

SENATE BILL No. 295

By Committee on Judiciary

1-18

1 AN ACT concerning legislative review of exceptions to disclosure of
2 public records; amending K.S.A. 2017 Supp. 9-513c, 40-5007a, 40-
3 5009a, 40-5012a and 45-229 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2017 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 and prepared by the commissioner in the
9 course of licensing or examining a person engaged in money transmission
10 business shall be confidential and may not be disclosed by the
11 commissioner except as provided in subsection (c) or (d).

12 (b) (1) All confidential information shall be the property of the state
13 of Kansas and shall not be subject to disclosure except upon the written
14 approval of the state bank commissioner.

15 (2) The provisions of this subsection shall expire on June 30, 2019,
16 unless the legislature acts to reenact such provisions. The provisions of this
17 paragraph shall be reviewed by the legislature prior to July 1, 2019.

18 (c) (1) The commissioner shall have the authority to share
19 supervisory information, including reports of examinations, with other
20 state or federal agencies having regulatory authority over the person's
21 money transmission business and shall have the authority to conduct joint
22 examinations with other regulatory agencies.

23 (2)-(A) The requirements under any federal or state law regarding the
24 confidentiality of any information or material provided to the nationwide
25 multi-state licensing system, and any privilege arising under federal or
26 state law, including the rules of any federal or state court, with respect to
27 such information or material, shall continue to apply to such information
28 or material after the information or material has been disclosed to the
29 system. Such information and material may be shared with all state and
30 federal regulatory officials with financial services industry oversight
31 authority without the loss of confidentiality protections provided by
32 federal and state laws.

33 ~~(B) The provisions of this paragraph shall expire July 1, 2018, unless~~
34 ~~the legislature acts to reenact such provisions. The provisions of this~~
35 ~~section shall be reviewed by the legislature prior to July 1, 2018.~~

36 (d) The commissioner may provide for the release of information to

1 law enforcement agencies or prosecutorial agencies or offices who shall
2 maintain the confidentiality of the information.

3 (e) The commissioner may accept a report of examination or
4 investigation from another state or federal licensing agency, in which the
5 accepted report is an official report of the commissioner. Acceptance of an
6 examination or investigation report does not waive any fee required by this
7 act.

8 (f) Nothing shall prohibit the commissioner from releasing to the
9 public a list of persons licensed or their agents or from releasing
10 aggregated financial data on such persons.

11 (g) The provisions of subsection (a) shall expire on July 1, 2021,
12 unless the legislature acts to reauthorize such provisions. The provisions of
13 subsection (a) shall be reviewed by the legislature prior to July 1, 2021.

14 Sec. 2. K.S.A. 2017 Supp. 40-5007a is hereby amended to read as
15 follows: 40-5007a. (a) (1) The commissioner may conduct an examination
16 under this act of a licensee as often as the commissioner in such
17 commissioner's sole discretion deems appropriate.

18 (2) For purposes of completing an examination of a licensee under
19 this act, the commissioner may examine or investigate any person, or the
20 business of any person, insofar as the examination or investigation, in the
21 sole discretion of the commissioner, is necessary or material to the
22 examination of the licensee.

23 (3) In lieu of an examination under this act of any foreign or alien
24 licensee licensed in this state, the commissioner, at the commissioner's
25 discretion, may accept an examination report on the licensee as prepared
26 by the commissioner for the licensee's state of domicile or port-of-entry
27 state.

28 (b) (1) Any person required to be licensed by this act shall for five
29 years retain copies of all:

30 (A) Proposed, offered or executed contracts, underwriting documents,
31 policy forms, and applications from the date of the proposal, offer or
32 execution of the contract, whichever is later;

33 (B) all checks, drafts or other evidence and documentation related to
34 the payment, transfer, deposit or release of funds from the date of the
35 transaction; and

36 (C) all other records and documents related to the requirements of
37 this act.

38 (2) This section shall not relieve any person licensed under this act of
39 the obligation to produce these documents and provide copies thereof to
40 the commissioner after the retention period has expired if the person has
41 retained such documents.

42 (3) Records required to be retained by this section must be legible and
43 complete and may be retained in paper, photograph, microprocess,

1 magnetic, mechanical, electronic media or by any process that accurately
2 reproduces or forms a durable medium for the reproduction of a record.

3 (c) (1) Upon determining that an examination should be conducted,
4 the commissioner shall issue an examination warrant appointing one or
5 more examiners to perform the examination and instructing them as to the
6 scope of the examination. The commissioner may also employ such other
7 guidelines or procedures as the commissioner may deem appropriate.

