

HOUSE BILL No. 2030

By Special Committee on Judiciary

1-18

1 AN ACT concerning open records; relating to exceptions to disclosure;
2 amending K.S.A. 2010 Supp. 9-513c, 40-2,118, 40-4913 and 45-229
3 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2010 Supp. 9-513c is hereby amended to read as
7 follows: 9-513c. (a) Notwithstanding any other provision of law, all
8 information or reports obtained by the commissioner in the course of
9 licensing or examining a person engaged in money transmission business
10 shall be confidential and may not be disclosed by the commissioner
11 except as provided in subsection (b) or (c).

12 (b) The commissioner shall have the authority to share supervisory
13 information, including examinations, with other state or federal agencies
14 having regulatory authority over the person's money transmission
15 business and shall have the authority to conduct joint examinations with
16 other regulatory agencies.

17 (c) The commissioner may provide for the release of information to
18 law enforcement agencies or prosecutorial agencies or offices who shall
19 maintain the confidentiality of the information.

20 (d) Nothing shall prohibit the commissioner from releasing to the
21 public a list of persons licensed or their agents or from releasing
22 aggregated financial data on such persons.

23 (e) The provisions of subsection (a) shall expire on July 1,
24 ~~2011~~2016, unless the legislature acts to reauthorize such provisions. The
25 provisions of subsection (a) shall be reviewed by the legislature prior to
26 July 1, ~~2011~~2016.

27 Sec. 2. K.S.A. 2010 Supp. 40-2,118 is hereby amended to read as
28 follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance
29 act" means an act committed by any person who, knowingly and with
30 intent to defraud, presents, causes to be presented or prepares with
31 knowledge or belief that it will be presented to or by an insurer, purported
32 insurer, broker or any agent thereof, any written statement as part of, or in
33 support of, an application for the issuance of, or the rating of an insurance
34 policy for personal or commercial insurance, or a claim for payment or
35 other benefit pursuant to an insurance policy for commercial or personal
36 insurance which such person knows to contain materially false

1 information concerning any fact material thereto; or conceals, for the
2 purpose of misleading, information concerning any fact material thereto.

3 (b) An insurer that has knowledge or a good faith belief that a
4 fraudulent insurance act is being or has been committed shall provide to
5 the commissioner, on a form prescribed by the commissioner, any and all
6 information and such additional information relating to such fraudulent
7 insurance act as the commissioner may require.

8 (c) Any other person that has knowledge or a good faith belief that a
9 fraudulent insurance act is being or has been committed may provide to
10 the commissioner, on a form prescribed by the commissioner, any and all
11 information and such additional information relating to such fraudulent
12 insurance act as the commissioner may request.

13 (d) (1) Each insurer shall have antifraud initiatives reasonably
14 calculated to detect fraudulent insurance acts. Antifraud initiatives may
15 include: fraud investigators, who may be insurer employees or
16 independent contractors; or an antifraud plan submitted to the
17 commissioner no later than July 1, 2007. Each insurer that submits an
18 antifraud plan shall notify the commissioner of any material change in the
19 information contained in the antifraud plan within 30 days after such
20 change occurs. Such insurer shall submit to the commissioner in writing
21 the amended antifraud plan.

22 The requirement for submitting any antifraud plan, or any amendment
23 thereof, to the commissioner shall expire on the date specified in
24 paragraph (2) of this subsection unless the legislature reviews and
25 reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229, and
26 amendments thereto.

27 (2) Any antifraud plan, or any amendment thereof, submitted to the
28 commissioner for informational purposes only shall be confidential and
29 not be a public record and shall not be subject to discovery or subpoena
30 in a civil action unless following an in camera review, the court
31 determines that the antifraud plan is relevant and otherwise admissible
32 under the rules of evidence set forth in article 4, of chapter 60 of the
33 Kansas Statutes Annotated, and amendments thereto. The provisions of
34 this paragraph shall expire on July 1, ~~2011~~2016, unless the legislature
35 reviews and reenacts this provision pursuant to K.S.A. 45-229, and
36 amendments thereto, prior to July 1, ~~2011~~2016.

