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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 20, 2020
Re: Senate Bill No. 427

Senate Bill No. 427 is the annual legislative review of exceptions to disclosure of public records under the Kansas open records act.

Under the Kansas open records act, any new or substantially amended exception to disclosure expires on July 1 five years after enactment of the new or substantially amended exception, unless the legislature acts to continue the exception. In the year before an exception expires, the Revisor of Statutes certifies to the Senate President and the House Speaker the statutory language and citation of each exception that will expire in the next ensuing year.

Under K.S.A. 45-229(h), the legislature is required to review each exception before its expiration and consider the following factors:

1. What specific records are affected by the exception;
2. whom does the exception uniquely affect, as opposed to the general public;
3. what is the identifiable public purpose or goal of the exception; and
4. whether the information contained in the records may be obtained readily by alternative means and how it may be obtained.

Two documents are attached to this memorandum: The document entitled "Open Records Exception Review – New and Substantially Amended Exceptions" is a list of the statute numbers containing the exceptions. The document entitled "Statutory Text of New and Substantially Amended Kansas Open Records Exceptions" contains those statutes with the language creating or amending the open records exception highlighted within each statute.

If enacted, SB 427 would take effect upon publication in the statute book, July 1, 2020.

**OPEN RECORDS EXCEPTION REVIEW
NEW AND SUBSTANTIALLY AMENDED EXCEPTIONS**

RE: K.S.A. 45-229

Exceptions enacted or substantially amended in the 2015 legislative session, previously extended or not certified in a prior year

Certified for the 2020 legislative session

Exceptions expire July 1, 2020

SUBSTANTIALLY AMENDED EXCEPTIONS

38-2310(c)	Law enforcement records identifying victims of certain crimes
45-221(a)(52)	Public records that identify the home address of certain officials
59-29a22(b)(10)	Treatment records in the possession of a treatment facility

NEW EXCEPTIONS

9-1810(b)	Bank commissioner informal agreements with banks or trust companies
40-409(j)(2)	Records relating to certain insurance policy valuation
40-6007(a)	Insurer own risk and solvency assessment documents
50-6a11(f)	Tobacco sales data related to the master settlement agreement
65-6747	Court records relating to unlawful abortions

PREVIOUSLY EXTENDED EXCEPTIONS

40-223j(c)	Insurance actuarial reports used for counseling and discipline
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EXCEPTIONS NOT CERTIFIED IN A PRIOR YEAR

46-1129	Survey responses to audits conducted under the legislative post audit act
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Statutory Text of New and Substantially Amended Kansas Open Records Exceptions

Substantially Amended Exceptions

38-2310. Records of law enforcement officers, agencies and municipal courts concerning certain juveniles; disclosure. (a) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) the Kansas department for children and families;

(4) the juvenile's court appointed special advocate, any officer of a public or private agency or institution or any individual having custody of a juvenile under court order or providing educational, medical or mental health services to a juvenile;

(5) any educational institution, to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator, to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701, and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 2019 Supp. 38-2326, and amendments thereto;

(9) juvenile intake and assessment workers;

(10) the department of corrections;

(11) juvenile community corrections officers;

(12) the interstate compact for juveniles compact administrator for the purpose of carrying out the responsibilities related to the interstate compact for juveniles;

(13) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(14) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated, and amendments thereto; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2019 Supp. 21-6419 through 21-6422, and amendments thereto, or human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2019 Supp. 21-5426, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records, shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juveniles shall be confidential, and shall not be disclosed except as provided by statutory law and rules and regulations promulgated by the secretary.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified by the secretary, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a juvenile whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a juvenile or an agency having the legal responsibility or authorization to care for, treat or supervise a juvenile;

(C) a parent or other person responsible for the welfare of a juvenile, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the juvenile, the attorney and a guardian ad litem, if any, for such juvenile;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the Kansas code for care of children or the revised Kansas juvenile justice code, whichever is applicable;

(G) members of a multidisciplinary team under this code;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a juvenile who is the subject of a report or record of child abuse or neglect, specifically including the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physician assistants, community mental health workers, addiction counselors and licensed or registered child care providers;

(J) a citizen review board pursuant to K.S.A. 2019 Supp. 38-2207, and amendments thereto;

(K) an educational institution to the extent necessary to enable such institution to provide the safest possible environment for pupils and employees of the institution;

(L) any educator to the extent necessary for the protection of the educator and pupils;

(M) any juvenile intake and assessment worker of another certified juvenile intake and assessment program; and

(N) the interstate compact for juveniles compact administrator for the purpose of carrying out the responsibilities related to the interstate compact for juveniles.

History: L. 2006, ch. 169, § 10; L. 2011, ch. 30, § 161; L. 2014, ch. 115, § 68; L. 2015, ch. 94, § 15; L. 2016, ch. 102, § 18; July 1.

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions

are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to K.S.A. 40-409(b), and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under K.S.A. 40-2,156(a), and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third-party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers, DD Form 214. Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with K.S.A. 44-532(h)(1), and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(51) Records of a public agency on a public website which are searchable by a keyword search and identify the home address or home ownership of a law enforcement officer as defined in K.S.A. 2019 Supp. 21-5111, and amendments thereto, parole officer, probation officer, court services officer or community correctional services officer. Such individual officer shall file with the custodian of such record a request to have such officer's identifying information restricted from public access on such public website. Within 10 business days of receipt of such requests, the public agency shall restrict such officer's identifying information from such public access. Such restriction shall expire after five years and such officer may file with the custodian of such record a new request for restriction at any time.