8 (2) Every licensee or person from whom information is sought, its
9 officers, directors and agents shall provide to the examiners timely,
10 convenient and free access at all reasonable hours at its offices to all
11 books, records, accounts, papers, documents, assets and computer or other
12 recordings relating to the property, assets, business and affairs of the
13 licensee being examined. The officers, directors, employees and agents of
14 the licensee or person shall facilitate the examination and aid in the
15 examination so far as it is in their power to do so. The refusal of a licensee,
16 by its officers, directors, employees or agents, to submit to examination or
17 to comply with any reasonable written request of the commissioner shall
18 be grounds for suspension or refusal of, or nonrenewal of any license or
19 authority held by the licensee to engage in the viatical settlement business
20 or other business subject to the commissioner's jurisdiction. Any
21 proceedings for suspension, revocation or refusal of any license or
22 authority shall be conducted pursuant to the Kansas administrative
23 procedure act.

24 (3) The commissioner shall have the power to issue subpoenas, to
25 administer oaths and to examine under oath any person as to any matter
26 pertinent to the examination. Upon the failure or refusal of a person to
27 obey a subpoena, the commissioner may petition a court of competent
28 jurisdiction, and upon proper showing, the court may enter an order
29 compelling the witness to appear and testify or produce documentary
30 evidence. Failure to obey the court order shall be punishable as contempt
31 of court.

32 (4) When making an examination under this act, the commissioner
33 may retain attorneys, appraisers, independent actuaries, independent
34 certified public accountants or other professionals and specialists as
35 examiners, the reasonable cost of which shall be borne by the licensee that
36 is the subject of the examination.

37 (5) Nothing contained in this act shall be construed to limit the
38 commissioner's authority to terminate or suspend an examination in order
39 to pursue other legal or regulatory action pursuant to the insurance laws of
40 this state. Findings of fact and conclusions made pursuant to any
41 examination shall be prima facie evidence in any legal or regulatory
42 action.

43 (6) Nothing contained in this act shall be construed to limit the

1 commissioner's authority to use and, if appropriate, to make public any
2 final or preliminary examination report, any examiner or licensee work
3 papers or other documents, or any other information discovered or
4 developed during the course of any examination in the furtherance of any
5 legal or regulatory action—~~which~~ *that* the commissioner, in such
6 commissioner's sole discretion, may deem appropriate.

7 (d) (1) Examination reports shall be comprised of only facts
8 appearing upon the books, records or other documents of the licensee, its
9 agents or other persons examined, or as ascertained from the testimony of
10 its officers or agents or other persons examined concerning its affairs, and
11 such conclusions and recommendations as the examiners find reasonably
12 warranted from the facts.

13 (2) Not later than 60 days following completion of the examination,
14 the examiner in charge shall file with the commissioner a verified written
15 report of examination under oath. Upon receipt of the verified report, the
16 commissioner shall transmit the report to the licensee examined, together
17 with a notice that shall afford the licensee examined a reasonable
18 opportunity of not more than 30 days to make a written submission or
19 rebuttal with respect to any matters contained in the examination report.

20 (3) In the event the commissioner determines that regulatory action is
21 appropriate as a result of an examination, the commissioner may initiate
22 any proceedings or actions provided by law.

23 (e) (1) Names and individual identification data for all viators shall be
24 considered private and confidential information and shall not be disclosed
25 by the commissioner, unless required by law.

26 (2) Except as otherwise provided in this act, all examination reports,
27 working papers, recorded information, documents and copies thereof
28 produced by, obtained by or disclosed to the commissioner or any other
29 person in the course of an examination made under this act, or in the
30 course of analysis or investigation by the commissioner of the financial
31 condition or market conduct of a licensee shall be confidential by law and
32 privileged, shall not be subject to the provisions of the Kansas open
33 records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be
34 subject to subpoena, and shall not be subject to discovery or admissible in
35 evidence in any private civil action. The commissioner is authorized to use
36 the documents, materials or other information in the furtherance of any
37 regulatory or legal action brought as part of the commissioner's official
38 duties.