37 (e) Except as otherwise specifically provided in K.S.A. 21-3718 ~~and~~
38 ~~amendments thereto~~ and K.S.A. 44-5,125, and amendments thereto, a
39 fraudulent insurance act shall constitute a severity level 6, nonperson
40 felony if the amount involved is \$25,000 or more; a severity level 7,
41 nonperson felony if the amount is at least \$5,000 but less than \$25,000; a
42 severity level 8, nonperson felony if the amount is at least \$1,000 but less
43 than \$5,000; and a class C nonperson misdemeanor if the amount is less

1 than \$1,000. Any combination of fraudulent acts as defined in subsection
2 (a) which occur in a period of six consecutive months which involves
3 \$25,000 or more shall have a presumptive sentence of imprisonment
4 regardless of its location on the sentencing grid block.

5 (f) In addition to any other penalty, a person who violates this statute
6 shall be ordered to make restitution to the insurer or any other person or
7 entity for any financial loss sustained as a result of such violation. An
8 insurer shall not be required to provide coverage or pay any claim
9 involving a fraudulent insurance act.

10 (g) This act shall apply to all insurance applications, ratings, claims
11 and other benefits made pursuant to any insurance policy.

12 Sec. 3. K.S.A. 2010 Supp. 40-4913 is hereby amended to read as
13 follows: 40-4913. (a) (1) Each insurer shall notify the commissioner
14 whenever such insurer terminates a business relationship with an
15 insurance agent if:

16 (A) The termination is for cause;

17 (B) such insurance agent has committed any act which would be in
18 violation of any provision of subsection (a) of K.S.A. 2010 Supp. 40-
19 4909, and amendments thereto; or

20 (C) such insurer has knowledge that such insurance agent is engaged
21 in any activity which would be in violation of any provision of subsection
22 (a) of K.S.A. 2010 Supp. 40-4909, and amendments thereto.

23 (2) The notification shall:

24 (A) Be made in a format prescribed by the commissioner;

25 (B) be submitted to the commissioner within 30 days of the date of
26 the termination of the business relationship; and

27 (C) contain:

28 (i) The name of the insurance agent; and

29 (ii) the reason for the termination of the business relationship with
30 such insurer.

31 (3) Upon receipt of a written request from the commissioner, each
32 insurer shall provide to the commissioner any additional data, documents,
33 records or other information concerning the termination of the insurer's
34 business relationship with such agent.

35 (4) Whenever an insurer discovers or obtains additional information
36 which would have been reportable under paragraph (1) of this subsection,
37 the insurer shall forward such additional information to the commissioner
38 within 30 days of its discovery.

39 (b) (1) Each insurer shall notify the commissioner whenever such
40 insurer terminates a business relationship with an insurance agent for any
41 reason not listed in subsection (a).

42 (2) The notification shall:

43 (A) Be made in a format prescribed by the commissioner;

1 (B) be submitted to the commissioner within 30 days of the date of
2 the termination of the business relationship.

3 (3) Upon receipt of a written request from the commissioner, each
4 insurer shall provide to the commissioner any additional data, documents,
5 records or other information concerning the termination of the insurer's
6 business relationship with such agent.

7 (4) Whenever an insurer discovers or obtains additional information
8 which would have been reportable under paragraph (1) of this subsection,
9 the insurer shall forward such additional information to the commissioner
10 within 30 days of its discovery.

11 (c) For the purposes of this section, the term "business relationship"
12 shall include any appointment, employment, contract or other relationship
13 under which such insurance agent represents the insurer.

14 (d) (1) No insurance entity, or any agent or employee thereof acting
15 on behalf of such insurance entity, regulatory official, law enforcement
16 official or the insurance regulatory official of another state who provides
17 information to the commissioner in good faith pursuant to this section
18 shall be subject to a civil action for damages as a result of reporting such
19 information to the commissioner. For the purposes of this section,
20 insurance entity shall mean any insurer, insurance agent or organization
21 to which the commissioner belongs by virtue of the commissioner's
22 office.

