

## HOUSE BILL No. 2012

By Committee on Judiciary

1-16

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1 AN ACT concerning public records; relating to legislative review of  
2 exceptions to disclosure; amending K.S.A. 2012 Supp. 45-229 and  
3 repealing the existing section.  
4

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

6 Section 1. K.S.A. 2012 Supp. 45-229 is hereby amended to read as  
7 follows: 45-229. (a) It is the intent of the legislature that exceptions to  
8 disclosure under the open records act shall be created or maintained only  
9 if:

10 (1) The public record is of a sensitive or personal nature concerning  
11 individuals;

12 (2) the public record is necessary for the effective and efficient  
13 administration of a governmental program; or

14 (3) the public record affects confidential information.

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

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

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

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

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

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

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

23 (1) Is required by federal law;

24 (2) applies solely to the legislature or to the state court system.

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

27 (A) What specific records are affected by the exception;

28 (B) whom does the exception uniquely affect, as opposed to the  
29 general public;

30 (C) what is the identifiable public purpose or goal of the exception;

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

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

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

42 (B) protects information of a sensitive personal nature concerning  
43 individuals, the release of which information would be defamatory to such

1 individuals or cause unwarranted damage to the good name or reputation  
2 of such individuals or would jeopardize the safety of such individuals.  
3 Only information that would identify the individuals may be excepted  
4 under this paragraph; or

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

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

16 (i) Exceptions contained in the following statutes as continued in  
17 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas  
18 and exceptions contained in the following statutes as certified by the  
19 revisor of statutes to the president of the senate and the speaker of the  
20 house of representatives pursuant to subsection (e) of this section during  
21 2009 are hereby continued in existence until July 1, 2015, at which time  
22 such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-  
23 2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-  
24 4516, 16-715, 16a-2-304, 17-1312e, 17-2036, 17-2227, 17-5832, 17-7511,  
25 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-  
26 243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-  
27 1664, 38-2212, 39-709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-  
28 2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-  
29 2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805,  
30 40-4205, 40-5301, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-  
31 1005, 44-1019, subsections (a)(1) through (43), (a)(45) and (a)(46) of 45-  
32 221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614,  
33 49-406, 49-427, 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-  
34 29b79, 60-3333, 60-3336, 60-3351, 65-102b, 65-118, 65-119, 65-153f, 65-  
35 170g, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-  
36 1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507,  
37 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d,  
38 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-  
39 34,126, 65-4019, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003,  
40 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151,  
41 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-972a, 72-996, 72-4311, 72-  
42 4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-  
43 2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-

1 8104, 74-8307, 74-8705, 74-8804, 74-9805, 74-99d05, 75-104, 75-712,  
2 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-  
3 53,105, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11,  
4 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-3499, 79-  
5 34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

6 (j) Exceptions contained in the following statutes as continued in  
7 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas  
8 and exceptions contained in the following statutes as certified by the  
9 revisor of statutes to the president of the senate and the speaker of the  
10 house of representatives pursuant to subsection (e) of this section during  
11 2010, are hereby continued in existence until July 1, 2016, at which time  
12 such exceptions shall expire: 1-501, 9-1303, 12-4516a, 12-5358, 12-5611,  
13 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 39-970, 44-1132, 60-3333,  
14 65-525, 65-5117, 65-6016, 65-6017, 65-6154, 71-218, 74-7508, 75-457,  
15 75-712c, 75-723 and 75-7c06.

16 (k) Exceptions contained in the following statutes as certified by the  
17 revisor of statutes to the president of the senate and the speaker of the  
18 house of representatives pursuant to subsection (e) during 2006, 2007 and  
19 2008 are hereby continued in existence until July 1, 2014, at which time  
20 such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-  
21 17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-  
22 5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46)  
23 and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-  
24 50,184, 74-8134, 74-99b06 and 82a-2210.

25 (l) Exceptions contained in the following statutes as certified by the  
26 revisor of statutes to the president of the senate and the speaker of the  
27 house of representatives pursuant to subsection (e) during 2011 are hereby  
28 continued in existence until July 1, 2017, at which time such exceptions  
29 shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-  
30 8772 and 75-7427.

31 (m) *Exceptions contained in the following statutes as certified by the*  
32 *revisor of statutes to the president of the senate and the speaker of the*  
33 *house of representatives pursuant to subsection (e) during 2012 are hereby*  
34 *continued in existence until July 1, 2018, at which time such exceptions*  
35 *shall expire: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a, 40-5012a,*  
36 *65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-712 and*  
37 *75-5366.*

38 Sec. 2. K.S.A. 2012 Supp. 45-229 is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its  
40 publication in the statute book.