39 (3) Documents, materials or other information, including, but not
40 limited to, all working papers, and copies thereof, in the possession or
41 control of the NAIC and its affiliates and subsidiaries shall be confidential
42 by law and privileged, shall not be subject to subpoena, and shall not be
43 subject to discovery or admissible in evidence in any private civil action if

1 they are:

2 (A) Created, produced or obtained by or disclosed to the NAIC and
3 its affiliates and subsidiaries in the course of assisting an examination
4 made under this act, or assisting a commissioner in the analysis or
5 investigation of the financial condition or market conduct of a licensee; or

6 (B) disclosed to the NAIC and its affiliates and subsidiaries under
7 ~~paragraph (4)~~ of subsection (e)(4) by the commissioner.

8 For the purposes of ~~paragraph (2)~~ of subsection (e)(2), the term "act"
9 includes the law of another state or jurisdiction that is substantially similar
10 to this act.

11 (4) Neither the commissioner nor any person that received the
12 documents, material or other information while acting under the authority
13 of the commissioner, including the NAIC and its affiliates and
14 subsidiaries, shall be permitted to testify in any private civil action
15 concerning any confidential documents, materials or information subject to
16 ~~paragraph (1)~~ of subsection (e)(1).

17 (5) In order to assist in the performance of the commissioner's duties,
18 the commissioner may:

19 (A) Share documents, materials or other information, including the
20 confidential and privileged documents, materials or information subject to
21 ~~paragraph (1)~~ of subsection (e)(1), with other state, federal and
22 international regulatory agencies, with the NAIC and its affiliates and
23 subsidiaries, and with state, federal and international law enforcement
24 authorities, provided that the recipient agrees to maintain the
25 confidentiality and privileged status of the document, material,
26 communication or other information;

27 (B) receive documents, materials, communications or information,
28 including otherwise confidential and privileged documents, materials or
29 information, from the NAIC and its affiliates and subsidiaries, and from
30 regulatory and law enforcement officials of other foreign or domestic
31 jurisdictions, and shall maintain as confidential or privileged any
32 document, material or information received with notice or the
33 understanding that it is confidential or privileged under the laws of the
34 jurisdiction that is the source of the document, material or information;
35 and

36 (C) enter into agreements governing sharing and use of information
37 consistent with this subsection.

38 (6) No waiver of any applicable privilege or claim of confidentiality
39 in the documents, materials or information shall occur as a result of
40 disclosure to the commissioner under this section or as a result of sharing
41 as authorized in ~~paragraph (4)~~ of subsection (e)(4).

42 (7) A privilege established under the law of any state or jurisdiction
43 that is substantially similar to the privilege established under this

1 subsection shall be available and enforced in any proceeding in, and in any
2 court of, this state.

3 (8) Nothing contained in this act shall prevent or be construed as
4 prohibiting the commissioner from disclosing the content of an
5 examination report, preliminary examination report or results, or any
6 matter relating thereto, to the commissioner of any other state or country,
7 or to law enforcement officials of this or any other state or agency of the
8 federal government at any time or to the NAIC, so long as such agency or
9 office receiving the report or matters relating thereto agrees in writing to
10 hold it confidential and in a manner consistent with this act.

11 ~~(9) The provisions of this subsection shall expire July 1, 2013, unless~~
12 ~~the legislature acts to reenact such provisions. The provisions of this~~
13 ~~section shall be reviewed by the legislature prior to July 1, 2013.~~

14 (f) (1) An examiner may not be appointed by the commissioner if the
15 examiner, either directly or indirectly, has a conflict of interest or is
16 affiliated with the management of or owns a pecuniary interest in any
17 person subject to examination under this act. This section shall not be
18 construed to automatically preclude an examiner from being:

19 (A) A viator;

20 (B) an insured in a viaticated insurance policy; or

21 (C) a beneficiary in an insurance policy that is proposed to be
22 viaticated.

23 (2) Notwithstanding the requirements of this clause, the
24 commissioner may retain from time to time, on an individual basis,
25 qualified actuaries, certified public accountants or other similar individuals
26 who are independently practicing their professions, even though these
27 persons may from time to time be similarly employed or retained by
28 persons subject to examination under this act.

29 (g) Unless provided otherwise, all fees and procedures for
30 examinations under this act shall be in accordance with K.S.A. 40-223,
31 and amendments thereto.

32 (h) (1) No cause of action shall arise nor shall any liability be
33 imposed against the commissioner, the commissioner's authorized
34 representatives or any examiner appointed by the commissioner for any
35 statements made or conduct performed in good faith while carrying out the
36 provisions of this act.

