exclusion.

(2) Any compliance self-evaluative audit document so submitted and in the possession of the commissioner shall remain

the property of the insurance company and shall not be subject to any disclosure or production under the Kansas open records act. The provision of this paragraph shall expire on July 1, ~~2010~~ 2015, unless the legislature reenacts such provision. The provision of this paragraph shall be reviewed by the legislature prior to July 1, ~~2010~~ 2015.

(d) Disclosure of an insurance compliance self-evaluative audit document to a governmental agency, whether voluntary or pursuant to compulsion of law, shall not constitute a waiver of the privilege set forth in subsection (a) with respect to any other persons or any other governmental agencies. Nothing in this act shall prohibit the division of post audit from having access to all insurance compliance self-evaluative audit documents in the custody of the commissioner.

Sec. 4. K.S.A. 60-3351 and 74-7405a and K.S.A. 2009 Supp. 38-1664, 45-229 and 79-1437f are hereby repealed.

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