

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2012

By Committee on Judiciary

1-16

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 **subsections (g) and (h)**, any new exception to disclosure or substantial
27 amendment of an existing exception shall expire on July 1 of the fifth year
28 after enactment of the new exception or substantial amendment, unless the
29 legislature acts to continue the exception. A law that enacts a new
30 exception or substantially amends an existing exception shall state that the
31 exception expires at the end of five years and that the exception shall be
32 reviewed by the 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 **(3) has been reviewed and continued in existence twice by the**
26 **legislature; or**

27 **(4) has been reviewed and continued in existence by the**
28 **legislature during the 2013 legislative session and thereafter.**

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

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

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

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

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

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

43 (A) Allows the effective and efficient administration of a

1 governmental program, which administration would be significantly
2 impaired without the exception;

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

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

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

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

1 2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922, 65-
2 4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05,
3 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-
4 1220a, 66-2010, ~~72-972a~~, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106,
5 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-
6 50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804,
7 74-9805, ~~74-99d05~~, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332,
8 75-4362, 75-5133, 75-5266, ~~75-53,105~~, 75-5665, 75-5666, 75-7310, 76-
9 355, 76-359, 76-493, 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-
10 3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-
11 5206.

12 **(2) Exceptions contained in the following statutes as certified by**
13 **the revisor of statutes to the president of the senate and the speaker of**
14 **the house of representatives pursuant to subsection (e) during 2009**
15 **are hereby continued in existence until July 1, 2015, at which time**
16 **such exceptions shall expire: 17-2036, 40-5301, subsections (a)(45) and**
17 **(a)(46) of 45-221, 60-3351, 72-972a, 74-99d05 and 75-53,105.**

18 (j) **(1)** Exceptions contained in the following statutes as continued in
19 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas
20 ~~and exceptions contained in the following statutes as certified by the~~
21 ~~revisor of statutes to the president of the senate and the speaker of the~~
22 ~~house of representatives pursuant to subsection (e) of this section during~~
23 ~~2010; and which have been reviewed and continued in existence twice~~
24 ~~by the legislature as provided in subsection (g) are hereby continued in~~
25 ~~existence until July 1, 2016, at which time such exceptions shall expire: 1-~~
26 ~~501, 9-1303, 12-4516a, 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-~~
27 ~~2311, 38-2326, 39-970, 44-1132, 60-3333, 65-525, 65-5117, 65-6016, 65-~~
28 ~~6017, 65-6154, 71-218, and 74-7508, 75-457, 75-712c, 75-723 and 75-~~
29 ~~7e06.~~

30 **(2) Exceptions contained in the following statutes as certified by**
31 **the revisor of statutes to the president of the senate and the speaker of**
32 **the house of representatives pursuant to subsection (e) during 2010**
33 **are hereby continued in existence until July 1, 2016, at which time**
34 **such exceptions shall expire: 12-5358, 12-5611, 22-4906, 22-4909, 38-**
35 **2310, 38-2311, 38-2326, 44-1132, 60-3333, 65-6154, 71-218, 75-457, 75-**
36 **712c, 75-723 and 75-7c06.**

37 (k) Exceptions contained in the following statutes as certified by the
38 revisor of statutes to the president of the senate and the speaker of the
39 house of representatives pursuant to subsection (e) during 2006, 2007 and
40 2008 are hereby continued in existence until July 1, 2014, at which time
41 such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-
42 17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-
43 5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46)

1 and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-
2 50,184, 74-8134, 74-99b06 and 82a-2210.

3 (l) Exceptions contained in the following statutes as certified by the
4 revisor of statutes to the president of the senate and the speaker of the
5 house of representatives pursuant to subsection (e) during 2011 are hereby
6 continued in existence until July 1, 2017, at which time such exceptions
7 shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-
8 8772 and 75-7427.

9 (m) *Exceptions contained in the following statutes as certified by the*
10 *revisor of statutes to the president of the senate and the speaker of the*
11 *house of representatives pursuant to subsection (e) during 2012 and*
12 **which have been reviewed during the 2013 legislative session and**
13 **continued in existence by the legislature as provided in subsection (g)**
14 *are hereby continued in existence until July 1, 2018, at which time such*
15 ~~*exceptions shall expire: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,*~~
16 ~~*40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-*~~
17 ~~*712 and 75-5366.*~~

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

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