37 (2) No cause of action shall arise, nor shall any liability be imposed
38 against any person for the act of communicating or delivering information
39 or data to the commissioner or the commissioner's authorized
40 representative or examiner pursuant to an examination made under this act,
41 if the act of communication or delivery was performed in good faith and
42 without fraudulent intent or the intent to deceive. This paragraph does not
43 abrogate or modify in any way any common law or statutory privilege or

1 immunity heretofore enjoyed by any person identified in paragraph (1).

2 (3) A person identified in paragraph (1) or (2) shall be entitled to an
3 award of attorney fees and costs if such person is the prevailing party in a
4 civil cause of action for libel, slander or any other relevant tort arising out
5 of activities in carrying out the provisions of this act and the party bringing
6 the action was not substantially justified in doing so. For purposes of this
7 section a proceeding is "substantially justified" if it had a reasonable basis
8 in law or fact at the time that it was initiated.

9 (i) The commissioner may investigate suspected fraudulent viatical
10 settlement acts and persons engaged in the business of viatical settlements.

11 Sec. 3. K.S.A. 2017 Supp. 40-5009a is hereby amended to read as
12 follows: 40-5009a. (a) (1) A viatical settlement provider entering into a
13 viatical settlement contract shall first obtain:

14 (A) If the viator is the insured, a written statement from a licensed
15 attending physician that the viator is of sound mind and under no
16 constraint or undue influence to enter into a viatical settlement contract;
17 and

18 (B) a document in which the insured consents to the release of such
19 insured's medical records to a viatical settlement provider, viatical
20 settlement broker and the insurance company that issued the life insurance
21 policy covering the life of the insured.

22 (2) Within 20 days after a viator executes documents necessary to
23 transfer any rights under an insurance policy or within 20 days of entering
24 any agreement, option, promise or any other form of understanding,
25 expressed or implied, to viaticate the policy, the viatical settlement
26 provider shall give written notice to the insurer that issued that insurance
27 policy that the policy has or will become a viaticated policy. The notice
28 shall be accompanied by the documents required by paragraph (3).

29 (3) The viatical settlement provider shall deliver a copy of the
30 medical release required under ~~clause (B) of~~ paragraph (1)(B), a copy of
31 the viator's application for the viatical settlement contract, the notice
32 required under paragraph (2) and a request for verification of coverage to
33 the insurer that issued the life policy that is the subject of the viatical
34 transaction. The form for verification shall be developed by the
35 commissioner.

36 (4) The insurer shall respond to a request for verification of coverage
37 submitted on an approved form by a viatical settlement provider within 30
38 calendar days of the date the request is received and shall indicate whether,
39 based on the medical evidence and documents provided, the insurer
40 intends to pursue an investigation at this time regarding the validity of the
41 insurance contract.

42 (5) Prior to or at the time of execution of the viatical settlement
43 contract, the viatical settlement provider shall obtain a witnessed

1 document in which the viator consents to the viatical settlement contract,
2 represents that the viator has a full and complete understanding of the
3 viatical settlement contract, that such viator has a full and complete
4 understanding of the benefits of the life insurance policy, acknowledges
5 that such viator is entering into the viatical settlement contract freely and
6 voluntarily and, for persons with a terminal or chronic illness or condition,
7 acknowledges that the insured has a terminal or chronic illness and that the
8 terminal or chronic illness or condition was diagnosed after the life
9 insurance policy was issued.

10 (6) If a viatical settlement broker performs any of these activities
11 required of the viatical settlement provider, the viatical settlement provider
12 is deemed to have fulfilled the requirements of this section.

13 (b)(1) All medical information solicited or obtained by any licensee
14 shall be subject to the applicable provisions of state law relating to
15 confidentiality of medical information.

16 ~~(2) The provisions of this subsection shall expire July 1, 2013, unless~~
17 ~~the legislature acts to reenact such provisions. The provisions of this~~
18 ~~section shall be reviewed by the legislature prior to July 1, 2013.~~

19 (c) All viatical settlement contracts entered into in this state shall
20 provide the viator with an unconditional right to rescind the contract for at
21 least 15 calendar days from the receipt of the viatical settlement proceeds.
22 If the insured dies during the rescission period, the viatical settlement
23 contract shall be deemed to have been rescinded, subject to repayment to
24 the viatical settlement provider or purchaser of all viatical settlement
25 proceeds, and any premiums, loans and loan interest that have been paid
26 by the viatical settlement provider or purchaser.

