

HOUSE BILL No. 2023

By Committee on Judiciary

1-15

1 AN ACT concerning legislative review of exceptions to open records;
2 amending K.S.A. 2014 Supp. 45-229 and 60-3351 and repealing the
3 existing sections.

4

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

6 Section 1. K.S.A. 2014 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 subsections (g) and (h), any new
25 exception to disclosure or substantial amendment of an existing exception
26 shall expire on July 1 of the fifth year after enactment of the new
27 exception or substantial amendment, unless the legislature acts to continue
28 the exception. A law that enacts a new exception or substantially amends
29 an existing exception shall state that the exception expires at the end of
30 five years and that the exception shall be reviewed by the legislature
31 before the scheduled date.

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

36 (d) This section is not intended to repeal an exception that has been

1 amended following legislative review before the scheduled repeal of the
2 exception if the exception is not substantially amended as a result of the
3 review.

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

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

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

22 (1) Is required by federal law;

23 (2) applies solely to the legislature or to the state court system;

24 (3) has been reviewed and continued in existence twice by the
25 legislature; or

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

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

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

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

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

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

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

42 (A) Allows the effective and efficient administration of a
43 governmental program, which administration would be significantly

1 impaired without the exception;

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

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

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

19 (i) (1) Exceptions contained in the following statutes as continued in
20 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas
21 and which have been reviewed and continued in existence twice by the
22 legislature as provided in subsection (g) are hereby continued in existence:
23 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189,
24 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-
25 1312e, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321, 21-
26 2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312,
27 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934,
28 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,
29 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b,
30 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635,
31 44-714, 44-817, 44-1005, 44-1019, ~~subsections (a)(1) through (43) of 45-~~
32 ~~221(a)(1) through (43),~~ 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849,
33 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 58-4114, 59-2135, 59-2802,
34 59-2979, 59-29b79, 60-3333, 60-3336, 65-102b, 65-118, 65-119, 65-153f,
35 65-170g, 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, 72-996, 72-4311, 72-4452, 72-
42 5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-
43 4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307,

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

6 (2) Exceptions contained in the following statutes as certified by the
7 revisor of statutes to the president of the senate and the speaker of the
8 house of representatives pursuant to subsection (e) ~~during 2009~~ and which
9 *have been reviewed during the 2015 legislative session and continued in*
10 *existence by the legislature as provided in subsection (g)* are hereby
11 continued in existence ~~until July 1, 2015, at which time such exceptions~~
12 ~~shall expire~~: 17-2036, 40-5301, subsections (a)(45) and (a)(46) of 45-
13 221(a)(45), (46) and (49), 48-16a10, 58-4616, 60-3351, 72-972a, 74-
14 50,217, 74-99d05 and 75-53,105.

15 (j) (1) Exceptions contained in the following statutes as continued in
16 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas
17 and which have been reviewed and continued in existence twice by the
18 legislature as provided in subsection (g) are hereby continued in existence:
19 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016, 65-6017 and
20 74-7508.

21 (2) Exceptions contained in the following statutes as certified by the
22 revisor of statutes to the president of the senate and the speaker of the
23 house of representatives pursuant to subsection (e) during 2010 are hereby
24 continued in existence until July 1, 2016, at which time such exceptions
25 shall expire: 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-
26 2326, 44-1132, 60-3333, 65-6154, 71-218, 75-457, 75-712c, 75-723 and
27 75-7c06.

28 (k) Exceptions contained in the following statutes as certified by the
29 revisor of statutes to the president of the senate and the speaker of the
30 house of representatives pursuant to subsection (e) and which have been
31 reviewed during the 2014 legislative session and continued in existence by
32 the legislature as provided in subsection (g) are hereby continued in
33 existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-
34 17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-
35 2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46), (47) and
36 (48) of 45-221(a)(44), (45), (46), (47) and (48), 50-6a11, 56-1a610, 56a-
37 1204, 65-1,243, 65-16,104, 65-3239, 74-50,184, 74-8134, 74-99b06, 77-
38 503a and 82a-2210.

39 (l) Exceptions contained in the following statutes as certified by the
40 revisor of statutes to the president of the senate and the speaker of the
41 house of representatives pursuant to subsection (e) during 2011 are hereby
42 continued in existence until July 1, 2017, at which time such exceptions
43 shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-

1 8772 and 75-7427.

2 (m) Exceptions contained in the following statutes as certified by the
3 revisor of statutes to the president of the senate and the speaker of the
4 house of representatives pursuant to subsection (e) during 2012 and which
5 have been reviewed during the 2013 legislative session and continued in
6 existence by the legislature as provided in subsection (g) are hereby
7 continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,
8 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-
9 712 and 75-5366.

10 Sec. 2. K.S.A. 2014 Supp. 60-3351 is hereby amended to read as
11 follows: 60-3351. (a) Except as provided in K.S.A. 60-3352 and 60-3353,
12 and amendments thereto, an insurance compliance self-evaluative audit
13 document is privileged information and is not discoverable, or admissible
14 as evidence in any legal action in any civil, criminal or administrative
15 proceeding. The privilege created herein is a matter of substantive law of
16 this state and is not merely a procedural matter governing civil or criminal
17 procedures in the courts of this state.

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

28 (c) Any insurance company may voluntarily submit, in connection
29 with any examination conducted under chapter 40 of the Kansas Statutes
30 Annotated, and amendments thereto, an insurance compliance self-
31 evaluative audit document to the commissioner as a confidential document
32 in the same manner as provided in chapter 40 of the Kansas Statutes
33 Annotated, and amendments thereto, for documents required to be
34 provided to the commissioner in the course of an examination by the
35 commissioner without waiving the privilege set forth in this section to
36 which the insurance company would otherwise be entitled. Any provision
37 in chapter 40 of the Kansas Statutes Annotated, and amendments thereto,
38 permitting the commissioner to make confidential documents public or to
39 grant the national association of insurance commissioners access to
40 confidential documents shall not apply to the insurance compliance self-
41 evaluative audit document voluntarily submitted by an insurance company.
42 To the extent that the commissioner has the authority to compel the
43 disclosure of an insurance compliance self-evaluative audit document

1 under other provisions of applicable law, any such report furnished to the
2 commissioner shall not be provided to any other persons or entities and
3 shall be accorded the same confidentiality and other protections as
4 provided above for voluntarily submitted documents. Any use of an
5 insurance compliance self-evaluative audit document furnished as a result
6 of a request of the commissioner under a claim of authority to compel
7 disclosure shall be limited to determining whether or not any disclosed
8 defects in an insurers' policies and procedures or inappropriate treatment
9 of customers has been remedied or that an appropriate plan for their
10 remedy is in place.

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

16 (2) Any compliance self-evaluative audit document so submitted and
17 in the possession of the commissioner shall remain the property of the
18 insurance company and shall not be subject to any disclosure or production
19 under the Kansas open records act. ~~The provision of this paragraph shall~~
20 ~~expire on July 1, 2015, unless the legislature reenacts such provision. The~~
21 ~~provision of this paragraph shall be reviewed by the legislature prior to~~
22 ~~July 1, 2015.~~

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

30 Sec. 3. K.S.A. 2014 Supp. 45-229 and 60-3351 are hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its
32 publication in the statute book.