

**SENATE BILL No. 427**

By Committee on Judiciary

2-13

1 AN ACT concerning the open records act; relating to exceptions to the  
2 disclosure of public records; legislative review of expiring exceptions;  
3 continuing such exceptions; amending K.S.A. 2019 Supp. 9-1810, 40-  
4 223j, 45-229 and 50-6a11 and repealing the existing sections.

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

7 Section 1. K.S.A. 2019 Supp. 9-1810 is hereby amended to read as  
8 follows: 9-1810. (a) The commissioner may enter into any informal  
9 agreement with any bank or trust company for a plan of action to address  
10 possible safety or soundness concerns, violations of law or any weakness  
11 displayed by the bank or trust company if the commissioner determines  
12 that the bank or trust company displays:

13 (1) Possible safety and soundness concerns or is violating, has  
14 violated or is about to violate any law, rule and regulation or order of the  
15 commissioner or the state banking board resulting in a less than  
16 satisfactory condition, but not to a degree requiring formal administrative  
17 action; or

18 (2) any weakness that if not properly addressed and corrected would  
19 reasonably be expected to result in future safety and soundness concerns,  
20 violations of applicable laws, rules and regulations and further  
21 deterioration in the condition of the bank or trust company.

22 (b) The adoption of an informal agreement authorized by this section  
23 shall not be subject to the provisions of K.S.A. 77-501 et seq., and  
24 amendments thereto, or K.S.A. 77-601 et seq., and amendments thereto.  
25 Any informal agreement authorized by this section shall not be considered  
26 an order or other agency action and shall be considered confidential  
27 examination material pursuant to K.S.A. 9-1712, and amendments thereto.  
28 ~~The provisions of this subsection shall expire on July 1, 2020, unless the~~  
29 ~~legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,~~  
30 ~~and amendments thereto, prior to July 1, 2020.~~

31 Sec. 2. K.S.A. 2019 Supp. 40-223j is hereby amended to read as  
32 follows: 40-223j. (a) The statement of actuarial opinion shall be provided  
33 with the annual statement in accordance with the appropriate NAIC  
34 property and casualty annual statement instructions and shall be treated as  
35 a public document.

36 (b) (1) Any document, material or other information, in the control or

1 possession of the department that is furnished to the commissioner  
2 pursuant to this act or obtained by the commissioner in an investigation  
3 pursuant to this section shall be kept confidential by the commissioner.  
4 Such information shall not be made public or subject to subpoena, other  
5 than by the commissioner and then only for the purpose of enforcement  
6 actions taken by the commissioner pursuant to this act or any other  
7 provision of the insurance laws of this state.

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

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

18 (3) Neither the commissioner nor any person who received  
19 documents, materials or other information while acting under the authority  
20 of the commissioner shall be required to testify in any private civil action  
21 concerning any confidential documents, materials or information subject to  
22 paragraph (1).

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

27 (A) The NAIC and its affiliates and subsidiaries;

28 (B) the actuarial board for counseling and discipline or any other  
29 entity which regulates actuaries;

30 (C) other state, federal or international regulatory agencies; and

31 (D) other state, federal or international law enforcement authorities.

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

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

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

1 of this act.

2 (c) ~~The provisions of subsection (b)(2) shall expire on July 1, 2020,~~  
3 ~~unless the legislature acts to reenact such provision. The provisions of~~  
4 ~~subsection (b)(2) shall be reviewed by the legislature prior to July 1, 2020.~~

5 (d) For the purposes of this section:

6 (1) "Commissioner" ~~shall mean~~ *means* the commissioner of  
7 insurance.

8 (2) "NAIC" ~~shall mean~~ *means* the national association of insurance  
9 commissioners.

10 Sec. 3. K.S.A. 2019 Supp. 45-229 is hereby amended to read as  
11 follows: 45-229. (a) It is the intent of the legislature that exceptions to  
12 disclosure under the open records act shall be created or maintained only  
13 if:

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

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

18 (3) the public record affects confidential information.

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

28 (b) Subject to the provisions of subsections (g) and (h), any new  
29 exception to disclosure or substantial amendment of an existing exception  
30 shall expire on July 1 of the fifth year after enactment of the new  
31 exception or substantial amendment, unless the legislature acts to continue  
32 the exception. A law that enacts a new exception or substantially amends  
33 an existing exception shall state that the exception expires at the end of  
34 five years and that the exception shall be reviewed by the legislature  
35 before the scheduled date.