27 (d) The viatical settlement provider shall instruct the viator to send
28 the executed documents required to effect the change in ownership,
29 assignment or change in beneficiary directly to the independent escrow
30 agent. Within three business days after the date the escrow agent receives
31 the document, or from the date the viatical settlement provider receives the
32 documents, if the viator erroneously provides the documents directly to the
33 provider, the provider shall pay or transfer the proceeds of the viatical
34 settlement into an escrow or trust account maintained in a state or
35 federally-chartered financial institution whose deposits are insured by the
36 federal deposit insurance corporation. Upon payment of the settlement
37 proceeds into the escrow account, the escrow agent shall deliver the
38 original change in ownership, assignment or change in beneficiary forms
39 to the viatical settlement provider or related provider trust. Upon the
40 escrow agent's receipt of the acknowledgment of the properly completed
41 transfer of ownership, assignment or designation of beneficiary from the
42 insurance company, the escrow agent shall pay the settlement proceeds to
43 the viator.

1 (e) Failure to tender consideration to the viator for the viatical
2 settlement contract within the time disclosed pursuant to ~~clause (6) of~~
3 ~~subsection (a) of~~ K.S.A. 2017 Supp. 40-5008(a)(6), and amendments
4 thereto, renders the viatical settlement contract voidable by the viator for
5 lack of consideration until the time consideration is tendered to and
6 accepted by the viator.

7 (f) Contacts with the insured for the purpose of determining the
8 health status of the insured by the viatical settlement provider or viatical
9 settlement broker after the viatical settlement has occurred shall only be
10 made by the viatical settlement provider or viatical settlement broker
11 licensed in this state or its authorized representatives and shall be limited
12 to once every three months for insureds with a life expectancy of more
13 than one year, and to no more than once per month for insureds with a life
14 expectancy of one year or less. The viatical settlement provider or viatical
15 settlement broker shall explain the procedure for these contacts at the time
16 the viatical settlement contract is entered into. The limitations set forth in
17 this subsection shall not apply to any contacts with an insured for reasons
18 other than determining the insured's health status. Viatical settlement
19 providers and viatical settlement brokers shall be responsible for the
20 actions of their authorized representatives.

21 Sec. 4. K.S.A. 2017 Supp. 40-5012a is hereby amended to read as
22 follows: 40-5012a. (a) No person shall:

23 (1) Commit a fraudulent viatical settlement act.

24 (2) Knowingly or intentionally interfere with the enforcement of any
25 provision of this act or any investigation of suspected or actual violations
26 of this act.

27 (3) Knowingly or intentionally permit any person, employed by a
28 person in the business of viatical settlements, convicted of a felony
29 involving dishonesty or breach of trust to participate in the business of
30 viatical settlements. No person in the business of viatical settlements shall
31 knowingly or intentionally permit any person convicted of a felony
32 involving dishonesty or breach of trust to participate in the business of
33 viatical settlements.

34 (4) Issue, solicit, market or otherwise promote the purchase of an
35 insurance policy for the sole purpose of or with the primary emphasis on
36 settling the policy.

37 (5) Employ any device, scheme or artifice in violation of K.S.A. 40-
38 450, and amendments thereto, in the solicitation, application or issuance of
39 a life insurance policy.

40 (6) Receive, when providing premium financing, any proceeds, fees
41 or other consideration from the policy or owner of the policy that are in
42 addition to the amounts required to pay the principal, interest and costs or
43 expenses incurred by the lender or borrower related to policy premiums

1 paid under the premium financing agreement, except for the event of a
2 default unless either the default on such loan or the transfer of the policy in
3 connection with such default occurs pursuant to an agreement or
4 understanding with any other person for the purpose of evading regulation
5 under this act.

6 (b) (1) Viatical settlements, contracts and applications for viatical
7 settlements, regardless of the form of transmission, shall contain the
8 following statement or a substantially similar statement:

9 "Any person who knowingly presents false information in an
10 application for insurance or viatical settlement contract is guilty of a crime
11 and may be subject to fines and confinement in prison."

12 (2) The lack of a statement as required in paragraph (1) shall not
13 constitute a defense in any prosecution for a fraudulent viatical settlement
14 act.

15 (c) (1) Any person engaged in the business of viatical settlements
16 having knowledge or a reasonable belief that a fraudulent viatical
17 settlement act is being, will be or has been committed shall provide to the
18 commissioner the information required by, and in a manner prescribed by,
19 the commissioner.

