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MEMORANDUM

To: Committee on Judiciary  
From: Katherine McBride, Assistant Revisor of Statutes  
Date: January 24, 2013  
Subject: Kansas Open Records Act (KORA).

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In recent years, the Legislature has undertaken a comprehensive review of the Kansas Open Records Act (KORA) in order to determine if any statutory exceptions to the law are unnecessary and could be discontinued. Currently, there are 14 statutory exceptions to the KORA that are scheduled for expiration in 2013.

K.S.A. 45-229 provides that all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception created by the legislature or substantial amendment to an exception, shall expire five years after creation or amendment, unless the legislature acts to continue the exception. In the year prior to the expiration, the Revisor of Statutes is required to certify the language and citation of each exception to the Speaker of the House of Representatives and the President of the Senate.

Subsection (h) further requires the legislature to:

“(1) ...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. “

**Attachment A lists 14 statutory exceptions to the Kansas Open Records Act that are scheduled for expiration in 2013 and Attachment B provides the statutory language of each exception.**

# ATTACHMENT A

OPEN RECORDS REVIEW – SUBSTANTIALLY AMENDED AND NEW  
EXCEPTIONS  
2008 LEGISLATIVE SESSION

RE: K.S.A. 45-229  
Certified for Calendar Year 2012  
Exceptions Expire July 1, 2013

Substantially Amended Exception

40-222 Expanded coverage insurance exam  
75-712 Background checks appointees to certain state positions

New Exceptions

12-5811 Desoto/Johnson county riverfront authority  
40-223j Actuarial opinions and statements  
40-5007a Viatical insurance settlements  
40-5009a Viatical insurance settlements  
40-5012a Viatical insurance settlements  
65-1685 Prescription monitoring program  
65-1695 Pharmacy continuous quality improvement program  
65-2838a Healing arts non-disciplinary resolution  
66-1805 Underground utility damage prevention, notification center  
72-60c01 Compact on educational opportunity for military children  
75-5366 Matching child support debtors and insurance claimants

New Exceptions – Expiration by Separate Statute

66-1251 Broadband information (expires 7-1-2013 under 66-1254)

# ATTACHMENT B

## OPEN RECORDS SECTIONS CERTIFIED IN 2012, UNDER K.S.A. 45-229, AND AMENDMENTS THERETO

12-5811. (a) The governing and administrative body of the authority shall be a board consisting of six members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

(b) Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c) Members of the board shall be appointed as follows: Three shall be appointed by the mayor with the approval of the council and three shall be appointed by the commission. Of the first appointees, the council and mayor shall designate one member to serve a term of one year, one to serve two years and one to serve a three-year term. The commission shall designate the terms of its appointees likewise. Should the city and county consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

(d) Upon the expiration of the term of any member, all successor members of the board shall be appointed and hold office for terms of three years from the date of appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

(e) Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of the council and the commission, may remove any member of the board in case of incompetency, neglect of duty or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10 days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime involving moral turpitude or removal from office, the office of a member shall become vacant. A vacancy shall be filled for the unexpired term by appointment in the same manner as the original appointment.

(f) As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its members and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and successors shall be elected by the board from time to time for the term of the chairperson's office as a member of the board or for the term of three years, whichever is shorter.

(g) Regular meetings of the board shall be held at least once each calendar month, the time and place of such meetings to be fixed by the board. Four members of the board shall constitute a quorum for the transaction of business.

(h) All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairperson of the board and, if the chairperson approves thereof, the chairperson shall sign the same. If the chairperson does not approve any such resolution, the chairperson shall return it to the board with the chairperson's written objections thereto at the next regular meeting of the board occurring after the passage thereof. If the chairperson fails to return any resolution with the objections thereto by the prescribed time, the chairperson shall be deemed to have approved the same and it shall take effect accordingly. Upon the return of any resolution by the chairperson with the chairperson's objections, the vote by which such resolution was passed shall be reconsidered by the board. If upon reconsideration the resolution is passed by the affirmative vote of at least five members, it shall go into

effect notwithstanding the veto of the chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use in contract negotiations or civil proceedings to which the authority is a party.

40-222. (a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make, or direct to be made, a financial examination of any insurance company in the process of organization, or applying for admission or doing business in this state. In addition, at the commissioner's discretion the commissioner may make, or direct to be made, a market regulation examination of any insurance company doing business in this state.

(b) In scheduling and determining the nature, scope and frequency of examinations of financial condition, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiner's handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this subsection.