(52) Records of a public agency on a public website which are searchable by a keyword search and identify the home address or home ownership of a federal judge, a justice of the supreme court, a judge of the court of appeals, a district judge, a district magistrate judge, a municipal judge, the United States attorney for the district of Kansas, an assistant United States attorney, a special assistant United States attorney, the attorney general, an assistant attorney general, a special assistant attorney general, a county attorney, an assistant county attorney, a special assistant county attorney, a district attorney, an assistant district attorney, a special assistant district attorney, a city attorney, an assistant city attorney or a special assistant city attorney. Such person shall file with the custodian of such record a request to have such person's identifying information restricted from public access on such public website. Within 10 business days of receipt of such requests, the public agency shall restrict such person's identifying information from such public access. Such restriction shall expire after five years and such person may file with the custodian of such record a new request for restriction at any time.

(53) Records of a public agency that would disclose the name, home address, zip code, e-mail address, phone number or cell phone number or other contact information for any person licensed to carry concealed handguns or of any person who enrolled in or completed any weapons training in order to be licensed or has made application for such license under the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto, shall not be disclosed unless otherwise required by law.

(54) Records of a utility concerning information about cyber security threats, attacks or general attempts to attack utility operations provided to law enforcement agencies, the state corporation commission, the federal energy regulatory commission, the department of energy, the southwest power pool, the North American electric reliability corporation, the federal communications commission or any other federal, state or regional organization that has a responsibility for the safeguarding of telecommunications, electric, potable water, waste water disposal or treatment, motor fuel or natural gas energy supply systems.

(55) Records of a public agency containing information or reports obtained and prepared by the office of the state bank commissioner in the course of licensing or examining a person engaged in money transmission business pursuant to K.S.A. 9-508 et seq., and amendments thereto, shall not be disclosed except pursuant to K.S.A. 9-513c, and amendments thereto, or unless otherwise required by law.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject

to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

History: L. 1984, ch. 187, § 7; L. 1984, ch. 282, § 4; L. 1986, ch. 193, § 1; L. 1987, ch. 176, § 4; L. 1989, ch. 154, § 1; L. 1991, ch. 149, § 12; L. 1994, ch. 107, § 8; L. 1995, ch. 44, § 1; L. 1995, ch. 257, § 6; L. 1996, ch. 256, § 15; L. 1997, ch. 126, § 44; L. 1997, ch. 181, § 15; L. 2000, ch. 156, § 3; L. 2001, ch. 211, § 13; L. 2002, ch. 178, § 1; L. 2003, ch. 109, § 22; L. 2004, ch. 171, § 30; L. 2005, ch. 126, § 1; L. 2008, ch. 121, § 4; L. 2009, ch. 83, § 27; L. 2009, ch. 125, § 1; L. 2010, ch. 112, § 2; L. 2011, ch. 30, § 192; L. 2011, ch. 84, § 23; L. 2012, ch. 147, § 1; L. 2013, ch. 72, § 2; L. 2013, ch. 133, § 18; L. 2014, ch. 120, § 6; L. 2015, ch. 68, § 10; July 1.

59-29a22. Persons in custody of secretary for aging and disability services; rights and rules of conduct; definitions; application of Kansas administrative procedure act and Kansas judicial review act. (a) As used in this section:

(1) "Person" means any individual:

(A) Who is receiving services for mental illness and who is admitted, detained, committed, transferred or placed in the custody of the secretary for aging and disability services under the authority of K.S.A. 22-3219, 22-3302, 22-3303, 22-3428a, 22-3429, 22-3430, 59-29a05, 75-5209 and 76-1306, and amendments thereto.

(B) In the custody of the secretary for aging and disability services after being found a sexually violent predator pursuant to the Kansas sexually violent predator act, including any sexually violent predator placed on transitional release.

(2) "Restraints" means the application of any devices, other than human force alone, to any part of the body of the person for the purpose of preventing the person from causing injury to self or others.

(3) "Seclusion" means the placement of a person, alone, in a room, where the person's freedom to leave is restricted and where the person is not under continuous observation.

(4) "Emergency lockdown" means a safety measure used to isolate all or a designated number of persons greater than one to their rooms for a period necessary to ensure a safe and secure environment.

(5) "Individual person management plan" means a safety measure used to isolate an individual person when the person presents a safety or security risk that cannot be addressed through routine psychiatric methods.

(b) Each person shall have the following statutory rights:

(1) Upon admission or commitment, to be informed orally and in writing of the person's rights under this section. Copies of this section shall be posted conspicuously in each facility, and shall be available to the person's guardian and immediate family.

(2) To refuse to perform labor which is of financial benefit to the facility in which the person is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this subsection. Tasks of a personal housekeeping nature are not considered compensable labor. A person may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

(A) The labor is an integrated part of the person's treatment plan;

(B) the labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;

(C) the person has given written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

(D) the labor involved is evaluated for its appropriateness by the staff of the facility at least once every 180 days.

(3) To receive adequate treatment appropriate for such person's condition.

(4) To be informed of such person's treatment and care and to participate in the planning of such treatment and care.

