

2019 New and Substantially Amended Kansas Open Records Exceptions

RE: K.S.A. 45-229

Exceptions enacted or substantially amended in the 2019 legislative session
and exceptions not certified in a prior year

Certified for the 2024 legislative session

Exceptions expire July 1, 2024

NEW EXCEPTIONS

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| 2-3906 | Department of agriculture; information obtained from fingerprinting and criminal history records under industrial hemp act |
| 2-3907 | State fire marshal; information obtained from fingerprinting and criminal history records under industrial hemp act |
| 41-511 | Alcoholic beverage control; reports by carriers of alcoholic liquors |
| 50-6,109a | Kansas bureau of investigation; records relating to database information under the scrap metal theft reduction act |
| 74-50,227 | Secretary of commerce; information in report to the Legislature that would be detrimental to the development of a STAR bond project or jeopardize an economic development incentive program or project |

Statutory Text of 2019 New and Substantially Amended Kansas Open Records Exceptions
(listed in K.S.A. order)

2-3906. Commercial industrial hemp plan; requirements for hemp producers; violations by hemp producers; criminal history record checks; license modification fee limit. (a) The Kansas department of agriculture, in consultation with the governor and attorney general, shall submit a plan to the United States department of agriculture under which the Kansas department of agriculture will monitor and regulate the commercial production of industrial hemp within the state in accordance with 7 U.S.C. § 1621 et seq. and any rules and regulations adopted thereunder.

(b) Such plan shall include the following:

(1) A procedure to maintain relevant information regarding land on which industrial hemp is produced, including a legal description of the land, for a period of not less than three calendar years;

(2) a procedure for testing, using post-decarboxylation or other similarly reliable methods, the delta-9 tetrahydrocannabinol concentration levels of industrial hemp produced;

(3) a procedure for the effective disposal of industrial hemp and hemp products that are found to be in violation of this act;

(4) any licensing requirements or other rules and regulations deemed necessary by the Kansas department of agriculture for the proper monitoring and regulation of industrial hemp cultivation and production for commercial purposes, including, but not limited to:

(A) Fees for licenses, license renewals and other necessary expenses to defray the cost of implementing and operating the plan on an ongoing basis; and

(B) standards for authorized seed or clone plants;

(5) a procedure for the creation of documentation that any person in possession of unprocessed industrial hemp may use to prove to any law enforcement officer that such industrial hemp was lawfully grown under this section;

(6) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that industrial hemp is not produced in violation of this act; and

(7) any other procedures necessary to meet the requirements set forth in 7 U.S.C. § 1621 et seq. and any rules and regulations adopted thereunder.

(c)(1) A hemp producer who negligently violates this section or any rules and regulations adopted hereunder shall not be subject to any state or local criminal enforcement action, but shall comply with the following corrective actions as applicable:

(A) A reasonable date by which the hemp producer shall correct the negligent violation; and

(B) a requirement that the hemp producer shall periodically report to the Kansas department of agriculture on the hemp producer's compliance with this section and rules and regulations adopted hereunder, for a period of not less than the next two calendar years.

(2) A hemp producer who negligently violates this section or any rules and regulations adopted hereunder three times in a five-year period shall be ineligible to produce industrial hemp for a period of five years beginning on the date of the third violation.

(3) The Kansas department of agriculture shall immediately report any violation by a hemp producer with a greater culpable mental state than negligence to the attorney general and such hemp producer shall not be subject to the exemption in subsection (c)(1).

(d) Any individual otherwise eligible to become a licensed hemp producer shall not be eligible to produce industrial hemp if such individual has submitted any materially false information in any application to become a licensed hemp producer.