(c) For the purpose of such examination, the commissioner of insurance or the persons appointed by the commissioner, for the purpose of making such examination shall have free access to the books and papers of any such company that relate to its business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner or the persons appointed by the commissioner are empowered to administer, the directors, officers, agents or employees of any such company in relation to its affairs, transactions and condition.

(d) The commissioner may also examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company, but such examination or investigation shall not infringe upon or extend to any communications or information accorded privileged or confidential status under any other laws of this state.

(e) In lieu of examining the financial condition of a foreign or alien insurance company, the commissioner of insurance may accept the report of the examination made by or upon the authority of the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports as they relate to financial condition may only be accepted if:

(1) The insurance department conducting the examination was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(2) the examination is performed under the supervision of an accredited insurance department, or with the participation of one or more examiners who are employed by such an accredited insurance department and who after a review of the examination work papers and report state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(f) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting an examination of financial condition, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(g) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for

suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(h) When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination.

(i) Nothing contained in this act shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.

(j) Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report in the furtherance of any legal or regulatory action which the commissioner may, in the commissioner's sole discretion, deem appropriate.

(k) (1) No later than 30 days following completion of the examination or at such earlier time as the commissioner shall prescribe, the examiner in charge shall file with the department a verified written report of examination under oath. No later than 30 days following receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford such company examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(2) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiners workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violations; or

(B) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refile pursuant to subsection (k); or

(C) call and conduct a fact-finding hearing in accordance with K.S.A. 40-281, and amendments thereto, for purposes of obtaining additional documentation, data, information and testimony.

(3) All orders entered as a result of revelations contained in the examination report shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(4) Upon the adoption of the examination report, the commissioner shall hold the content of the examination report as private and confidential information for a period of 30 days except to the extent provided in paragraph (5). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(5) (A) Except as provided in paragraph (B), nothing contained in this act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, at any time to:

(i) The insurance department of this or any other state or country;

(ii) law enforcement officials of this or any other state or agency of the federal government or any other country; or

(iii) officials of any agency of another country.

(B) The commissioner shall not share any information listed in paragraph (A) unless the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

(6) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.

(7) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this act must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent otherwise specifically provided in K.S.A. 45-215 et seq., and amendments thereto. Access may also be granted to the national association of insurance commissioners. Such parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

Whenever it appears to the commissioner of insurance from such examination or other satisfactory evidence that the solvency of any such insurance company is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its policyholders, the commissioner of insurance shall give the company a notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act. If the hearing confirms the report of the examination, the commissioner shall suspend the certificate of authority of such company until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such company and in complying with the law, revoke the certificate of authority of such company to do business in this state. Upon revoking any such certificate the commissioner shall commence an action to dissolve such company or to enjoin the same from doing or transacting business in this state.

**40-223j.** (a) The statement of actuarial opinion shall be provided with the annual statement in accordance with the appropriate NAIC property and casualty annual statement instructions and shall be treated as a public document.

(b) (1) Any document, material or other information, in the control or possession of the department that is furnished to the commissioner pursuant to this act or obtained by the commissioner in an investigation pursuant to this section shall be kept confidential by the commissioner. Such information shall not be made public or subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this act or any other provision of the insurance laws of this state.

(2) (A) This subsection shall not be construed to limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and that the actuarial board for counseling and discipline establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents.

(B) This subsection shall not be construed to limit the commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be required to testify in any

private civil action concerning any confidential documents, materials or information subject to paragraph (1).

(4) The commissioner may share or exchange any documents, materials or other information, including confidential and privileged documents referred to in paragraph (1), received in the performance of the commissioner's duties under this act, with:

- (A) The NAIC and its affiliates and subsidiaries;
- (B) the actuarial board for counseling and discipline or any other entity which regulates actuaries;
- (C) other state, federal or international regulatory agencies; and
- (D) other state, federal or international law enforcement authorities.

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

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

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

(c) ~~The provisions of paragraph (2) of subsection (b) shall expire on July 1, 2013, unless the legislature acts to reenact such provision. The provisions of paragraph (2) of subsection (b) shall be reviewed by the legislature prior to July 1, 2013.~~

(d) For the purposes of this section: (1) "Commissioner" shall mean the commissioner of insurance.

(2) "NAIC" shall mean the national association of insurance commissioners.

**40-5007a.** (a) (1) The commissioner may conduct an examination under this act of a licensee as often as the commissioner in such commissioner's sole discretion deems appropriate.