(5) To refuse to consent to the administration of any medication prescribed for medical or psychiatric treatment, except in a situation in which the person is in a mental health crisis and less restrictive or intrusive measures have proven to be inadequate or clinically inappropriate. Treatment for a mental health crisis shall include medication or treatment necessary to prevent serious physical harm to the person or to others. After full explanation of the benefits and risks of such medication, the medication may be administered over the person's objection, except that the objection shall be recorded in the person's medical record and at the same time written notice thereof shall be forwarded to the medical director of the treatment facility or the director's designee. Within five days after receiving such notice, excluding Saturdays, Sundays and legal holidays, the medical director or designee shall deliver to the person's medical provider the medical director's or designee's written decision concerning the administration of that medication, and a copy of that decision shall be placed in the person's medical record.

(A) Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program or in quantities that interfere with a person's treatment program.

(B) A person will have the right to have explained the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered.

(6) To be subjected to restraint, seclusion, emergency lockdown, individual person management plan, or any combination thereof, only as provided in this subsection.

(A) Restraints, seclusion, or both, may be used in the following circumstances:

(i) If it is determined by medical staff to be necessary to prevent immediate substantial bodily injury to the person or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. When used, the extent of the restraint or seclusion applied to the person shall be the least restrictive measure necessary to prevent such injury to the person or others, and the use of restraint or seclusion in a treatment facility shall not exceed three hours without medical reevaluation. When restraints or seclusion are applied, there shall be monitoring of the person's condition at a frequency determined by the treating physician or licensed psychologist, which shall be no less than once per each 30 minutes. The superintendent of the treatment facility or a physician or licensed psychologist shall sign a statement explaining the treatment necessity for the use of any restraint or seclusion and shall make such statement a part of the permanent treatment record of the person.

(ii) For security reasons during transport to or from the person's unit, including, but not limited to, transport to another treatment or health care facility, another secure facility or court. Any person committed or transferred to a hospital or other health care facility for medical care may be isolated for security reasons within a locked area.

(B) Emergency lockdown may be used in the following circumstances:

(i) When necessary as an emergency measure as needed for security purposes, to deal with an escape or attempted escape, the discovery of a dangerous weapon or explosive device in the unit or facility or the receipt of reliable information that a dangerous weapon or explosive device is in the unit or facility, to prevent or control a riot or the taking of a hostage or for the discovery of contraband or a unit-wide search. An emergency lockdown order may be authorized only by the superintendent of the facility or the superintendent's designee.

(ii) During a period of emergency lockdown, the status of each person shall be reviewed every 30 minutes to ensure the safety of the person, and each person who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

(iii) The facility shall have a written policy covering the use of emergency lockdown that ensures the safety of the individual is secured and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required.

(iv) An emergency lockdown order may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing.

(C) Individual person management plan may be used in any of the following situations:

(i) As needed when a person demonstrates or threatens substantial injury to others, and routine psychiatric methods have been ineffective or are unlikely to be effective in reducing such risk.

(ii) As needed for safety or security purposes, for the behavioral management in situations including, but not limited to:

(a) Dealing with an escape or attempted escape;

(b) the discovery of a dangerous weapon or explosive device in the unit or facility or the receipt of reliable information that a dangerous weapon or explosive device is in the unit or facility;

(c) preventing or controlling a riot;

(d) the taking of a hostage;

(e) the disruption of the therapeutic environment on the unit; or

(f) for the discovery of contraband.

(iii) The status of the person shall be reviewed every 30 minutes to ensure the safety of the person.

(D) Restraint, seclusion, emergency lockdown, individual person management plan, or any combination thereof, may be used in any other situation deemed necessary by treatment staff for the safety of a person or persons, facility staff or visitors. In all situations, restraint, seclusion, emergency lockdown, or individual person management plan shall never be used as a punishment or for the convenience of staff.

(E) A person may be locked or restricted in such person's room during the night shift if such person resides in a unit in which each room is equipped with a toilet and sink or, if a person does not have a toilet in the room, if such person is given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

(7) To not be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the person or the written consent of a parent or legal guardian, if such person is a minor or has a legal guardian provided that the guardian has obtained authority to consent to such from the court which has venue over the guardianship following a hearing held for that purpose.

(8) To individual religious worship within the facility if the person desires such an opportunity, as long as it complies with applicable laws and facility rules and policies. The provisions for worship

shall be available to all persons on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(9) To a humane psychological and physical environment within the hospital facilities. All facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(10) To confidentiality of all treatment records and, as permitted by other applicable state or federal laws, to inspect and, upon receipt of payment of reasonable costs, to receive a copy of such records. The head of any treatment facility or designee who has the records may refuse to disclose portions of such records if the head of the treatment facility or designee states in writing that such disclosure will likely be injurious to the welfare of the person.

(11) Except as otherwise provided, to not be filmed or taped, unless the person signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the person for a particular purpose or project during a specified time period. The person may specify in such consent periods during which, or situations in which, the person may not be filmed or taped. If a person is legally incompetent, such consent shall be granted on behalf of the person by the person's guardian. A person may be filmed or taped for security purposes without the person's consent.

(12) To be informed in writing upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

(13) To be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility.

(14) To send and receive sealed mail to or from legal counsel, the courts, the secretary for aging and disability services, the superintendent of the treatment facility, the agency designated as the developmental disabilities protection and advocacy agency pursuant to P.L. 94-103, as amended, private physicians and licensed psychologists. A person who is indigent may have reasonable access to letter-writing materials.

(15) To send and receive mail with reasonable limitations. A person's mail is subject to physical examination and inspection for contraband, as defined by facility rules and policies.