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

40 (d) This section is not intended to repeal an exception that has been  
41 amended following legislative review before the scheduled repeal of the  
42 exception if the exception is not substantially amended as a result of the  
43 review.

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

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

16 (g) A provision of law that creates or amends an exception to  
17 disclosure under the open records law shall not be subject to review and  
18 expiration under this act if such provision:

19 (1) Is required by federal law;  
20 (2) applies solely to the legislature or to the state court system;  
21 (3) has been reviewed and continued in existence twice by the  
22 legislature; or

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

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 that would be significantly impaired without the  
41 exception;

42 (B) protects information of a sensitive personal nature concerning  
43 individuals, the release of such 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 that is used to protect or further a  
8 business advantage over those who do not know or use it, if the disclosure  
9 of such 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) would occur  
15 if the records were made public.

16 (i) (1) 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 that have been reviewed and continued in existence twice by the  
19 legislature as provided in subsection (g) are hereby continued in existence:  
20 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189,  
21 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-  
22 1312e, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321, 21-  
23 2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312,  
24 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934,  
25 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,  
26 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b,  
27 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635,  
28 44-714, 44-817, 44-1005, 44-1019, 45-221(a)(1) through (43), 46-256, 46-  
29 259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427,  
30 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-  
31 3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-  
32 1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-  
33 1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-  
34 1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a,  
35 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922,  
36 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-  
37 67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203,  
38 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-  
39 5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-  
40 50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804,  
41 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362,  
42 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493,  
43 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-

1 3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

2 (2) 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) and that have been  
5 reviewed during the 2015 legislative session and continued in existence by  
6 the legislature as provided in subsection (g) are hereby continued in  
7 existence: 17-2036, 40-5301, 45-221(a)(45), (46) and (49), 48-16a10, 58-  
8 4616, 60-3351, 72-972a, 74-50,217 and 75-53,105.

9 (j) (1) Exceptions contained in the following statutes as continued in  
10 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas  
11 and that have been reviewed and continued in existence twice by the  
12 legislature as provided in subsection (g) are hereby continued in existence:  
13 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016, 65-6017 and  
14 74-7508.

15 (2) Exceptions contained in the following statutes as certified by the  
16 revisor of statutes to the president of the senate and the speaker of the  
17 house of representatives pursuant to subsection (e) during 2015 and that  
18 have been reviewed during the 2016 legislative session are hereby  
19 continued in existence: 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-  
20 2326, 40-955, 44-1132, 45-221(a)(10)(F) and (a)(50), 60-3333, 65-4a05,  
21 65-445(g), 65-6154, 71-218, 75-457, 75-712c, 75-723 and 75-7c06.

22 (k) 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) and that have been  
25 reviewed during the 2014 legislative session and continued in existence by  
26 the legislature as provided in subsection (g) are hereby continued in  
27 existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-  
28 17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-  
29 2905, 41-2906, 44-706, 44-1518, 45-221(a)(44), (45), (46), (47) and (48),  
30 50-6a11, 56-1a610, 56a-1204, 65-1,243, 65-16,104, 65-3239, 74-50,184,  
31 74-8134, 74-99b06, 77-503a and 82a-2210.

32 (l) Exceptions contained in the following statutes as certified by the  
33 revisor of statutes to the president of the senate and the speaker of the  
34 house of representatives pursuant to subsection (e) during 2016 and that  
35 have been reviewed during the 2017 legislative session are hereby  
36 continued in existence: 12-5711, 21-2511, 22-4909, 38-2313, 45-221(a)  
37 (51) and (52), 65-516, 65-1505, 74-2012, 74-5607, 74-8745, 74-8752, 74-  
38 8772, 75-7d01, 75-7d05, 75-5133, 75-7427 and 79-3234.

39 (m) 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 2012 and that  
42 have been reviewed during the 2013 legislative session and continued in  
43 existence by the legislature as provided in subsection (g) are hereby

1 continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,  
2 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-  
3 712 and 75-5366.

4 (n) Exceptions contained in the following statutes as certified by the  
5 revisor of statutes to the president of the senate and the speaker of the  
6 house of representatives pursuant to subsection (e) and that have been  
7 reviewed during the 2018 legislative session are hereby continued in  
8 existence: 9-513c(c)(2), 39-709, 45-221(a)(26), (53) and (54), 65-6832,  
9 65-6834, 75-7c06 and 75-7c20.