(2) For purposes of completing an examination of a licensee under this act, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation, in the sole discretion of the commissioner, is necessary or material to the examination of the licensee.

(3) In lieu of an examination under this act of any foreign or alien licensee licensed in this state, the commissioner, at the commissioner's discretion, may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

(b) (1) Any person required to be licensed by this act shall for five years retain copies of all:

(A) Proposed, offered or executed contracts, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract, whichever is later;

(B) all checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and

(C) all other records and documents related to the requirements of this act.

(2) This section shall not relieve any person licensed under this act of the obligation to produce these documents and provide copies thereof to the commissioner after the retention period has expired if the person has retained such documents.

(3) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(c) (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to the Kansas administrative procedure act.

(3) The commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(4) When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(5) Nothing contained in this act shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner, in such commissioner's sole discretion, may deem appropriate.

(d) (1) Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) Not later than 60 days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

(e) (1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.

(2) Except as otherwise provided in this act, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this act, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(A) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this act, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(B) disclosed to the NAIC and its affiliates and subsidiaries under paragraph (4) of subsection (e) by the commissioner.

For the purposes of paragraph (2) of subsection (e), the term "act" includes the law of another state or jurisdiction that is substantially similar to this act.

(4) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (1) of subsection (e).

(5) In order to assist in the performance of the commissioner's duties, the commissioner may:

(A) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (1) of subsection (e), with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;

(B) receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(C) enter into agreements governing sharing and use of information consistent with this subsection.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (4) of subsection (e).

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(8) Nothing contained in this act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement

officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

(9) The provisions of this subsection shall expire July 1, 2013, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2013.

(f) (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this act. This section shall not be construed to automatically preclude an examiner from being:

- (A) A viator;
- (B) an insured in a viaticated insurance policy; or
- (C) a beneficiary in an insurance policy that is proposed to be viaticated.

(2) Notwithstanding the requirements of this clause, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this act.

(g) Unless provided otherwise, all fees and procedures for examinations under this act shall be in accordance with K.S.A. 40-223, and amendments thereto.

(h) (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this act.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph (1).

(3) A person identified in paragraph (1) or (2) shall be entitled to an award of attorney fees and costs if such person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(i) The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

**40-5009a.** (a) (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(A) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(B) a document in which the insured consents to the release of such insured's medical records to a viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

(2) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give

written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by paragraph (3).

(3) The viatical settlement provider shall deliver a copy of the medical release required under clause (B) of paragraph (1), a copy of the viator's application for the viatical settlement contract, the notice required under paragraph (2) and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The form for verification shall be developed by the commissioner.

(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(5) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that such viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that such viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the requirements of this section.

(b) (1) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

(2) The provisions of this subsection shall expire July 1, 2013, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2013.

(c) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least 15 calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans and loan interest that have been paid by the viatical settlement provider or purchaser.

(d) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(e) Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to clause (6) of subsection (a) of K.S.A. 2012 Supp. 40-5008, and amendments

thereto, renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

**40-5012a.** (a) No person shall:

(1) Commit a fraudulent viatical settlement act.

(2) Knowingly or intentionally interfere with the enforcement of any provision of this act or any investigation of suspected or actual violations of this act.

(3) Knowingly or intentionally permit any person, employed by a person in the business of viatical settlements, convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements. No person in the business of viatical settlements shall knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(4) Issue, solicit, market or otherwise promote the purchase of an insurance policy for the sole purpose of or with the primary emphasis on settling the policy.

(5) Employ any device, scheme or artifice in violation of K.S.A. 40-450, and amendments thereto, in the solicitation, application or issuance of a life insurance policy.

(6) Receive, when providing premium financing, any proceeds, fees or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay the principal, interest and costs or expenses incurred by the lender or borrower related to policy premiums paid under the premium financing agreement, except for the event of a default unless either the default on such loan or the transfer of the policy in connection with such default occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act.

(b) (1) Viatical settlements, contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(2) The lack of a statement as required in paragraph (1) shall not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(c) (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(d) (1) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated or completed fraudulent viatical settlement

acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(A) The commissioner or the commissioner's employees, agents or representatives;

(B) federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;

(C) any person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees or representatives;

(D) the NAIC, national association of securities dealers, the North American securities administrators association, or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or

(E) the life insurer that issued the life insurance policy covering the life of the insured.