(e) (1) The department shall require, as a qualification for initial or continuing licensure, all individuals seeking a license or license renewal as a hemp producer under this section to be fingerprinted and to submit to a state and national criminal history record check. The fingerprints shall be used to identify the individual and to determine whether the individual has a record of criminal history in this state or any other jurisdiction. The department is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The department may use the information obtained from fingerprinting and the criminal history record check for purposes of verifying the identification of the individual and for making an official determination of the qualifications for initial or continuing licensure as a hemp producer pursuant to this section and rules and regulations promulgated hereunder. Disclosure or use of any information received by the department for any purpose other than the purposes provided for in the commercial industrial hemp act shall be a class A misdemeanor and shall constitute grounds for removal from office or termination of employment.

(2) An individual who has been convicted of a felony violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a substantially similar offense in another jurisdiction, within the immediately preceding 10 years, shall be disqualified from initial or continuing licensure as a hemp producer under this section.

(3) The Kansas bureau of investigation may charge a reasonable fee for conducting a criminal history record check.

(4) The individual seeking a license or license renewal as a hemp producer under this section shall pay the costs of fingerprinting and the state and national criminal history record checks.

(f) The secretary of agriculture shall promulgate rules and regulations to implement the plan submitted to the United States department of agriculture and to otherwise effectuate the provisions of this section.

(g) Upon the repeal of 7 U.S.C. § 5940 or either the adoption of a federal plan by the United States department of agriculture that allows for the cultivation and production of industrial hemp for commercial purposes within the state or upon the adoption of rules and regulations by the Kansas secretary of agriculture that establish the cultivation and production of industrial hemp for commercial purposes within the state, the Kansas department of agriculture may discontinue the industrial hemp research program established pursuant to K.S.A. 2-3902, and amendments thereto.

(h) Any modification fee established by the department for any requested change to a license that was previously issued by the department under this section shall not exceed \$50.

(i) Any licensing or other fees collected pursuant to this section and any rules and regulations adopted hereunder shall be deposited in the commercial industrial hemp act licensing fee fund established by K.S.A. 2-3903, and amendments thereto, for all costs of the administration of the commercial production of industrial hemp.

(j) This section shall be a part of and supplemental to the commercial industrial hemp act, K.S.A. 2-3901 et seq., and amendments thereto.

2-3907. Requirements for hemp processors; registration; penalties; criminal history record checks. (a) The state fire marshal shall create and maintain a registry of all hemp processors operating within the state of Kansas.

(b) Any person engaging in the processing of industrial hemp shall register annually with the state fire marshal prior to processing industrial hemp.

(c) Registration shall expire annually on June 30. Registration fees, not to exceed \$1,000, shall be established pursuant to rules and regulations adopted by the state fire marshal.

(d) Any person required to register as a hemp processor pursuant to this section shall submit an annual registration application on a form provided by the state fire marshal that shall include, at a minimum:

(1) The full legal name, date of birth, address and telephone number of the applicant. If the applicant is not an individual, the same information shall also be provided for all owners and the individual responsible for all industrial hemp processing and related activities performed by the applicant;

(2) the physical location of any premises that will serve as a part of the applicant's industrial hemp processing operations;

(3) a brief description of the industrial hemp processing methods, activities and products planned for production; and

(4) certification that such applicant has fully complied with the fingerprinting and criminal history record check requirements contained in this section, if applicable. Any such applicant who provides a false statement of compliance with such requirements shall be guilty of a class C nonperson misdemeanor.

(e) The state fire marshal shall provide an updated list of all hemp processors to the Kansas bureau of investigation and to the county sheriff in each county where a hemp processor is located as often as is reasonably required or requested.

(f) Fees collected pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the fire marshal fee fund.

(g) It shall be unlawful for any person to operate as a hemp processor without valid registration. Upon a first conviction for a violation of this subsection, a person shall be guilty of a class A nonperson misdemeanor. On a second or subsequent conviction for a violation of this subsection, a person shall be guilty of a severity level 9, nonperson felony.