23 (2) Any document, material or other information in the control or
24 possession of the department that is furnished by an insurance entity or an
25 employee or agent thereof acting on behalf of such insurance entity, or
26 obtained by the insurance commissioner in an investigation pursuant to
27 this section shall be kept confidential by the commissioner. Such
28 information shall not be made public or subject to subpoena, other than
29 by the commissioner and then only for the purpose of enforcement
30 actions taken by the commissioner pursuant to this act or any other
31 provision of the insurance laws of this state.

32 (3) Neither the commissioner nor any person who received
33 documents, materials or other information while acting under the
34 authority of the commissioner shall be required to testify in any private
35 civil action concerning any confidential documents, materials or
36 information subject to paragraph (2).

37 (4) The commissioner may share or exchange any documents,
38 materials or other information, including confidential and privileged
39 documents referred to in paragraph (2) of subsection (d), received in the
40 performance of the commissioner's duties under this act, with:

41 (A) The NAIC;

42 (B) other state, federal or international regulatory agencies; and

43 (C) other state, federal or international law enforcement authorities.

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

6 (B) No waiver of an existing privilege or claim of confidentiality in
7 the documents, materials or information shall occur as a result of
8 disclosure to the commissioner under this section or as a result of sharing
9 as authorized by paragraph (1) of subsection (d).

10 (6) The commissioner of insurance is hereby authorized to adopt
11 such rules and regulations establishing protocols governing the exchange
12 of information as may be necessary to implement and carry out the
13 provisions of this act.

14 (e) The provisions of paragraph (2) of subsection (d) shall expire on
15 July 1, ~~2006~~2016, unless the legislature acts to reenact such provision.
16 The provisions of paragraph (2) of subsection (d) shall be reviewed by
17 the legislature prior to July 1, ~~2006~~2016.

18 (f) For the purposes of this section, insurance entity shall mean any
19 insurer, insurance agent or organization to which the commissioner
20 belongs by virtue of the commissioner's office.

21 (g) Any insurance entity, including any authorized representative of
22 such insurance entity, that fails to report to the commissioner as required
23 under the provisions of this section or that is found by a court of
24 competent jurisdiction to have failed to report in good faith, after notice
25 and hearing, may have its license or certificate of authority suspended or
26 revoked and may be fined in accordance with K.S.A. 2010 Supp. 40-4909
27 and amendments thereto.

28 Sec. 4. K.S.A. 2010 Supp. 45-229 is hereby amended to read as
29 follows: 45-229. (a) It is the intent of the legislature that exceptions to
30 disclosure under the open records act shall be created or maintained only
31 if:

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

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

36 (3) the public record affects confidential information.

37 The maintenance or creation of an exception to disclosure must be
38 compelled as measured by these criteria. Further, the legislature finds
39 that the public has a right to have access to public records unless the
40 criteria in this section for restricting such access to a public record are
41 met and the criteria are considered during legislative review in connection
42 with the particular exception to disclosure to be significant enough to
43 override the strong public policy of open government. To strengthen the

1 policy of open government, the legislature shall consider the criteria in
2 this section before enacting an exception to disclosure.

3 (b) Subject to the provisions of subsection (h), all exceptions to
4 disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and
5 any new exception to disclosure or substantial amendment of an existing
6 exception shall expire on July 1 of the fifth year after enactment of the
7 new exception or substantial amendment, unless the legislature acts to
8 continue the exception. A law that enacts a new exception or substantially
9 amends an existing exception shall state that the exception expires at the
10 end of five years and that the exception shall be reviewed by the
11 legislature before the scheduled date.

12 (c) For purposes of this section, an exception is substantially
13 amended if the amendment expands the scope of the exception to include
14 more records or information. An exception is not substantially amended if
15 the amendment narrows the scope of the exception.

16 (d) This section is not intended to repeal an exception that has been
17 amended following legislative review before the scheduled repeal of the
18 exception if the exception is not substantially amended as a result of the
19 review.