(2) Paragraph (1) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) A person identified in paragraph (1) shall be entitled to an award of attorney fees and costs if such person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (1).

(e) (1) ~~The documents and evidence provided pursuant to subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.~~

(2) ~~Paragraph (1) of this subsection shall not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:~~

(A) ~~In administrative or judicial proceedings to enforce laws administered by the commissioner;~~

(B) ~~to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC;~~

(C) ~~at the discretion of the commissioner or pursuant to a court order, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act; or~~

(D) ~~at the discretion of the commissioner or pursuant to a court order, to a person that is aggrieved by a fraudulent viatical settlement act.~~

(3) ~~Release of documents and evidence under subparagraphs (A) and (B) of paragraph (2) of this subsection does not abrogate or modify the privilege granted in paragraph (1).~~

(4) ~~The provisions of this subsection shall expire July 1, 2013, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2013.~~

(f) This act shall not:

(1) ~~Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;~~

(2) ~~preempt, supersede or limit any provision of any state securities law or any rule, order or notice issued thereunder;~~

(3) prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

(4) limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(g) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(1) Fraud investigators, who may be viatical settlement providers or viatical settlement broker employees or independent contractors; and

(2) an antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) a description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;

(C) a description of the plan for antifraud education and training of underwriters and other personnel; and

(D) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications; and

(3) antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

**65-1685.** (a) The prescription monitoring program database, all information contained therein and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, shall be privileged and confidential, shall not be subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of entities charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern, shall not be a public record and shall not be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, except as provided in subsections (c) and (d).

(b) The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted and maintained is not disclosed to persons except as provided in subsections (c) and (d).

(c) The board is hereby authorized to provide data in the prescription monitoring program to the following persons:

(1) Persons authorized to prescribe or dispense scheduled substances and drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients;

(2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established by the board;

(3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern;

(4) local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing scheduled substances and drugs of concern subject to the requirements in K.S.A. 22-2502, and amendments thereto;

(5) designated representatives from the department of health and environment regarding authorized medicaid program recipients;

(6) persons authorized by a grand jury subpoena, inquisition subpoena or court order in a criminal action;

(7) personnel of the prescription monitoring program advisory committee for the purpose of operation of the program;

(8) personnel of the board for purposes of administration and enforcement of this act or the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto;

(9) persons authorized to prescribe or dispense scheduled substances and drugs of concern, when an individual is obtaining prescriptions in a manner that appears to be misuse, abuse or diversion of scheduled substances or drugs of concern; and

(10) medical examiners, coroners or other persons authorized under law to investigate or determine causes of death.

(d) The prescription monitoring program advisory committee established pursuant to K.S.A. 65-1689, and amendments thereto, is authorized to review and analyze the data for purposes of identifying patterns and activity of concern.

(1) If a review of information appears to indicate a person may be obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances and drugs of concern, the advisory committee is authorized to notify the prescribers and dispensers who prescribed or dispensed the prescriptions. If the review identifies patterns or other evidence sufficient to create a reasonable suspicion of criminal activity, the advisory committee is authorized to notify the appropriate law enforcement agency.

(2) If a review of information appears to indicate that a violation of state or federal law relating to prescribing controlled substances and drugs of concern may have occurred, or that a prescriber or dispenser has knowingly prescribed, dispensed or obtained controlled substances and drugs of concern in a manner that is inconsistent with recognized standards of care for the profession, the advisory committee shall determine whether a report to the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing of controlled substances and drugs of concern or to the appropriate law enforcement agency is warranted.

(A) For purposes of such determination the advisory committee may, in consultation with the appropriate regulatory agencies and professional organizations, establish criteria regarding appropriate standards and utilize volunteer peer review committees of professionals with expertise in the particular practice to create such standards and review individual cases.

(B) The peer review committee or committees appointed herein shall have authority to request and receive information in the prescription monitoring program database from the director of the prescription monitoring program.

(C) If the determination is made that a referral to a regulatory or law enforcement agency is not warranted but educational or professional advising might be appropriate, the advisory committee may refer the prescribers or dispensers to other such resources.

(e) The board is hereby authorized to provide data in the prescription monitoring program to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual practitioners, dispensers, patients or persons who received prescriptions from dispensers.

65-1695. (a) No later than July 1, 2009, each pharmacy shall establish a continuous quality improvement (CQI) program. The purpose of the CQI program shall be to assess errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence.