(h) (1) The state fire marshal shall require all individuals applying for a hemp processor registration who seek to engage in the extraction of cannabinoids from industrial hemp, including the disposal of such cannabinoids, pursuant to the commercial industrial hemp act to be fingerprinted and submit to a state and national criminal history record check. The state fire marshal may require individuals who are current employees or applying to be employees of a hemp processor to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the individual and to determine whether the individual has a record of criminal history in Kansas or any other jurisdiction. The state fire marshal is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state fire marshal may use the information obtained from fingerprinting and the criminal history record check for purposes of verifying the identification of the individual and for making an official determination of the qualification and fitness of the individual to process industrial hemp pursuant to this act and rules and regulations promulgated hereunder. **Disclosure or use of any criminal history information for any purpose other than the purposes provided for in the commercial industrial hemp act shall be a class A nonperson misdemeanor and shall constitute grounds for removal from office or termination of employment.**

(2) An individual who has been convicted of a felony violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a substantially similar offense in another jurisdiction, within the immediately preceding 10 years, shall be disqualified from processing industrial hemp under this section.

(3) The state fire marshal may deny registration to any individual who has violated subsection (g) or any other provision of the commercial industrial hemp act.

(4) The Kansas bureau of investigation may charge a reasonable fee for conducting a criminal history record check.

(5) The individual seeking authorization to extract or dispose of cannabinoids from industrial hemp pursuant to this section shall pay the costs of fingerprinting and the state and national criminal history record check.

(6) Local and state law enforcement officers and agencies shall assist in taking and processing an individual's fingerprints as authorized by this section.

(i) (1) The state fire marshal shall promulgate rules and regulations to carry out the provisions of this section, including, but not limited to, rules and regulations on:

(A) The denial, conditioning, renewal or revocation of registration;

(B) the creation of multiple classes of registrations based upon the scope of hemp processing activities of an applicant;

(C) construction and safety standards for processing facilities;

(D) security measures;

(E) inventory control;

(F) maintenance of records;

(G) access to and inspection of records and processing facilities by the state fire marshal and law enforcement agencies;

(H) the collection and disposal of any cannabinoids extracted during the processing of industrial hemp that cannot be lawfully sold in this state; and

(I) the transportation of industrial hemp or hemp products.

(2) The state fire marshal may grant an exemption from the application of a specific requirement of rules and regulations promulgated under paragraph (1), unless the state fire marshal determines that the condition, structure or activity that is or would be in noncompliance with such requirement would constitute a distinct hazard to life or property. Any such exemption shall be granted only upon written request of a registrant or applicant for registration that clearly demonstrates that enforcement of a specific requirement of a rule and regulation will cause unnecessary hardship as determined by the state fire marshal.

(j) The Kansas department of agriculture and the state fire marshal shall coordinate with one another, including providing any requested information from the other, regarding industrial hemp licensees, hemp processors and hemp processor applicants necessary for the enforcement of any laws or rules and regulations relating to industrial hemp.

(k) This section shall be a part of and supplemental to the commercial industrial hemp act, K.S.A. 2-3901 et seq., and amendments thereto.

41-511. Reports of alcoholic liquor shipped into the state; contents; penalties; confidentiality. (a) Every express company or other common carrier that delivers any alcoholic liquors from outside the state for delivery in the state to consumers shall prepare and file monthly with the director of alcoholic beverage control a report of known alcoholic liquors shipped by such carrier. The report shall contain: (1) The name of the express company or other common carrier that delivers the alcoholic liquors; (2) the period of time covered by the report; (3) the name and business address of the consignor of such alcoholic liquors; (4) the weight of the package delivered to each consignee; (5) a unique tracking number; and (6) the date of delivery. Except as provided for in subsection (d), all reports submitted pursuant to this subsection shall be open records available for public inspection in accordance with the open records act.

(b) Upon request by the director, any additional records supporting the report shall be made available to the director by any express company or other common carrier. Any records containing information relating to such reports shall be kept and preserved for a period of two years unless the destruction of such records is authorized in writing by the director.

(c) Any express company or other common carrier that willfully fails, neglects or refuses to file any report pursuant to subsection (a) shall be subject to a civil penalty of not more than \$500.

