

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 34

As Amended by House Committee of the Whole

Brief*

SB 34 would extend the 30 statutory exceptions to the Kansas Open Records Act (KORA) until July 1, 2014.

The exceptions include the following:

- **KSA 8-240.** On applications for drivers' licenses and instruction permits, applicants are required to list their social security number (SSN). The statute provides that the SSN will remain confidential, except as provided in KSA 74-2012, which allows disclosure under proper judicial order;
- **KSA 8-247.** In regard to the expiration or renewal of a driver's license, the Division of Motor Vehicles is required to notify persons of the ability to make an anatomical gift. If an applicant indicates a willingness to have such applicant's name placed on the organ donor registry, the Division forwards the applicant's name to the organ procurement organization. Information concerning an applicant's indication of a willingness to have such applicant's name placed on the organ donor registry that is obtained by the Division and forwarded is confidential;
- **KSA 8-1324.** Nondriver identification card, SSN. Same as K.S.A. 8-240;
- **KSA 8-1325.** Nondriver identification card, anatomical gift. Same as K.S.A. 8-247;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- **KSA 12-17,150.** In regard to a redevelopment project area or a transportation development district where tax revenues are pledged or used to pay bonds, the Secretary of Revenue is required to provide reports to the bond trustee/escrow agent/paying agent identifying each retailer having a place of business in such district setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month. The bond trustee/escrow agent/paying agent shall keep such retailers' tax returns confidential, but may use such information for purposes of allocating and depositing such tax revenues in connection with the bonds used to finance redevelopment project costs or used to finance the costs of a project;
- **KSA 12-2001.** The governing body of a city may grant a franchise to a telecommunications local exchange service provider. The statute states that the information provided to the municipalities under this section shall be governed by confidentiality procedures in compliance with KSA 45-215 (KORA) and 66-1220a *et seq.* (confidentiality of trade secrets);
- **KSA 40-5006.** This section of law is a part of the viatical settlements act of 2002. A viatical settlement provider/broker, insurance company, insurance producer, information bureau, rating agency/company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person. Exceptions for disclosure include when it is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure or provided in response to an investigation or examination by the insurance commissioner or any other governmental officer or agency. Other disclosure reasons are listed in the statute;

- **KSA 40-5108.** In regard to insurance score models or other insurance scoring processes, they are considered to be a trade secret and to be kept confidential. There is an exception if the insurer has taken an adverse action based on credit information, the reason for such action must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take such adverse action;
- **KSA 41-2905.** This statute requires beer retailers who sell kegs to record the purchaser's name, address and driver's license/identification card number. The records required to be kept shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or KSA 21-3610 (furnishing alcoholic liquor or cereal malt beverage to a minor) or KSA 41-727 (purchase or consumption of alcoholic beverage by a minor). Except as specifically provided by this subsection, records required to be kept by this section shall not be sold, distributed or otherwise released to any person other than an agent of the retailer or to a law enforcement agency;
- **KSA 41-2906.** Cereal malt beverage retailers. Same as KSA 41-2905;
- **KSA 44-706.** Pursuant to the employment security law, a person is not disqualified from receiving benefits if they left work voluntarily due to circumstances resulting from domestic violence. No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the Department of Labor unless consent for disclosure is given by the individual;
- **KSA 44-1518.** Under the uniform athletic agents act, the Secretary of State may issue subpoenas for any material that is relevant to the administration of the act. Any such

information or material received by the secretary shall be treated as confidential by the secretary and shall not be open to public inspection except by court order;

- **KSA 65-3239.** Regarding the statewide organ and tissue donor registry, no organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund raising. Organ and tissue donor registry information shall not be further disseminated unless authorized in this section or by federal law; and
- **KSA 66-1233.** Pursuant to this law, the State Corporation Commission shall authorize electric public utilities and natural gas public utilities to adjust the utility's customers' bills to recover the utility's prudent expenditures for security measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets. The application and request shall be confidential and subject to protective order of the commission.
- **KSA 8-255c.** Pursuant to KSA 8-255b, the medical advisory board gives advisory opinions to the Director of Vehicles in the case of any person whose license to operate a motor vehicle has been suspended, revoked or reviewed by the Director of Vehicles and for good cause shown that the operation of a motor vehicle on a highway by such person would be inimical (tending to obstruct or harm) to public safety and welfare because of an existing or suspected mental or physical disability. In regard to this process, all reports made to, and all medical records reviewed and maintained by, the division shall be kept confidential and shall not be disclosed except upon the order of a court, pursuant to the request of the division or medical advisory board and shall not be subject to subpoena or discovery in any administrative/criminal/civil matter;

- **KSA 12-5332**. Pursuant to the wireless enhanced 911 act, the Secretary of Administration may require an audit of any wireless carrier's books and records concerning the collection and remittance of fees. Information provided by wireless carriers to the Secretary or the advisory board pursuant to the wireless enhanced 911 act will be treated as proprietary records which will be withheld from the public upon request of the party submitting such records;

- **KSA 17-12a607**. Under the uniform securities act, records are presumed to be public, subject to the following exceptions:
 - (1) A record obtained by the administrator in connection with an audit or inspection under KSA 17-12a411(d) [records of persons issuing or guaranteeing any securities subject to the provisions of this act and of every broker-dealer, agent, investment adviser or investment adviser representative registered or required to be registered under the act] or an investigation under KSA 17-12a602 [general authority of the administrator (Securities Commissioner) to investigate violations of the act];

 - (2) A part of a record filed in connection with a registration statement under KSA 17-12a301 and 17-12a303 through 17-12a305, or a record under KSA 17-12a411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

 - (3) A record that is not required to be provided to the administrator or filed under the act and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure;

 - (4) A nonpublic record received from a person specified in KSA 17-12a608(a) [records shared by

other state administrators, the federal government or a foreign government]; and

- (5) Any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed.