(A) An officer or employee of the facility at which the person is placed may delay delivery of the mail to the person for a reasonable period of time to verify whether the mail contains contraband, as defined by facility rules and policies, or whether the person named as the sender actually sent the mail. If contraband is found, such contraband may be returned to the sender or confiscated by the facility. If the officer or staff member cannot determine whether the person named as the sender actually sent the mail, the officer or staff member may return the mail to the sender along with notice of the facility mail policy.

(B) The superintendent of the facility or the superintendent's designee may, in accordance with the standards and the procedure under subsection (c), authorize a member of the facility treatment staff to read the mail, if the superintendent or the superintendent's designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of the person or others.

(C) A person may not receive through the mail any sexually explicit materials, items that are considered contraband, as defined by facility rules and policies, or items deemed to jeopardize the

person's individual treatment, another person's treatment or the therapeutic environment of the facility.

(16) Reasonable access to a telephone to make and receive telephone calls within reasonable limits.

(17) To wear and use such person's own clothing and toilet articles, as long as such wear and use complies with facility rules and policies, or to be furnished with an adequate allowance of clothes if none are available.

(18) To possess personal property in a reasonable amount, as long as the property complies with state laws and facility rules and policies, and be provided a reasonable amount of individual storage space pursuant to facility rules and policies. In no event shall a person be allowed to possess or store contraband.

(19) Reasonable protection of privacy in such matters as toileting and bathing.

(20) To see a reasonable number of visitors who do not pose a threat to the safety and security or therapeutic climate of the person, other persons, visitors or the facility.

(21) To present grievances under the procedures established by each facility on the person's own behalf.

(22) To spend such person's money as such person chooses with reasonable limitations, except under the following circumstances: (A) When restricted by facility rules and policies; or (B) to the extent that authority over the money is held by another, including the parent of a minor, a court-appointed guardian of the person's estate or a representative payee. A treatment facility may, as a part of its security procedures, use a trust account in lieu of currency that is held by a person, and may establish reasonable policies governing account transactions.

(c) (1) A person's rights under subsections (b)(15) to (b)(22) may be denied for cause by the superintendent of the facility or the superintendent's designee, or when medically or therapeutically contraindicated as documented by the person's physician, licensed psychologist or licensed master's level psychologist in the person's treatment record. The individual shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right in an informal hearing before the superintendent of the facility or the superintendent's designee. There shall be documentation of the grounds for withdrawal of rights in the person's treatment record.

(2) Notwithstanding subsection (c)(1), when the facility makes an administrative decision that applies equally to all persons and there is a legitimate governmental reason for the decision, notice of the decision is all that is required.

(d) The secretary for aging and disability services shall establish procedures to assure protection of persons' rights guaranteed under this section.

(e) No person may intentionally retaliate or discriminate against any person or employee for contacting or providing information to any state official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section.

(f) (1) Proceedings under this section or any other appeal concerning an action by the Kansas department for aging and disability services shall be governed under the Kansas administrative procedure act and the Kansas judicial review act. A person appealing any alleged violations of this section or any other agency determination shall exhaust all administrative remedies available through

the Larned state hospital, including the sexual predator treatment program, before having any right to request a hearing under the Kansas administrative procedure act.

(2) A final agency determination shall include notice of the right to appeal such determination only to the office of administrative hearings. Within 30 days after service of a final agency determination and the notice of right to appeal, the appellant may file a request for hearing in writing with the office of administrative hearings for a review of that determination. Any request for hearing must be accompanied by a copy of the final agency determination, including all documentation submitted through Larned state hospital and all agency responses. Failure to timely request a hearing constitutes a waiver of the right to any review. The request shall be examined by the presiding officer assigned. If the appellant seeks to challenge the final agency determination on any grounds other than material facts in controversy or agency violation of a relevant rule, regulation or statute, the appellant shall express such allegations with particularity within the request for hearing. If it plainly appears from the face of the request and accompanying final agency determination that the appellant failed to state a claim on which relief could be granted, or the appellant failed to demonstrate exhaustion, the request shall be dismissed. The burden shall be on the appellant to prove by a preponderance of the evidence that the agency action violated a specific rule, regulation or statute. If the request for hearing does not allege a violation of a specific rule, regulation or statute, the burden shall be on the appellant to prove by a preponderance of the evidence that the agency had no legitimate government interest in taking such action. Any dispositive ruling of the hearing officer assigned by the office of administrative hearings shall be deemed an initial order under the Kansas administrative procedure act.

(3) The person shall participate by telephone or other electronic means at any hearing before the office of administrative hearings or any proceeding under the Kansas judicial review act, unless the presiding officer or court determines that the interests of justice require an in-person proceeding. Notwithstanding K.S.A. 77-609, and amendments thereto, if an in-person proceeding is necessary, such proceeding shall be conducted at the place where the person is committed.

(4) Except as otherwise provided in the Kansas sexually violent predator act and notwithstanding K.S.A. 77-609, and amendments thereto, venue shall be in Pawnee county, Kansas, for all proceedings brought pursuant to the Kansas judicial review act.

History: L. 2007, ch. 170, § 1; L. 2014, ch. 115, § 217; L. 2015, ch. 95, § 11; L. 2018, ch. 94, § 6; July 1.

New Exceptions

9-1810. Informal agreements with commissioner; when. (a) The commissioner may enter into any informal agreement with any bank or trust company for a plan of action to address possible safety or soundness concerns, violations of law or any weakness displayed by the bank or trust company if the commissioner determines that the bank or trust company displays:

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

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

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

History: L. 2015, ch. 38, § 3; July 1.