(b) Reports, memoranda, proceedings, findings and other records generated as part of a pharmacy's CQI program shall be considered confidential and privileged peer review documents and not 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 an administrative proceeding initiated by the board of pharmacy. Nothing in this section shall be construed to prohibit a patient from accessing such patient's own prescription records. Nothing in this section shall affect the discoverability of any record not solely generated for or maintained as a part of a pharmacy's CQI program.

(c) No person in attendance at any meeting being conducted as part of a CQI program shall be compelled to testify in any civil, criminal or administrative action, other than an administrative proceeding initiated by the board of pharmacy as to any discussions or decisions which occurred as part of the CQI program.

(d) All reports and records generated as part of a pharmacy's CQI program shall be available for inspection by the board of pharmacy within a time period established by the board in rules and regulations.

(e) In conducting a disciplinary proceeding in which admission of any matters that are confidential and privileged under subsection (b) are proposed, the board of pharmacy shall hold the hearing in closed session when any report, record or testimony is disclosed. Unless otherwise provided by law, the board of pharmacy in conducting a disciplinary proceeding may close only that portion of the hearing in which disclosure of such privileged matters are proposed. In closing a portion of a hearing as provided in this subsection, the presiding officer may exclude any person from the hearing except members of the board, the licensee, the licensee's attorney, the agency's attorney, the witness, the court reporter and appropriate staff support for either counsel.

The board of pharmacy shall make the portions of the administrative record in which such privileged matters are disclosed subject to a protective order prohibiting further disclosure. Such privileged matters 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 be required to testify at a subsequent civil, criminal or administrative hearing regarding the privileged matters, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing.

The board of pharmacy may review any matters that are confidential and privileged under subsection (b) in conducting a disciplinary proceeding but must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding in an open meeting of the board of pharmacy. 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, record or report.

(f) The board may establish by rules and regulations requirements regarding the functions and record keeping of a pharmacy CQI program.

(g) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

65-2838a. (a) The board, a committee of the board or a peer review committee established pursuant to K.S.A. 65-2840c, and amendments thereto, as a non-disciplinary resolution, may enter into a written agreement with a licensee for a professional development plan, make written recommendations to a licensee or issue a written letter of concern to a licensee if the board, committee of the board or peer review committee determines that the licensee:

(1) Seeks to establish continued competency for renewal of licensure other than through continued education requirements established pursuant to K.S.A. 65-2809, and amendments thereto;

(2) has been absent from clinical practice for an extended period of time and seeks to resume clinical practice;

(3) has failed to adhere to the applicable standard of care but not to a degree constituting professional incompetence, as defined by K.S.A. 65-2837, and amendments thereto; or

(4) has engaged in an act or practice that, if continued, would reasonably be expected to result in future violations of the Kansas healing arts act.

(b) Notwithstanding any other provision of law, a meeting of the board, a committee of the board or a peer review committee established pursuant to K.S.A. 65-2840c, and amendments thereto, for the purpose of discussing or adopting a non-disciplinary resolution authorized by this section shall not be subject to the Kansas administrative procedures act, K.S.A. 77-501 et seq., and amendments thereto, and shall not be subject to the Kansas open meetings act as provided in K.S.A. 75-4317 et seq., and amendments thereto. A non-disciplinary resolution authorized by this section shall not be deemed disciplinary action or other order or adjudication. No failure to adhere to the applicable standard of care or violation of the Kansas healing arts act may be implied by the adoption of a non-disciplinary resolution.

(c) A non-disciplinary resolution authorized by this section shall be confidential in the manner provided by K.S.A. 65-2898a, and amendments thereto, and shall not be admissible in any civil, criminal or administrative action, except that such resolution shall be admissible in any disciplinary proceeding by the board.

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

66-1251. (a) On or before January 15, 2009, and annually thereafter, subject to the provisions of K.S.A. 2012 Supp. 66-1252, and amendments thereto, the commission shall report to the legislature on broadband service being provided in the state of Kansas. Such report shall include the following information:

(1) A report by census tract or other identifiable geographic unit indicating whether broadband service is available and the number of providers that offer service to customers in each census tract;

(2) beginning with the commission's report in 2010, a report by census tract of the change in: (A) The number of broadband providers; and (B) the geographic area or census tract where broadband service is available.

(b) The commission shall maintain the information provided by each provider pursuant to K.S.A. 2012 Supp. 66-1250, and amendments thereto, as confidential and shall report only the aggregated information by census tract to the legislature. In maintaining the information, the commission shall adhere to the confidentiality provisions in K.S.A. 66-1220a, and amendments thereto.