20 (e) In the year before the expiration of an exception, the revisor of
21 statutes shall certify to the president of the senate and the speaker of the
22 house of representatives, by July 15, the language and statutory citation
23 of each exception which will expire in the following year which meets the
24 criteria of an exception as defined in this section. Any exception that is
25 not identified and certified to the president of the senate and the speaker
26 of the house of representatives is not subject to legislative review and
27 shall not expire. If the revisor of statutes fails to certify an exception that
28 the revisor subsequently determines should have been certified, the
29 revisor shall include the exception in the following year's certification
30 after that determination.

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

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

38 (1) Is required by federal law;

39 (2) applies solely to the legislature or to the state court system.

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

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

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

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

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

6 (2) an exception may be created or maintained only if it serves an
7 identifiable public purpose and may be no broader than is necessary to
8 meet the public purpose it serves. An identifiable public purpose is served
9 if the legislature finds that the purpose is sufficiently compelling to
10 override the strong public policy of open government and cannot be
11 accomplished without the exception and if the exception:

12 (A) Allows the effective and efficient administration of a
13 governmental program, which administration would be significantly
14 impaired without the exception;

15 (B) protects information of a sensitive personal nature concerning
16 individuals, the release of which information would be defamatory to
17 such individuals or cause unwarranted damage to the good name or
18 reputation of such individuals or would jeopardize the safety of such
19 individuals. Only information that would identify the individuals may be
20 excepted under this paragraph; or

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

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

32 (i) Exceptions contained in the following statutes as continued in
33 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas
34 and exceptions contained in the following statutes as certified by the
35 revisor of statutes to the president of the senate and the speaker of the
36 house of representatives pursuant to subsection (e) of this section during
37 2009 are hereby continued in existence until July 1, 2015, at which time
38 such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-
39 2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-
40 4516, 16-715, 16a-2-304, 17-1312e, 17-2036, 17-2227, 17-5832, 17-
41 7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-
42 4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405,
43 34-251, 38-1664, 38-2212, 39-709b, 39-719e, 39-934, 39-1434, 39-1704,

1 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956,
 2 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-
 3 3613, 40-3805, 40-4205, 40-5301, 44-510j, 44-550b, 44-594, 44-635, 44-
 4 714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43), (a)(45)
 5 and (a)(46) of 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849,
 6 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 58-4114, 59-2135, 59-2802,
 7 59-2979, 59-29b79, 60-3333, 60-3336, 60-3351, 65-102b, 65-118, 65-
 8 119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a,
 9 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-
 10 445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-
 11 1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-
 12 3447, 65-34,108, 65-34,126, 65-4019, 65-4922, 65-4925, 65-5602, 65-
 13 5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804,
 14 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-
 15 972a, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903,
 16 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-
 17 7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 74-99d05,
 18 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133,
 19 75-5266, 75-53,105, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-
 20 493, 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420,
 21 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

22 (j) Exceptions contained in the following statutes *as continued in*
 23 *existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas*
 24 *and exceptions contained in the following statutes* as certified by the
 25 revisor of statutes to the president of the senate and the speaker of the
 26 house of representatives pursuant to subsection (e) of this section ~~on June~~
 27 ~~1, 2005~~ *during 2010*, are hereby continued in existence until July 1,
 28 ~~2011~~ *2016*, at which time such exceptions shall expire: 1-501, 9-1303, 12-
 29 4516a, ~~38-1692~~, *12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311,*
 30 *38-2326, 39-970, 40-4913, 44-1132, 60-3333, 65-525, 65-5117, 65-6016,*
 31 *65-6017 and, 65-6154, 71-218, 74-7508, 75-457, 75-712c, 75-723 and*
 32 *75-7c06.*

33 (k) Exceptions contained in the following statutes as certified by the
 34 revisor of statutes to the president of the senate and the speaker of the
 35 house of representatives pursuant to subsection (e) during 2006, 2007 and
 36 2008 are hereby continued in existence until July 1, 2014, at which time
 37 such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-
 38 17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-
 39 5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46)
 40 and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233,
 41 74-50,184, 74-8134, 74-99b06 and 82a-2210.

42 Sec. 5. K.S.A. 2010 Supp. 9-513c, 40-2,118, 40-4913 and 45-229
 43 are hereby repealed.

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