

SESSION OF 2018

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 336**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 336 would amend law regarding disclosure of information under the Revised Kansas Code for Care of Children (CINC Code) and would continue or eliminate exceptions to the Kansas Open Records Act (KORA).

Disclosure of Information Under the CINC Code

The bill would amend the statute in the CINC Code governing access to information concerning a child alleged or adjudicated to be in need of care and child fatalities.

A provision allowing a court to order disclosure of confidential agency records if such records are necessary for the proceedings of the court and are otherwise admissible as evidence would be amended to remove the requirement that such records be admissible as evidence.

Provisions requiring disclosure, pursuant to KORA, of records or reports related to a child fatality or near fatality resulting from child abuse or neglect, but allowing for the filing of a motion with a court by the Secretary for Children and Families (Secretary) or any affected individual to prevent disclosure of such records, would be amended to require notice of the filing of such motion to all parties requesting the records or report and provide such parties with the right to

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

request and receive a hearing prior to the entry of an order on the motion. The bill would add the “public’s interest in the disclosure of such records or reports” to the factors the court must consider when ruling on the motion.

The bill would add a provision requiring the Secretary, as allowed by applicable law, to release the following information when child abuse or neglect results in a child fatality and a request is made under KORA, within seven business days of receipt of such request:

- Age and sex of the child;
- Date of the fatality;
- A summary of any previous reports of abuse or neglect received by the Secretary involving the child, along with the findings of such reports; and
- Any Department for Children and Families-recommended services provided to the child.

The bill would add a similar provision requiring the Secretary, as allowed by applicable law, to release the following information when a child fatality occurs while the child was in the custody of the Secretary and a request is made under KORA, within seven business days of receipt of such request:

- Age and sex of the child;
- Date of the fatality; and
- A summary of the facts surrounding the death of the child.

Continuation and Elimination of KORA Exceptions

The bill would continue in existence the following exceptions to KORA:

- KSA 9-513c, concerning information or reports obtained and prepared by the State Bank Commissioner in the course of licensing or examining a person engaged in money transmission business (the bill would also remove an expiration provision in KSA 9-513c);
- KSA 39-709, concerning results of drug screenings administered under the cash assistance program;
- KSA 45-221(a)(26), concerning records of a utility or other public service pertaining to individually identifiable residential customers;
- KSA 45-221(a)(53), concerning records disclosing name or contact information for any person who is licensed to carry concealed handguns, enrolled in or completed any weapons training in order to be licensed, or has made application for such license under the Personal and Family Protection Act (PFPA);
- KSA 45-221(a)(54), concerning records of a utility related to cybersecurity threats, attacks, or general attempts to attack utility operations;
- KSA 65-6832 and KSA 65-6834, concerning protected health information;
- KSA 75-7c06, concerning records relating to licenses issued pursuant to the PFPA; and
- KSA 75-7c20, concerning security plans adopted to exempt a State or municipal building from law stating the carrying of a concealed handgun shall not be prohibited in any public area of any State or municipal building.

The bill would amend three statutes within the Viatical Settlements Act of 2002 that were reviewed and continued in 2013 to remove specific expiration provisions.

The bill would remove an exception preventing the disclosure of the name of any voter who has cast a ballot from the time the ballot is cast until the final canvass of the election by the county board of canvassers.

Technical Changes

The bill would update references to the Secretary, phrasing, and statutory references to ensure statutory consistency.

Background

As introduced by the Senate Committee on Judiciary, passed by the Senate, and heard by the House Committee on Judiciary, SB 336 contained provisions that would provide compensation for persons who have been wrongfully convicted and imprisoned.

The House Committee on Judiciary recommended a substitute bill for SB 336, replacing its contents, as passed by the Senate, with language modified from HB 2728, regarding disclosure of information under the CINC Code, and language modified from SB 295, regarding KORA exceptions. Further background information for HB 2728 and SB 295 is provided below.

There is no fiscal note available on the House Sub. for SB 336. However, fiscal note information for HB 2728 and SB 295 is provided below.

HB 2728 (Disclosure of Information under the CINC Code)

HB 2728 was introduced by the House Committee on Judiciary at the request of Representative Humphries on behalf of the Department for Children and Families. As introduced, the bill contained the provision requiring disclosure of certain information in the event that child abuse or neglect results in a child fatality.

In the House Committee hearing, the Acting Secretary for Children and Families and representatives of the Kansas Press Association and Kansas Sunshine Coalition for Open Government testified in support of the bill. A representative of the Kansas Association of Broadcasters submitted written-only proponent testimony. The attorney for the family of Evan Brewer submitted written-only opponent testimony.

The House Committee made the following modifications to the language of HB 2728 while placing it into House Sub. for SB 336:

- Removed an existing requirement that records be otherwise admissible as evidence for a court to order disclosure;
- Added the notice and hearing provisions and consideration of the public's interest in disclosure;
- Added the provision requiring release of certain information when a child fatality occurs when a child is in the custody of the Secretary; and
- Added a requirement that release under the new provisions be made within seven business days of receipt of the request.

According to the fiscal note prepared by the Division of the Budget on HB 2728, as introduced, the Department for

Children and Families indicates enactment of HB 2728 would have no fiscal effect on agency operations.

SB 295 (KORA Exceptions)

A sunset provision for all exceptions to KORA was added in 2000, requiring a review of existing exceptions within five years and of any new exception or substantial amendment to an exception by July 1 of the fifth year after enactment. Absent such review, they would expire. The law also required any exceptions continued after legislative review to be reviewed again five years later; however, 2013 HB 2012 modified the requirement so that exceptions would no longer be subject to review and expiration if the Legislature reviews and continues the exception during the 2013 Session or thereafter.

In the Senate Committee on Judiciary hearing, staff presented an overview of SB 295. A representative of the League of Kansas Municipalities appeared as a proponent of the bill. No other testimony was presented.

The House Committee on Judiciary held an informational hearing on the contents of SB 295 and placed language modified from SB 295 into House Sub. for SB 336. The language was modified to remove, rather than continue, an exception regarding certain voter information.

According to the fiscal note prepared by the Division of the Budget on SB 295, as introduced, the Insurance Department and Office of the State Bank Commissioner indicate enactment of the bill would have no fiscal effect.