(d) If any of the reports required by subsection (a) include any information relating to the name or address of a consignee of any alcoholic liquors, such information shall be redacted from the reports that are made available for public inspection. The provisions of this subsection providing for the confidentiality of certain public records shall expire on July 1, 2024, unless the legislature reviews and reenacts such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, 2024.

(e) The provisions of this section shall be a part of and supplemental to the Kansas liquor control act.

50-6,109a. Implementation, administration and enforcement by attorney general and Kansas bureau of investigation; rules and regulations; scrap metal theft reduction fee fund and scrap metal data repository fund; database, requirements; report to legislature. (a) The attorney general is hereby given jurisdiction and authority over all matters involving the implementation, administration and enforcement of the provisions of the scrap metal theft reduction act including to:

- (1) Employ or appoint agents as necessary to implement, administer and enforce the act;
- (2) contract;
- (3) expend funds;
- (4) license and discipline;
- (5) investigate;
- (6) issue subpoenas;
- (7) keep statistics; and
- (8) conduct education and outreach programs to promote compliance with the act.

(b) In accordance with the rules and regulations filing act, the attorney general is hereby authorized to adopt rules and regulations necessary to implement the provisions of the scrap metal theft reduction act.

(c) There is hereby established in the state treasury the scrap metal theft reduction fee fund to be administered by the attorney general. All moneys received by the attorney general from fees, charges or penalties collected under the provisions of the scrap metal theft reduction act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, who shall deposit the entire amount thereof in the state treasury to the credit of the scrap metal theft reduction fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee. All moneys credited to the scrap metal theft reduction fee fund shall be expended for the administration of the duties, functions and operating expenses incurred under the provisions of the scrap metal theft reduction act.

(d) There is hereby established in the state treasury the scrap metal data repository fund to be administered by the director of the Kansas bureau of investigation. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the Kansas bureau of investigation or the director's designee. All moneys credited to the scrap metal data repository fund shall be expended for the administration of the duties, functions and operating expenses incurred under the provisions of the scrap metal theft reduction act.

(e) The attorney general may transfer any moneys from the scrap metal theft reduction fee fund to the scrap metal data repository fund. The attorney general shall certify each such transfer to the director of accounts and reports and shall transmit a copy of each such certification to the director of the budget and the director of legislative research.

(f) On July 1, 2020, the Kansas bureau of investigation shall establish and maintain a database which shall be a central repository for the information required to be provided under K.S.A. 2023 Supp. 50-6,110, and amendments thereto. The database shall be maintained for the purpose of providing information to law enforcement and for any other purpose deemed necessary by the attorney general to implement and enforce the provisions of the scrap metal theft reduction act.

(g) The information maintained in such database by the Kansas bureau of investigation, or by any entity contracting with the Kansas bureau of investigation, submitted to, maintained or stored as part of the system may be provided to the attorney general and shall:

(1) Be confidential, shall only be used for investigatory, evidentiary or analysis purposes related to criminal violations of city, state or federal law and shall only be released to law enforcement in response to an official investigation or as permitted in subsection (f); and

(2) not be a public record and shall not be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this subsection shall expire on July 1, 2024, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto.

(h) On or before February 1, 2021, and annually on or before February 1 thereafter, the attorney general shall submit a report to the president of the senate, the speaker of the house of representatives and the standing committees on judiciary in the senate and the house of representatives on the implementation, administration and enforcement of the provisions of the scrap metal theft reduction act.

(i) Any entity contracting with the attorney general or the Kansas bureau of investigation to provide or maintain the database required by this section shall not require a scrap metal dealer to contract with such entity for the authority to release proprietary or confidential data, including, but not limited to, customer information. Such entity shall not charge any fee to the scrap metal dealer as a condition of providing information to the database as required by the scrap metal theft reduction act, including, but not limited to, a fee for electronic submission of information.