10 (o) Exceptions contained in the following statutes as certified by the  
11 revisor of statutes to the president of the senate and the speaker of the  
12 house of representatives pursuant to subsection (e) that have been  
13 reviewed during the 2019 legislative session are hereby continued in  
14 existence: 21-2511(h)(2), 21-5905(a)(7), 22-2302(b) and (c), 22-2502(d)  
15 and (e), 40-222(k)(7), 44-714(e), 45-221(a)(55), 46-1106(g) regarding 46-  
16 1106(i), 65-2836(i), 65-2839a(c), 65-2842(d), 65-28a05(n), article 6(d) of  
17 65-6230, 72-6314(a) and 74-7047(b).

18 (p) *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) that have been*  
21 *reviewed during the 2020 legislative session are hereby continued in*  
22 *existence: 38-2310(c), 40-409(j)(2), 40-6007(a), 45-221(a)(52), 46-1129,*  
23 *59-29a22(b)(10) and 65-6747.*

24 Sec. 4. K.S.A. 2019 Supp. 50-6a11 is hereby amended to read as  
25 follows: 50-6a11. (a) The director is authorized to disclose to the attorney  
26 general any information received under this act, as requested by the  
27 attorney general for purposes of determining compliance with or enforcing  
28 the provisions of this act. The director and attorney general shall share  
29 with each other information received under this act and the director and  
30 the attorney general may share such information with federal agencies,  
31 attorneys general of other states or directors of taxation or their equivalents  
32 of other states, for purposes of enforcement of this act, the corresponding  
33 federal laws or the corresponding laws of other states. The director and  
34 attorney general may share the information specified under this subsection  
35 with any of the following:

36 (1) Federal, state or local agencies for the purposes of enforcement of  
37 corresponding laws of other states.

38 (2) A court, arbitrator, data clearinghouse or similar entity for the  
39 purpose of assessing compliance with or making calculations required by  
40 the master settlement agreement or agreements regarding disputes under  
41 the master settlement agreement, and with counsel for the parties or expert  
42 witnesses in any such proceeding, if the information otherwise remains  
43 confidential.

1 (b) Except as otherwise provided, any information provided to the  
2 attorney general or director for purposes of enforcement of this act may be  
3 shared between the attorney general and the director and shall not be  
4 disclosed publicly by the attorney general or the director except when  
5 necessary to facilitate compliance with and enforcement of this act.

6 (c) On a quarterly basis, and upon request made in writing by a  
7 tobacco product manufacturer, the attorney general or the director may  
8 provide the name of any stamping agent who reports selling the tobacco  
9 product manufacturer's products.

10 (d) On a quarterly basis, and upon request made in writing by a  
11 tobacco product manufacturer, a stamping agent shall provide to the  
12 requesting tobacco product manufacturer the total number of cigarettes, by  
13 brand family, which the stamping agent reported to the attorney general or  
14 director pursuant to K.S.A. 2019 Supp. 50-6a10, and amendments thereto,  
15 provided that such information provided by the stamping agent to a  
16 tobacco product manufacturer shall be limited to the brand families of that  
17 manufacturer as listed in the directory established in K.S.A. 50-6a04(b),  
18 and amendments thereto.

19 (e) Unless disclosure is authorized under this section, all information  
20 obtained by the director and disclosed to the attorney general or shared  
21 with federal agencies, attorneys general of other states or directors of  
22 taxation or their equivalents of other states for purposes of enforcement of  
23 this act, the corresponding federal laws or the corresponding laws of other  
24 states, shall be confidential. The penalties provided under K.S.A. 75-5133,  
25 and amendments thereto, shall not apply when information is lawfully  
26 disclosed pursuant to this section.

27 (f) Any tobacco sales data provided to the director, attorney general  
28 or data clearinghouse for the purpose of assessing compliance with or  
29 making calculations required by the master settlement agreement or related  
30 agreements, shall be confidential. ~~The provisions of this subsection shall  
31 expire on July 1, 2020, unless the legislature reviews this provision  
32 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.~~

33 Sec. 5. K.S.A. 2019 Supp. 9-1810, 40-223j, 45-229 and 50-6a11 are  
34 hereby repealed.

35 Sec. 6. This act shall take effect and be in force from and after its  
36 publication in the statute book.