

Charitable Privacy Act; KORA Exception Continuations; HB 2109

HB 2109 enacts the Charitable Privacy Act (Act) and continues in existence several exceptions in the Kansas Open Records Act (KORA).

Charitable Privacy Act

The Act defines “personal information” to mean any list, record, register, registry, roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, or volunteer of, or donor of financial or nonfinancial support to, a nonprofit organization.

The Act defines “nonprofit organization” to mean:

- An organization exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code;
- An organization that has submitted an application with the Internal Revenue Service for a Section 501(c) exemption; or
- An organization that is a not-for-profit business entity organized under the Kansas General Corporation Code.

The Act defines “public agency” to mean the state or any political or taxing subdivision of the state, or any office, agency, or instrumentality thereof.

The Act prohibits a public agency from:

- Requiring an individual or a nonprofit organization to provide the agency with personal information or compelling the release of personal information;
- Releasing or publicly disclosing personal information in the possession of the agency; or
- Requesting or requiring a current or prospective contractor or grant recipient to provide the public agency with a list of nonprofit organizations to which the contractor or grantee has provided financial or nonfinancial support.

The Act provides that personal information shall be confidential and not subject to KORA. This provision expires on July 1, 2027, unless the Legislature reviews and reenacts it before that date.

The Act provides that a person alleging a violation of its provisions may bring a civil action for injunctive relief or damages, and damages awarded are not less than \$7,500 for each violation of the Act’s provisions. The court is allowed to award reasonable attorney fees and costs to the complainant when the court determines such award is appropriate.

A person who knowingly violates the Act's provisions is guilty of a class C nonperson misdemeanor.

The Act specifies its provisions do not apply to:

- Reports or disclosures required under the Campaign Finance Act or the State Governmental Ethics Law;
- A valid warrant issued for personal information by a court of competent jurisdiction;
- A lawful request for discovery of personal information in litigation, under specified circumstances;
- Admission of personal information as relevant evidence before a court of competent jurisdiction, except that no court shall disclose personal information unless the court makes a finding of good cause;
- A national securities association as defined by the Securities Exchange Act of 1934, and regulations adopted thereunder;
- Any adult care home as defined in the Adult Care Home Licensure Act;
- Certain information provided to the Attorney General involving the Charitable Organizations and Solicitations Act (COSA) or the Kansas Consumer Protection Act, except that certain disclosures regarding donors are prohibited without consent of the donor;
- Information concerning staff, officers, and individuals designated to control funding needed to process and verify a request for a grant of funds from or a contract for goods and services with any public agency, except that information directly identifying an individual as a donor of financial support to a nonprofit organization is not subject to disclosure;
- A request by the Department of Revenue, the Kansas Bureau of Investigation, or the Legislature for information required for an audit, background check, examination, or investigation, only for use in connection with such proceeding or any related proceedings; and
- The collection of information related to boards of directors, officers, resident agents, incorporators, and large capital holders of an organization in any report or disclosure required by any statute to be made with the Secretary of State with the intent that it becomes a public record, except that information directly identifying an individual as a donor of financial support to a nonprofit organization is not subject to disclosure.

KORA Exception Continuations

The bill continues in existence the following exceptions to KORA:

- KSA 9-2216a, concerning licensed mortgage business annual reports;
- KSA 22-4620, concerning electronic recordings of felony custodial interrogations;
- KSA 40-2,203, concerning insurer corporate governance annual disclosures;
- KSA 40-3805, concerning insurance third-party administrator transaction records;
- KSA 40-6001 and KSA 40-6007, concerning insurance risk management and own risk and solvency assessment records;
- KSA 50-1124, concerning licensed credit services organization annual reports;
and
- KSA 50-1128, concerning State Bank Commissioner examination reports of credit services organizations.