20 (2) Any other person having knowledge or a reasonable belief that a
21 fraudulent viatical settlement act is being, will be or has been committed
22 may provide to the commissioner the information required by, and in a
23 manner prescribed by, the commissioner.

24 (d) (1) No civil liability shall be imposed on and no cause of action
25 shall arise from a person's furnishing information concerning suspected,
26 anticipated or completed fraudulent viatical settlement acts or suspected or
27 completed fraudulent insurance acts, if the information is provided to or
28 received from:

29 (A) The commissioner or the commissioner's employees, agents or
30 representatives;

31 (B) federal, state or local law enforcement or regulatory officials or
32 their employees, agents or representatives;

33 (C) any person involved in the prevention and detection of fraudulent
34 viatical settlement acts or that person's agents, employees or
35 representatives;

36 (D) the NAIC, national association of securities dealers, the North
37 American securities administrators association, or their employees, agents
38 or representatives, or other regulatory body overseeing life insurance,
39 viatical settlements, securities or investment fraud; or

40 (E) the life insurer that issued the life insurance policy covering the
41 life of the insured.

42 (2) Paragraph (1) shall not apply to statements made with actual
43 malice. In an action brought against a person for filing a report or

1 furnishing other information concerning a fraudulent viatical settlement
2 act or a fraudulent insurance act, the party bringing the action shall plead
3 specifically any allegation that paragraph (1) does not apply because the
4 person filing the report or furnishing the information did so with actual
5 malice.

6 (3) A person identified in paragraph (1) shall be entitled to an award
7 of attorney fees and costs if such person is the prevailing party in a civil
8 cause of action for libel, slander or any other relevant tort arising out of
9 activities in carrying out the provisions of this act and the party bringing
10 the action was not substantially justified in doing so. For purposes of this
11 section a proceeding is substantially justified if it had a reasonable basis in
12 law or fact at the time that it was initiated.

13 (4) This section does not abrogate or modify common law or
14 statutory privileges or immunities enjoyed by a person described in
15 paragraph (1).

16 (e) (1) The documents and evidence provided pursuant to subsection
17 ~~(d) of this section~~ or obtained by the commissioner in an investigation of
18 suspected or actual fraudulent viatical settlement acts shall be privileged
19 and confidential and shall not be a public record and shall not be subject to
20 discovery or subpoena in a civil or criminal action.

21 (2) Paragraph (1) of this subsection shall not prohibit release by the
22 commissioner of documents and evidence obtained in an investigation of
23 suspected or actual fraudulent viatical settlement acts:

24 (A) In administrative or judicial proceedings to enforce laws
25 administered by the commissioner;

26 (B) to federal, state or local law enforcement or regulatory agencies,
27 to an organization established for the purpose of detecting and preventing
28 fraudulent viatical settlement acts or to the NAIC;

29 (C) at the discretion of the commissioner or pursuant to a court order,
30 to a person in the business of viatical settlements that is aggrieved by a
31 fraudulent viatical settlement act; or

32 (D) at the discretion of the commissioner or pursuant to a court order,
33 to a person that is aggrieved by a fraudulent viatical settlement act.

34 (3) Release of documents and evidence under ~~subparagraphs (A) and~~
35 ~~(B) of paragraph (2)~~ *paragraphs (2)(A) and (B)* of this subsection does not
36 abrogate or modify the privilege granted in paragraph (1).

37 ~~(4) The provisions of this subsection shall expire July 1, 2013, unless~~
38 ~~the legislature acts to reenact such provisions. The provisions of this~~
39 ~~section shall be reviewed by the legislature prior to July 1, 2013.~~

40 (f) This act shall not:

41 (1) Preempt the authority or relieve the duty of other law enforcement
42 or regulatory agencies to investigate, examine and prosecute suspected
43 violations of law;

1 (2) preempt, supersede or limit any provision of any state securities
2 law or any rule, order or notice issued thereunder;

3 (3) prevent or prohibit a person from disclosing voluntarily
4 information concerning viatical settlement fraud to a law enforcement or
5 regulatory agency other than the insurance department; or

6 (4) limit the powers granted elsewhere by the laws of this state to the
7 commissioner or an insurance fraud unit to investigate and examine
8 possible violations of law and to take appropriate action against
9 wrongdoers.