40-409. Valuation of policies; compensation of actuary; standard valuation law; commissioners' reserve valuation method; lapse rates; aggregate reserves; calculations; Kansas companies doing business in another state; annual opinion by actuary on reserves; confidential; valuation manual; principle-based valuation; single state exemption. (a) For the purposes of this section, the following definitions apply on or after the operative date of the valuation manual:

(1) "Accident and health insurance" means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness or medical conditions and as may be specified in the valuation manual;

(2) "appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection (b-1);

(3) "company" means an entity which: (A) Has written, issued or reinsured life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and has at least one such policy in force or on claim; or (B) has written, issued or reinsured life insurance contracts, accident and health insurance contracts or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance or deposit-type contracts in this state;

(4) "deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual;

(5) "life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual;

(6) "NAIC" means the national association of insurance commissioners;

(7) "policyholder behavior" means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this act including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization or benefit elections prescribed by the policy or contract, but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract;

(8) "principle-based valuation" means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (h), as specified in the valuation manual;

(9) "qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American academy of actuaries qualification standards for actuaries who sign such statements and who meet the requirements specified in the valuation manual;

(10) "tail risk" means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude; and

(11) "valuation manual" means the manual of valuation instructions adopted by the NAIC as specified in this section or as subsequently amended.

(a-1) (1) Every life insurance company transacting business in this state shall annually file, on or before March 1 of each year, with the commissioner of insurance a certified valuation of its policies in force as of December 31 of the preceding year.

(2) *Policies and contracts issued prior to the operative date of the valuation manual.*

(A) It shall be the duty of the commissioner of insurance to annually make or cause to be made net valuations of all the outstanding policies and additions thereto of every life insurance company transacting business in this state prior to the operative date of the valuation manual, except that in the case of an alien company such valuation shall be limited to its insurance transactions in the United States. In making the valuations of life insurance companies organized under the laws of this state, the valuation shall include unpaid dividends, and all other policy obligations. Whenever the laws of any other state of the United States shall authorize the valuation of life insurance policies by some designated state officer according to the same standard as herein provided, or some other standard which will require a reserve not less than the standard herein provided, the valuation made according to the standard by such officer of the policies and other obligations of any life insurance company not organized under the laws of this state, and certified by such officer, may be received as true and correct, and no further valuation of the same shall be required of such company by the commissioner of insurance. It shall be the duty of the commissioner of insurance, whenever requested so to do by any life insurance company organized under the laws of this state, to make annual valuations of all the outstanding policies and additions thereto of every such company and deliver to such company certificates of such valuation, specifying the amount of the company's reserve on policies thus valued. And for the performance of the duties prescribed by this section the commissioner of insurance shall be authorized to employ an actuary, whose compensation shall be paid by the company whose policies, additions, unpaid dividends or other outstanding policy obligations are valued, upon a certificate by the commissioner of insurance showing the compensation due therefor.

(B) The provisions set forth in subsections (d) and (e) shall apply to all policies and contracts, as appropriate, subject to this section issued on or after the operative date of K.S.A. 40-428, and amendments thereto, and prior to the operative date of the valuation manual, and the provisions set forth in subsections (g) and (h) shall not apply to any such policies and contracts.

(C) The minimum standard for the valuation of policies and contracts issued prior to the operative date of K.S.A. 40-428, and amendments thereto, shall be that provided in subsection (c).

(3) *Policies and contracts issued on or after the operative date of the valuation manual.*

(A) The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(B) The provisions set forth in subsections (g) and (h) shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

(4) Any such company which at any time shall have adopted any standards of valuation producing greater aggregate reserves than those calculated according to the minimum standards hereinafter provided may, with the approval of the commissioner of insurance, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(b) This subsection shall become operative for the year ending December 31, 1995, and each subsequent calendar year, prior to the operative date of the valuation manual.

(1) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are

based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall adopt an administrative regulation defining the specific application, scope and content of this opinion.

(2) Except as otherwise provided by law or rules and regulations of the commissioner, every life insurance company shall also annually include in the opinion required by paragraph (1), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, making adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(3) The commissioner may provide for a transition period for establishing any higher reserves which the qualified actuary deems necessary in order to render the opinion required by this section.

(4) Each opinion required by paragraph (2) shall comply with the following provisions:

(A) A memorandum, in form and substance acceptable to or prescribed by the commissioner shall be prepared to support each actuarial opinion; and

(B) if the insurance company fails to provide a supporting memorandum within a period specified or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the prescribed standards or is otherwise unacceptable to the commissioner, the commissioner is authorized to employ an actuary whose compensation and expenses shall be paid by the company whose policies, additions, unpaid dividends or other outstanding policy or contractual obligations are valued upon a certificate by the commissioner showing the compensation and expenses due therefor.

(5) Every opinion of the actuary shall comply with the following provisions:

(A) The opinion shall be submitted with the annual statement required by K.S.A. 40-225, and amendments thereto, reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995;

(B) the opinion shall apply to all business in force including individual and group health insurance plans;

(C) the opinion shall be based on standards adopted from time to time by the actuarial standards board of the American academy of actuaries and on such additional standards as the commissioner prescribes;

(D) in the case of an opinion required to be submitted by an insurance company not domiciled in this state, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(E) for the purposes of this subsection, "qualified actuary" means a member in good standing of the American academy of actuaries;

(F) except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion required by this act; and

(G) any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the opinion, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this subsection or by rules and regulations adopted pursuant to this subsection. Notwithstanding the provisions of this paragraph, the memorandum or other material may be released by the commissioner: (i) With the written consent of the company; or (ii) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(b-1) This subsection shall become operative after the operative date of the valuation manual.