- **KSA 38-1008.** The Interstate Commission for Juveniles, pursuant to the interstate compact for juveniles, allows the Commission to exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;

- **KSA 38-2209.** Child in need of care records are confidential except as is necessary for the exchange of information between interested parties to provide necessary services to the child and the child's family. The records are divided into the following categories: Court records [official file and social file], agency records and law enforcement records. In regard to each category, specified parties are allowed access;

- **KSA 45-221 (a) (44).** The amount of franchise tax paid to the Secretary of Revenue or the Secretary of State by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships shall not be required to be disclosed;

- **KSA 45-221 (a) (45).** Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are

submitted to the agency, shall not be required to be disclosed;

- **KSA 45-221 (a) (46)**. Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214) shall not be required to be disclosed. Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research;
- **KSA 45-221 (a) (47)**. Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse shall not be required to be disclosed;
- **KSA 56-1a610**. Limited partnership income tax filing extension applications filed with the Secretary of State shall be confidential and only disclosed to partners in the limited partnership, pursuant to a proper judicial order or pursuant to the general powers of the Secretary of Revenue regarding tax records;
- **KSA 56a-1204**. Limited liability partnership income tax filing extension. Same as KSA 56-1a610;
- **KSA 65-1,243**. Records received and information assembled by the birth defects information system are confidential medical records. All medical records reviewed and maintained by the Department of Health and Environment shall be kept confidential and shall not be disclosed except upon the order of a court of competent

jurisdiction and shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil matter. The secretary may use information assembled by the system to notify parents, guardians and custodians of children with congenital anomalies or abnormal conditions of medical care and other services available for the child and family;

- **KSA 74-50,184.** Pursuant to the Kansas professional regulated sports act, the athletic commission may receive criminal and juvenile proceedings background information to determine the qualifications of a person for appointment to be the boxing commissioner. Such information, other than conviction data, is to be kept confidential;
- **KSA 74-8134.** Pursuant to the Kansas angel investor tax credit act, portions of documents and other materials submitted to KTEC that contain trade secrets shall be kept confidential. Portions of documents and other materials means any customer lists; any formula, compound, production data or compilation of information certain individuals within a commercial concern using such portions of documents and other material means to fabricate, produce or compound an article of trade; or any service having commercial value, which gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service;
- **KSA 74-99b06.** The following records of the Kansas Bioscience Authority shall not be subject to the provisions of the Kansas open records act, when in the opinion of the board, the disclosure of the information in the records would be harmful to the competitive position of the authority:
 - (A) Proprietary information gathered by or in the possession of the authority from third parties pursuant to a promise of confidentiality;

- (B) contract cost estimates prepared for confidential use in awarding contracts for research development, construction, renovation, commercialization or the purchase of goods or services; and
 - (C) data, records or information of a proprietary nature produced or collected by or for the authority; financial statements not publicly available that may be filed with the authority from third parties; the identity, accounts or account status of any customer of the authority; consulting or other reports paid for by the authority to assist the authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the authority.
- **KSA 82a-2210.** Horsethief reservoir benefit district sales tax. Same as KSA 12-17,150.

Another amendment to the KORA pertains to surveys conducted by the Director of Personnel Services regarding wage and salary information about jobs in other public or private employment which would be confidential and not subject to disclosure. Such information would not be subject to subpoena, or other demand in any administrative, criminal or civil action. This confidentiality provision would not be subject to expiration.

Survey information could be disclosed, upon written request, if no person or entity could be identified in the information to be disclosed which would be determined by the Director of Personnel Services.

Other amendments are technical in nature.

Background

The KORA is intended to ensure the business of government is conducted openly. A number of exceptions exist in recognition that some records contain information that is private in nature. For this reason, the Act lists a number of exceptions.

In recent years, the Legislature has undertaken a comprehensive review of the KORA in order to determine if any statutory exceptions to that law were unnecessary and could be discontinued. The Special Committee on Judiciary studied the exceptions during the 2008 interim and recommended a bill be drafted to extend the first group of 14 exceptions, *i.e.*, those listed in 2008 SB 702, for four more years. The Committee also recommended the extension of the second group of 16 KORA exceptions for five years.

The proponent of the bill that presented testimony to the Senate Committee was Eric Sartorius, City of Overland Park.

There was no testimony in opposition to the bill.

The House Committee amended the bill so that all the statutory exceptions to the KORA would expire on the same date, namely the year 2014.

Another amendment made by the House Committee is the provision regarding the wage and salary information survey conducted by the Director of Personnel Services.

The House Committee of the Whole made technical amendments to the bill.

The fiscal note indicates that passage of the bill would have no fiscal effect.