(c) The commission, after consulting with broadband providers, may adopt rules and regulations as necessary to establish the form and manner in which the provider information shall be submitted and to fulfill all other requirements of the commission under this act.

(d) The commission shall, in addition to those reports required by subsection (a), on or before

January 15, 2008, and annually thereafter, report to the legislature the names of the broadband service providers that fail to comply with the reporting requirements of K.S.A. 2012 Supp. 66-1250, and amendments thereto.

**66-1805.** (a) This act recognizes the establishment of a single notification center for the state of Kansas. Each operator who has an underground facility shall become a member of the notification center.

(b) For operators of tier 1 facilities or operators of tier 2 facilities that desire notification in the same manner as operators of tier 1 facilities, the notification center shall provide prompt notice of any proposed excavation to each affected operator that has facilities recorded with the notification center in the area of a proposed excavation site.

(c) For operators of tier 2 facilities that desire direct contact with the excavator, the notification center shall provide the excavator with the name and contact information of the affected operator that has facilities recorded with the notification center in the area of the proposed excavation.

(d) Notification to operators as defined in subsection (b) shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

(e) Notification to operators as defined in subsection (c) may be given by notifying the operator of tier 2 facilities using the contact information provided by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

(f) Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

(g) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.

(h) A suitable record shall be maintained by operators of tier 2 facilities that desire direct contact with the excavator pursuant to subsection (c) to document the receipt of notices from excavators.

(i) The notification center shall charge and collect an annual membership fee in the amount of \$25 from each tier 2 facility member.

(j) The notification center shall charge a referral fee to tier 2 facility members in an amount no more than 50% of the referral fee rate charged to tier 1 facility members.

(k) Upon request of the operator, the person filing the notice of intent to excavate shall whitenline the proposed excavation site prior to locates being performed.

(l) The notification center established pursuant to this section shall be and is hereby deemed to be a public agency and shall be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto, except that the notification center or board of directors, or successor managing organization shall not disseminate, make available or otherwise distribute data or information provided by an operator of a tier 1, 2 or 3 facility unless such dissemination, making available or distributing is necessary for the state corporation commission or the notification center to carry out legal duties or specific statutory duties prescribed under this chapter.

(m) On and after July 1, 2009, the notification center's board of directors shall include two members from tier 2 facilities and 1 member from tier 3 facilities.

(n) The notification center shall prepare an annual report which describes the activities of such center. An annual audit of the notification center shall be conducted by an independent certified public accountant. The notification center shall provide copies of such reports to each member of the notification center and shall be subject to the open records act, K.S.A. 45-215 et seq., and amendments

thereto.

(o) The notification center shall solicit proposals for operation of the notification center not more than every five years which shall be awarded in an open meeting by the board of directors of the notification center. The bidding process prescribed by this subsection shall be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto.

(p) The notification center shall conduct a cost of service audit not more than every five years or as otherwise requested by the board of directors of the notification center or a majority of the members of such center.

**72-60c01.** The interstate compact on educational opportunity for military children is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

## **Interstate Compact on Educational Opportunity for Military Children**

### **ARTICLE I. PURPOSE**

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of educational records from the previous school district or variations in entrance or age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

### **ARTICLE II. DEFINITIONS**

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. section 1209 and 1211.

B. "Children of military families" means school-aged children, enrolled in kindergarten or any of the grades one through 12, in the household of an active duty member.

C. "Compact commissioner" means the voting representative of each compacting state appointed pursuant to article VIII of this compact.

D. "Deployment" means the period one month prior to the service members' departure from their home station on military orders through six months after return to their home station.

E. "Educational records" means those official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

F. "Extracurricular activities" means voluntary activities sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays and club activities.

G. "Interstate commission on educational opportunity for military children" means the commission that is created under article IX of this compact, which is generally referred to as interstate commission.

H. "Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten and grades one through 12 in public schools.

I. "Member state" means a state that has enacted this compact.

J. "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of the department of defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects or flood control projects.

K. "Non-member state" means a state that has not enacted this compact.

L. "Receiving state" means the state to which a child of a military family is sent, brought or caused to be sent or brought.

M. "Rule" means a written statement by the interstate commission promulgated pursuant to article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means the state from which a child of a military family is sent, brought or caused to be sent or brought.

O. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory.