(1) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(2) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by paragraph (1), an opinion of the same appointed actuary as to whether the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(3) Each opinion required by subsection (b-1) shall be governed by the following provisions:

(A) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, shall be prepared to support each actuarial opinion; and

(B) if the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(4) Every opinion subject to subsection (b-1) shall be governed by the following provisions:

(A) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner;

(B) the opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual;

(C) the opinion shall apply to all policies and contracts subject to subsection (b-1)(2), plus other actuarial liabilities as may be specified in the valuation manual;

(D) the opinion shall be based on standards adopted from time to time by the actuarial standards board or its successor, and on such additional standards as may be prescribed in the valuation manual;

(E) in the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by such company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(F) except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the appointed actuary's opinion; and

(G) disciplinary action by the commissioner against the company or the appointed actuary shall be defined in rules and regulations by the commissioner.

(c) This subsection shall apply to only those policies and contracts issued prior to the operative date of K.S.A. 40-428, and amendments thereto, the standard nonforfeiture law, except as provided in subsection (d).

For the purpose of such valuations and for making special examinations of the condition of life insurance companies, as provided by the laws of this state, and for valuing all outstanding policies of every life insurance company, the method and basis of valuation shall be the same as prescribed by the insurance code of this state in the valuation of such contracts before June 1, 1927. The legal minimum standard for the valuation of life insurance contracts issued on or after June 1, 1927, shall be the one-year preliminary-term method of valuation, except as hereinafter modified, on the basis of the American experience table of mortality with interest at 4% per annum. If the premium charged for term insurance under limited-payment life preliminary-term policy providing for the payment of all premiums thereon in less than 20 years from the date of policy, or under an endowment preliminary-term policy, exceeds that charged for life insurance under twenty-payment life preliminary-term policy of the same company, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty-payment life preliminary-term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium-payment period, equal to the difference between the value at the end of such period of such a twenty-payment life preliminary-term policy and the full net level premium reserve at such time of such a limited-payment life or endowment policy. The premium-payment period is the period during which premiums are concurrently payable, under such twenty-payment life preliminary-term policy and such limited-payment life or endowment policy. Policies issued on the preliminary-term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with the modified preliminary-term method of valuation provided therein. Except as otherwise provided for group annuity and pure endowment contracts in paragraphs (1-a) and (1-b) of subsection (d), the legal minimum standard for the valuation of annuities shall be McClintock's "table of mortality among annuitants," with interest at 4% per annum, but annuities deferred 10 or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premiums therefor, or upon any higher standard at the option of the company. The commissioner of insurance may, in the commissioner's discretion, vary the above standard of interest and mortality in cases of companies organized under the laws of a foreign country and in particular cases of invalid lives or other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(d) *Standard valuation law.* This subsection shall apply to only those policies and contracts issued on or after the operative date of K.S.A. 40-428, and amendments thereto, the standard nonforfeiture law, except as otherwise provided in paragraphs (1-a) and (1-b) for group annuity and pure endowment contracts issued prior to such operative date, and except as provided in subsection (e).

(1) Except as otherwise provided in paragraphs (1-a) and (1-b), the minimum standard for the valuation of all such policies and contracts shall be the commissioners' reserve valuation methods defined in paragraphs (2), (2-a) and (5), 3½% interest or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, 4% interest for such policies issued prior to July 1, 1978, 5½% interest for single premium life insurance policies and 4½% interest for all other such policies issued on or after July 1, 1978, and the following specified tables:

(A) For ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies—the commissioners' 1941 standard ordinary mortality table for such policies issued prior to the operative date of K.S.A. 40-428(d-1), and amendments thereto, the commissioners' 1958 standard ordinary mortality table and the commissioners' 1958 extended term insurance table, as applicable, for such policies issued on or after the operative date of K.S.A. 40-428(d-1), and amendments thereto, and prior to the operative date of K.S.A. 40-428(d-3), and amendments thereto, provided that for any category of such policies issued on female risks, the modified net premiums and present values, referred to in subsection (d)(2), may be calculated, according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of K.S.A. 40-428(d-3), and amendments thereto: (i) The commissioners' 1980 standard ordinary mortality table; or (ii) at the election of the company for any one or more specified plans of life insurance, the commissioners' 1980 standard ordinary mortality table with ten-year select mortality factors; or (iii) any ordinary mortality table, adopted after 1980 by the NAIC, that is approved by rules and regulations promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(B) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies—the 1941 standard industrial mortality table for such policies issued prior to the operative date of K.S.A. 40-428(d-2), and amendments thereto, and for such policies issued on or after such operative date the commissioners' 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the NAIC, that is approved by rules and regulations promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(C) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, and excluding annuities involving life contingencies provided or available under optional modes of settlement in life insurance policies or annuity contracts—the 1937 standard annuity mortality table, or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(D) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(E) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1961, either the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, any tables of disablement rates and termination rates, adopted after 1980 by the NAIC, that are approved by rules and regulations promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, or, at the option of the company, the class (3) disability table (1926); and for policies issued prior to January 1, 1961, the class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserve for life insurance policies.