10 (g) Viatical settlement providers and viatical settlement brokers shall
11 have in place antifraud initiatives reasonably calculated to detect,
12 prosecute and prevent fraudulent viatical settlement acts. At the discretion
13 of the commissioner, the commissioner may order, or a licensee may
14 request and the commissioner may grant, such modifications of the
15 following required initiatives as necessary to ensure an effective antifraud
16 program. The modifications may be more or less restrictive than the
17 required initiatives so long as the modifications reasonably may be
18 expected to accomplish the purpose of this section. Antifraud initiatives
19 shall include:

20 (1) Fraud investigators, who may be viatical settlement providers or
21 viatical settlement broker employees or independent contractors; and

22 (2) an antifraud plan, ~~which~~ *that* shall be submitted to the
23 commissioner. The antifraud plan shall include, but not be limited to:

24 (A) A description of the procedures for detecting and investigating
25 possible fraudulent viatical settlement acts and procedures for resolving
26 material inconsistencies between medical records and insurance
27 applications;

28 (B) a description of the procedures for reporting possible fraudulent
29 viatical settlement acts to the commissioner;

30 (C) a description of the plan for antifraud education and training of
31 underwriters and other personnel; and

32 (D) a description or chart outlining the organizational arrangement of
33 the antifraud personnel who are responsible for the investigation and
34 reporting of possible fraudulent viatical settlement acts and investigating
35 unresolved material inconsistencies between medical records and
36 insurance applications; and

37 (3) antifraud plans submitted to the commissioner shall be privileged
38 and confidential and shall not be a public record and shall not be subject to
39 discovery or subpoena in a civil or criminal action.

40 Sec. 5. K.S.A. 2017 Supp. 45-229 is hereby amended to read as
41 follows: 45-229. (a) It is the intent of the legislature that exceptions to
42 disclosure under the open records act shall be created or maintained only
43 if:

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

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

5 (3) the public record affects confidential information.

6 The maintenance or creation of an exception to disclosure must be
7 compelled as measured by these criteria. Further, the legislature finds that
8 the public has a right to have access to public records unless the criteria in
9 this section for restricting such access to a public record are met and the
10 criteria are considered during legislative review in connection with the
11 particular exception to disclosure to be significant enough to override the
12 strong public policy of open government. To strengthen the policy of open
13 government, the legislature shall consider the criteria in this section before
14 enacting an exception to disclosure.

15 (b) Subject to the provisions of subsections (g) and (h), any new
16 exception to disclosure or substantial amendment of an existing exception
17 shall expire on July 1 of the fifth year after enactment of the new
18 exception or substantial amendment, unless the legislature acts to continue
19 the exception. A law that enacts a new exception or substantially amends
20 an existing exception shall state that the exception expires at the end of
21 five years and that the exception shall be reviewed by the legislature
22 before the scheduled date.

23 (c) For purposes of this section, an exception is substantially
24 amended if the amendment expands the scope of the exception to include
25 more records or information. An exception is not substantially amended if
26 the amendment narrows the scope of the exception.

27 (d) This section is not intended to repeal an exception that has been
28 amended following legislative review before the scheduled repeal of the
29 exception if the exception is not substantially amended as a result of the
30 review.

31 (e) In the year before the expiration of an exception, the revisor of
32 statutes shall certify to the president of the senate and the speaker of the
33 house of representatives, by July 15, the language and statutory citation of
34 each exception that will expire in the following year which meets the
35 criteria of an exception as defined in this section. Any exception that is not
36 identified and certified to the president of the senate and the speaker of the
37 house of representatives is not subject to legislative review and shall not
38 expire. If the revisor of statutes fails to certify an exception that the revisor
39 subsequently determines should have been certified, the revisor shall
40 include the exception in the following year's certification after that
41 determination.

42 (f) "Exception" means any provision of law that creates an exception
43 to disclosure or limits disclosure under the open records act pursuant to

1 K.S.A. 45-221, and amendments thereto, or pursuant to any other
2 provision of law.

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

6 (1) Is required by federal law;

7 (2) applies solely to the legislature or to the state court system;

8 (3) has been reviewed and continued in existence twice by the
9 legislature; or

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

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

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

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

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

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

20 (2) an exception may be created or maintained only if it serves an
21 identifiable public purpose and may be no broader than is necessary to
22 meet the public purpose it serves. An identifiable public purpose is served
23 if the legislature finds that the purpose is sufficiently compelling to
24 override the strong public policy of open government and cannot be
25 accomplished without the exception and if the exception:

26 (A) Allows the effective and efficient administration of a
27 governmental program, which administration would be significantly
28 impaired without the exception;