P. "Student" means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten or any of the grades one through 12.

Q. "Transition" means (1) the formal and physical process of transferring from school to school or (2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. "Uniformed services" means the army, navy, air force, marine corps, coast guard as well as the commissioned corps of the national oceanic and atmospheric administration and public health services.

S. "Veteran" means a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

### ARTICLE III. APPLICABILITY

A. Except as otherwise provided in subsection B, this compact shall apply to the children of:

1. Active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. section 1209 and 1211;
2. members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and
3. members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. Inactive members of the national guard and military reserves;
2. members of the uniformed services now retired, except as provided in paragraph 1;
3. veterans of the uniformed services, except as provided in paragraph 1; and
4. other United States department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

### ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT

A. Unofficial or "hand-carried" education records - In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the interstate commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records or transcripts - Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within 10 days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

C. Immunizations - Compacting states shall allow 30 days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within 30 days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

D. Kindergarten and First grade entrance age - Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

### ARTICLE V. PLACEMENT & ATTENDANCE

A. Course placement - When the student transfers before or during the school year, the receiving state school initially shall honor placement of the student in educational courses based on the student's enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in such courses.

B. Educational program placement - The receiving state school initially shall honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to, gifted and talented programs and English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services - (1) In compliance with the federal requirements of the individuals with disabilities education act (IDEA), 20 U.S.C.A. section 1400 et seq., the receiving state initially shall provide comparable services to a student with disabilities based on the student's current individualized education program (IEP). (2) In compliance with the requirements of section 504 of the rehabilitation act, 29 U.S.C.A. section 794, and with Title II of the Americans with disabilities act, 42 U.S.C.A. sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility - Local education agency administrative officials shall have flexibility in waiving course and program prerequisites or other preconditions for placement in courses and programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities - A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with the student's parent or legal guardian relative to such leave or deployment of the parent or guardian.

## ARTICLE VI. ELIGIBILITY

### A. Eligibility for enrollment

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which the child was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation - State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

## ARTICLE VII. GRADUATION

In order to facilitate the on-time graduation of children of military families:

A. Waiver requirements - Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams - States shall accept: (1) Exit or end-of-course exams required for graduation from the sending state; or (2) national norm-referenced achievement tests or (3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in the senior year, then the provisions of paragraph C of this article shall apply.

C. Transfers during senior year - Should a military student transferring at the beginning or during the senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with paragraphs A and B of this article.

## ARTICLE VIII. STATE COORDINATION

A. Each member state, through the creation of a state council or use of an existing body or board, shall provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and interstate commission activities. While each member state may determine the membership of its own state council, its membership must include: The commissioner of education, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one representative each from the legislative and executive branches of government and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

## ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR

## MILITARY CHILDREN

The member states hereby create the "interstate commission on educational opportunity for military children." The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one interstate commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the interstate commission is entitled to one vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

C. Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States department of defense, the education commission of the states, the interstate agreement on the qualification of educational personnel and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the interstate commission and such other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States department of defense, shall serve as an ex-officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Public notice shall be given by the interstate commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the interstate commission's internal personnel practices and procedures;
2. disclose matters specifically exempted from disclosure by federal and state statute;

3. disclose trade secrets or commercial or financial information which is privileged or confidential;
4. involve accusing a person of a crime, or formally censuring a person;
5. disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. disclose investigative records compiled for law enforcement purposes; or
7. specifically relate to the interstate commission's participation in a civil action or other legal proceeding.

H. For a meeting, or portion of a meeting, closed pursuant to this provision, the interstate commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptible provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. ~~All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission.~~

I. The interstate commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. The interstate commission shall create a process that permits military officials, education officials and parents to inform the interstate commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the interstate commission or any member state.

## ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the power to:

- A. Provide for dispute resolution among member states.
- B. Promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.
- C. Issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions.
- D. Enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.
- E. Establish and maintain offices which shall be located within one or more of the member states.
- F. Purchase and maintain insurance and bonds.
- G. Borrow, accept, hire or contract for services of personnel.
- H. Establish and appoint committees including, but not limited to, an executive committee as required by article IX, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.
- I. Elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their

compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. Accept any and all donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it.

K. Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed.

L. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. Establish a budget and make expenditures.

N. Adopt a seal and bylaws governing the management and operation of the interstate commission.

O. Report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

P. Coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. Establish uniform standards for the reporting, collecting and exchanging of data.