(F) For accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1961, either the 1959 accidental death benefits table, any accidental death benefits table, adopted after 1980 by the NAIC, that is approved by rules and regulations promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, or, at the option of the company, the inter-company double indemnity mortality table; and for policies issued prior to January 1, 1961, the inter-company double indemnity mortality table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(G) For group life insurance, life insurance issued on the substandard basis, annuities involving life contingencies provided or available under optional modes of settlement in life insurance policies or annuity contracts and other special benefits—such tables as may be approved by the commissioner of insurance.

(H) For all credit life insurance having initial terms of 10 years or less, excluding any disability and accidental death benefits in such policies, the 1980 commissioners' extended term mortality table or any later version as established in rules and regulations adopted by the commissioner of insurance.

(1-a) Except as provided in paragraph (1-b), the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the operative date of this paragraph (1-a), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioners' reserve valuation methods defined in paragraphs (2) and (2-a) and the following tables and interest rates:

(A) For individual annuity and pure endowment contracts issued prior to July 1, 1978, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner of insurance, and 6% interest for single premium immediate annuity contracts, and 4% interest for all other individual annuity and pure endowment contracts.

(B) For individual single premium immediate annuity contracts issued on or after July 1, 1978, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table, or any individual annuity mortality table, adopted after 1980 by the NAIC, that is approved by rules and regulations promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and 7½% interest.

(C) For individual annuity and pure endowment contracts issued on or after July 1, 1978, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table, or any individual annuity mortality table, adopted after 1980 by the NAIC, that is approved by rules and regulations promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and 5½% interest for

single premium deferred annuity and pure endowment contracts and 4½% interest for all other such individual annuity and pure endowment contracts.

(D) For all annuities and pure endowments purchased prior to July 1, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 group annuity mortality table, or any modification of this table approved by the commissioner of insurance, and 6% interest.

(E) For all annuities and pure endowments purchased on or after July 1, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 group annuity mortality table, or any group annuity mortality table, adopted after 1980 by the NAIC, that is approved by rules and regulations promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and 7½% interest.

After July 1, 1973, any company may file with the commissioner of insurance a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such company. A company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this paragraph for such company shall be January 1, 1979.

(1-b) (A) Applicability of this paragraph:

(1) The interest rates used in determining the minimum standard for the valuation of:

(a) Life insurance policies issued in a particular calendar year, on or after the operative date of K.S.A. 40-428(d-3), and amendments thereto;

(b) individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1983;

(c) annuities and pure endowments purchased in a particular calendar year on or after January 1, 1983, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this paragraph (1-b).

(B) Calendar year statutory valuation interest rates:

(1) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer ¼%:

(a) For life insurance,

$$I = .03 + W (R1 - .03) + W/2 (R2 - .09);$$

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where R 1 is the lesser of R and .09,
R 2 is the greater of R and .09,

R is the reference interest rate defined in this paragraph and W is the weighting factor defined in this paragraph.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (b) above, the formula for life insurance stated in (a) above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single premium immediate annuities stated in (b) above shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less.

(d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (b) above shall apply.

(e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (b) above shall apply.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than 1/2%, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined for 1979, and shall be determined for each subsequent calendar year regardless of when K.S.A. 40-428 (d-3), and amendments thereto, becomes operative.

(C) Weighting factors:

(1) The weighting factors referred to in the formulas stated above are given in the following tables:

(a) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy;

(b) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

(c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (b) above, shall be as specified in tables (i), (ii) and (iii) below, according to the rules and definitions in (iv), (v) and (vi) below:

(i) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C

5 or less	.80	.60	.50
More than five, but not more than 10	.75	.60	.50
More than 10, but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

(ii)

	Plan Type		
	A	B	C
For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by	.15	.25	.05

(iii)

	Plan Type		
	A	B	C
For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by	.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) Plan type as used in the above tables is defined as follows:

Plan type A: At any time policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted.

Plan type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this paragraph (1-b), an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis

under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(D) Reference interest rate:

(1) The reference interest rate referred to in paragraph(1-b)(B) shall be defined as follows:

(a) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, inc.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, inc.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (b) above, with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, inc.

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (b) above, with guaranteed duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, inc.

(e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, inc.

(f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (b) above, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, inc.

(E) Alternative method for determining reference interest rates:

(1) In the event that Moody's corporate bond yield average—monthly average corporates is no longer published by Moody's investors service, inc., or in the event that the NAIC determines that Moody's corporate bond yield average—monthly average corporates as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the NAIC and approved by regulation promulgated by the commissioner, may be substituted.

(2) Commissioners' reserve valuation method. Except as otherwise provided in paragraphs (2-a) and (5), reserves according to the commissioners' reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the

payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor.

The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for benefits such that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due. Such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Except for any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in paragraph (5), be the greater of the reserve as of such policy anniversary calculated as described in this paragraph and the reserve as of such policy anniversary calculated as described in this paragraph, but with: (i) The value defined in subparagraph (A) of this paragraph being reduced by 15% of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in paragraphs (1) and (1-b) shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this paragraph (2).

Reserves according to the commissioners' reserve valuation method for universal life contracts issued after December 31, 2006, providing for death benefits that are guaranteed to remain in effect if specified conditions, as defined in the universal life insurance contract are met by the contract owner, shall calculate the value of the guarantee by a method consistent with the principles of this paragraph (2). The use of anticipated lapse rates in such calculations shall not exceed 2% per annum.