(j) A scrap metal dealer providing information to the database as required by the scrap metal theft reduction act shall not be subject to civil liability for any claim arising from the negligence or omission by the state of Kansas or any contracting entity in the collection, storing or release of information provided by such scrap metal dealer to the database.

74-50,227. Format; internet access; information to be published; exceptions, reports to legislative committees, confidentiality under Kansas open records and Kansas open meetings acts. (a) The department of commerce shall collect incentive data from economic development incentive programs that provide more than \$50,000 of annual incentives from administering agencies as required by this section. Such data shall be collected from administering agencies and be stored in a database that is available to the public in a digital format. The database shall contain information from multiple years and must be searchable, printable and available to access over the internet on the department of commerce's website on a permanently accessible web page that may be accessed via a conspicuous link to that web page placed on the front page of the department's website. Information included in the database shall be updated by the department of commerce on an annual basis and such update shall be completed prior to the end of the following fiscal year in which such incentive was earned or distributed.

(b) The database required to be created by subsection (a) shall contain the following information or shall contain a link by which the user can access such information:

(1) User information for each economic development incentive program, including the:

(A) Names and addresses, including county, of recipients receiving benefits from the program and, for sales tax and revenue bonds issued under the STAR bond financing act, K.S.A. 12-17,162 et seq., and amendments thereto, the names of principals and officers for each project developer;

(B) annual amount of incentives claimed, distributed to or received by each recipient and any remaining balance of the total amount of incentives claimed or awarded to the recipient;

(C) qualification criteria for the economic development incentive program, including, if available, qualification criteria specific to the recipient. Qualification criteria shall include, but not be limited to, any requirements regarding the number of jobs created or the amount of initial or annual capital improvement;

(D) required benchmarks for continued participation in the economic development incentive program and progress made toward the benchmarks; and

(E) years for which the recipient has received benefits under the economic development incentive program;

(2) descriptive information for each economic development program, which shall include:

(A) A description and history of the program, including its inception date;

(B) the purpose or goals of the program and the criteria for qualification;

(C) applications for the program, if any, and relevant resources or contacts;

(D) the program cost and return on investment, including assumptions used to calculate the return on investment;

(E) the program compliance rate;

(F) annual reports, if required by statute; and

(G) evaluations of the program, if any; and

(3) annual data, which shall be organized by recipient, county and program and shall include the:

(A) Total amount of annual incentives from a program claimed or received by a recipient;

(B) total amount of incentives received by recipients in each county; and

(C) total amount of incentives distributed by each program.

(c) Data collected pursuant to this section must be aggregated and provided by program, recipient and county.

(d) Except as otherwise provided in this subsection, and notwithstanding any information publication requirements listed in this section, no information shall be disclosed by the secretary of commerce under this section if such disclosure would:

- (1) Violate any federal law;
- (2) violate the confidentiality provisions of any agreement executed before July 1, 2019;
- (3) in the discretion of the secretary of commerce, be detrimental to the development of a STAR bond project or jeopardize an economic development incentive program or project; or
- (4) disclose the names or other personally identifying information of individuals who have made contributions or investments pursuant to the provisions of an economic development incentive program for the purpose of receiving a tax credit.

Information that is otherwise publicly available shall not be considered confidential and shall be subject to publication as provided in this section.

(e) (1) The secretary of commerce shall report in writing to the standing committee on commerce, labor and economic development of the house of representatives and the standing committee on commerce of the senate any information not disclosed by the secretary pursuant to subsection (d)(3) and the reason the information was not disclosed. Any testimony or oral presentation before the committee or discussion by the committee with respect to the report shall be considered the discussion of data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships pursuant to the provisions of K.S.A. 75-4319(b)(4), and amendments thereto, for purposes of the Kansas open meetings act, and shall be closed to the public.

(2) The report of the secretary pursuant to subsection (e)(1) shall be confidential and shall not be subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this paragraph shall expire on July 1, 2024, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2024.