R. Maintain corporate books and records in accordance with the bylaws.

S. Perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. Provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

## ARTICLE XI. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The interstate commission, by a majority of the members present and voting, within 12 months after the first interstate commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the interstate commission;

2. establishing an executive committee, and such other committees as may be necessary;

3. providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission;

4. providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

5. establishing the titles and responsibilities of the officers and staff of the interstate commission;

6. providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and

7. providing "start up" rules for initial administration of the compact.

B. The interstate commission, by a majority of the members, shall elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission. Subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate

commission.

C. Executive Committee, Officers and Personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

a. Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;

b. overseeing an organizational structure within, and appropriate procedures for the interstate commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the interstate commission.

2. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

D. The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## ARTICLE XII. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority - The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this act, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that substantially conforms to the "model state administrative procedure act," of 1981 Act, uniform laws annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

## ARTICLE XIII. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

### A. Oversight

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission.

3. The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination - If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of

the default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

7. The defaulting state may appeal the action of the interstate commission by petitioning the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

#### C. Dispute Resolution

1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

2. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

#### D. Enforcement

1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The interstate commission, by majority vote of the members, may initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

### ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION

A. The interstate commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

C. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same. The interstate commission shall not pledge the credit of any of the member

states, except by and with the authority of the member state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

#### **ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT**

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 10 of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of the compact by all states.

C. The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

#### **ARTICLE XVI. WITHDRAWAL AND DISSOLUTION**

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state. A member state may withdraw from the compact specifically repealing the statute, which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member jurisdiction.

3. The withdrawing state immediately shall notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

#### **ARTICLE XVII. SEVERABILITY AND CONSTRUCTION**

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

## ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS

### A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

### B. Binding Effect of the Compact

1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

2. All agreements between the interstate commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

75-712. (a) It is the duty of the members of the bureau to make full and complete investigations at the direction of the attorney general. Each member of the bureau shall possess all powers and privileges which are now or may be hereafter given to the sheriffs of Kansas.

(b) (1) The bureau shall acquire, collect, classify and preserve criminal identification and other crime records, and may exchange such criminal identification records with the duly authorized officials of governmental agencies, of states, cities and penal institutions.

(2) The bureau shall make available to the governor's domestic violence fatality review board crime record information related to domestic violence, including, but not limited to, type of offense, type of victim and victim relationship to offender, as found on the Kansas standard offense report. Such crime record information shall be made available only in a manner that does not identify individual offenders or victims.

(c) For purposes of carrying out the powers and duties of the bureau, the director may request and accept grants or donations from any person, firm, association or corporation or from the federal government or any federal agency and may enter into contracts or other transactions with any federal agency in connection therewith.

(d) The bureau shall conduct background investigations of: (1) Appointees to positions which are subject to confirmation by the senate of the state of Kansas; and (2) at the direction of the governor, all judicial appointments. The bureau shall require the appointee to be fingerprinted. The fingerprints shall be submitted to the bureau and to the federal bureau of investigation for the identification of the appointee and to obtain criminal history record information, including arrest and nonconviction data. Background reports may include criminal intelligence information and information relating to criminal and background investigations. Except as provided by this subsection, information received pursuant to this subsection shall be confidential and shall not be disclosed except to the appointing authority or as provided by K.S.A. 2012 Supp. 75-4315d, and amendments thereto. If the appointing authority is the governor, information received pursuant to this subsection also may be disclosed to the governor's staff

as necessary to determine the appointee's qualifications.

(e) Reports of all investigations made by the members of the bureau shall be made to the attorney general of Kansas.

75-5366. (a) The secretary of social and rehabilitation services is authorized to enter into an agreement with any entity that engages in the business of matching information about child support debtors against information about insurance claimants. Any such agreement shall be subject to the provisions of K.S.A. 39-759, and amendments thereto, concerning confidential information. If the entity is a consortium or similar joint venture of two or more states, or if the entity is an agency of the United States, the requirements of K.S.A. 75-5365, and amendments thereto, shall not apply.

(b) Pursuant to an agreement made under subsection (a), the secretary of social and rehabilitation services may disclose information about any individual who owes past due support in a title IV-D case if the support debtor owes at least \$25 in past due support. "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.).

(c) To the extent feasible, the secretary of social and rehabilitation services shall require or provide secure electronic processes for disclosing information about support debtors to any entity conducting matches pursuant to this section and for any insurers disclosing information about claimants to such an entity.

(d) The secretary of social and rehabilitation services shall have the authority to adopt such rules and regulations as may be necessary to administer the provisions of this act.