29 (B) protects information of a sensitive personal nature concerning
30 individuals, the release of which information would be defamatory to such
31 individuals or cause unwarranted damage to the good name or reputation
32 of such individuals or would jeopardize the safety of such individuals.
33 Only information that would identify the individuals may be excepted
34 under this paragraph; or

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

40 (3) Records made before the date of the expiration of an exception
41 shall be subject to disclosure as otherwise provided by law. In deciding
42 whether the records shall be made public, the legislature shall consider
43 whether the damage or loss to persons or entities uniquely affected by the

1 exception of the type specified in paragraph (2)(B) or (2)(C) would occur
2 if the records were made public.

3 (i) (1) Exceptions contained in the following statutes as continued in
4 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas
5 and that have been reviewed and continued in existence twice by the
6 legislature as provided in subsection (g) are hereby continued in existence:

7 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189,
8 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-
9 1312e, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321, 21-
10 2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312,
11 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934,
12 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,
13 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b,
14 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635,
15 44-714, 44-817, 44-1005, 44-1019, 45-221(a)(1) through (43), 46-256, 46-
16 259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427,
17 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-
18 3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-
19 1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-
20 1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-
21 1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a,
22 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922,
23 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-
24 67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203,
25 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-
26 5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-
27 50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804,
28 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362,
29 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493,
30 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-
31 3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

32 (2) 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) and that have been
35 reviewed during the 2015 legislative session and continued in existence by
36 the legislature as provided in subsection (g) are hereby continued in
37 existence: 17-2036, 40-5301, 45-221(a)(45), (46) and (49), 48-16a10, 58-
38 4616, 60-3351, 72-972a, 74-50,217 and 75-53,105.

39 (j) (1) Exceptions contained in the following statutes as continued in
40 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas
41 and that have been reviewed and continued in existence twice by the
42 legislature as provided in subsection (g) are hereby continued in existence:
43 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016, 65-6017 and

1 74-7508.

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) during 2015 and that
5 have been reviewed during the 2016 legislative session are hereby
6 continued in existence: 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-
7 2326, 40-955, 44-1132, 45-221(a)(10)(F) and (a)(50), 60-3333, 65-4a05,
8 65-445(g), 65-6154, 71-218, 75-457, 75-712c, 75-723 and 75-7c06.

9 (k) Exceptions contained in the following statutes as certified by the
10 revisor of statutes to the president of the senate and the speaker of the
11 house of representatives pursuant to subsection (e) and that have been
12 reviewed during the 2014 legislative session and continued in existence by
13 the legislature as provided in subsection (g) are hereby continued in
14 existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-
15 17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-
16 2905, 41-2906, 44-706, 44-1518, 45-221(a)(44), (45), (46), (47) and (48),
17 50-6a11, 56-1a610, 56a-1204, 65-1,243, 65-16,104, 65-3239, 74-50,184,
18 74-8134, 74-99b06, 77-503a and 82a-2210.

19 (l) Exceptions contained in the following statutes as certified by the
20 revisor of statutes to the president of the senate and the speaker of the
21 house of representatives pursuant to subsection (e) during 2016 and that
22 have been reviewed during the 2017 legislative session are hereby
23 continued in existence: 12-5711, 21-2511, 22-4909, 38-2313, 45-221(a)
24 (51) and (52), 65-516, 65-1505, 74-2012, 74-5607, 74-8745, 74-8752, 74-
25 8772, 75-7d01, 75-7d05, 75-5133, 75-7427 and 79-3234.

26 (m) Exceptions contained in the following statutes as certified by the
27 revisor of statutes to the president of the senate and the speaker of the
28 house of representatives pursuant to subsection (e) during 2012 and that
29 have been reviewed during the 2013 legislative session and continued in
30 existence by the legislature as provided in subsection (g) are hereby
31 continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,
32 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-
33 712 and 75-5366.

34 (n) *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) and that have been*
37 *reviewed during the 2018 legislative session are hereby continued in*
38 *existence: 9-513c(c)(2), 25-2422, 39-709, 45-221(a)(26), (53) and (54),*
39 *65-6832, 65-6834, 75-7c06 and 75-7c20.*

40 Sec. 6. K.S.A. 2017 Supp. 9-513c, 40-5007a, 40-5009a, 40-5012a
41 and 45-229 are hereby repealed.

42 Sec. 7. This act shall take effect and be in force from and after its
43 publication in the statute book.