(2-a) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, as now or hereafter amended.

Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(3) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in paragraphs (2), (2-a), (5) and (6) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(3-a) In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the appointed actuary rendering the opinion required by subsection (b) and (b-1).

(4) Reserves for any category of policies, contracts or benefits as established by the commissioner of insurance may be calculated at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies or contracts.

(5) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in paragraphs (1) and (1-b).

Except for any life insurance policy issued on or after January 1, 1988, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment

benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this paragraph (5) shall be applied as if the method actually used in calculating the reserve for such policy were the method described in paragraph (2), ignoring the third paragraph of paragraph (2). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with paragraph (2), including the third paragraph of paragraph (2), and the minimum reserve calculated in accordance with this paragraph (5).

(6) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in paragraphs (2), (2-a) and (5), the reserves which are held under any such plan must:

(A) Be appropriate in relation to the benefits and the pattern of premiums for that plan, and

(B) be computed by a method which is consistent with the principles of this standard valuation law, as determined by regulations promulgated by the commissioner.

(e) Any company organized under the laws of this state, which shall desire to do business in any other states wherein it is not permitted to issue or deliver policies valued as provided in subsection (d), may value its policies issued and delivered in such other states as provided in subsection (c).

(f) For accident and sickness contracts issued prior to the operative date of the valuation manual, the commissioner shall adopt rules and regulations establishing the minimum standard of valuation and may adopt other rules and regulations necessary to administer the provisions of this section. For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (a-1)(3).

(g) *Valuation manual for policies issued on or after the operative date of the valuation manual.*

(1) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (a-1)(3), except as provided under paragraphs (5) or (7).

(2) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(A) The valuation manual has been adopted by the NAIC by an affirmative vote of at least 42 members, or $\frac{3}{4}$ of the members voting, whichever is greater;

(B) the standard valuation law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than 75% of the direct premiums written as reported in the following annual statements submitted for 2008: (i) Life, accident and health annual statements; (ii) health annual statements; or (iii) fraternal annual statements; and

(C) the standard valuation law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions: (i) The 50 states of the United States; (ii) American Samoa; (iii) the American Virgin Islands; (iv) the District of Columbia; (v) Guam; and (vi) Puerto Rico.

(3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when the change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

(A) At least $\frac{3}{4}$ of the members of the NAIC voting, but not less than a majority of the total membership; and

(B) members of the NAIC representing jurisdictions totaling greater than 75% of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subparagraph (A): (i) Life, accident and health insurance statements; (ii) health annual statements; or (iii) fraternal annual statements, pursuant to K.S.A. 40-225, and amendments thereto.

(4) The valuation manual must specify all of the following:

(A) Minimum valuation standards for and definitions of the policies or contracts subject to subsection (a-1)(3). Such minimum valuation standards shall be:

(i) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection (a-1)(3);

(ii) the commissioner's annuity reserve valuation method for annuity contracts subject to subsection (a-1)(3); and

(iii) minimum reserves for all other policies or contracts subject to subsection (a-1)(3);

(B) which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subsection (h)(1) and the minimum valuation standards consistent with those requirements;

(C) for policies and contracts subject to a principle-based valuation under subsection (h):

(i) Requirements for the format of reports to the commissioner under subsection (h)(2)(C) and which shall include information necessary to determine if the valuation is appropriate and in compliance with this section;

(ii) assumptions shall be prescribed for risks over which the company does not have significant control or influence; and

(iii) procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures;

(D) for policies not subject to a principle-based valuation under subsection (h), the minimum valuation standard shall either:

(i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(ii) develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(E) other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls; and

(F) the data and form of the data required under subsection (i), with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(5) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this section, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the commissioner by rules and regulations.

(6) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this section. The commissioner may rely upon the opinion, regarding provisions contained within this section, of a qualified actuary engaged by the commissioner of another state, district or territory of the United States. As used in this paragraph, the term "engage" includes employment and contracting.

(7) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with requirements of the valuation manual or this section; and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted pursuant to K.S.A. 77-501 et seq., and amendments thereto.

(h) *Requirements of a principle-based valuation.*

(1) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(A) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, a level of conservatism that reflects conditions appropriately adverse to quantify the tail risk;

(B) incorporate assumptions, risk analysis methods and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;

(C) incorporate assumptions that are derived in one of the following manners:

(i) The assumption is prescribed in the valuation manual; and

(ii) for assumptions that are not prescribed, the assumptions shall be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or to the extent that company data is not available, relevant or statistically credible, be established utilizing other relevant, statistically credible experience; and

(D) provide margins for uncertainty, including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one or more policies or contracts subject to this subsection as specified in the valuation manual shall:

(A) Establish procedures for corporate governance and oversight of the actual valuation function consistent with those described in the valuation manual;

(B) provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to

such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year; and

(C) develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle-based valuation may include a prescribed formulaic reserve component.

(i) *Experience reporting for policies in force on or after the operative date of the valuation manual.*

A company shall submit mortality, morbidity, policyholder behavior or expense experience and other data as prescribed in the valuation manual.

(j) *Confidentiality.*

(1) For purposes of this subsection, "confidential information" means:

(A) A memorandum in support of an opinion submitted under subsections (b) or (b-1) and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;

(B) all documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under subsection (g)(6); except, that if an examination report or other material prepared in connection with an examination made under K.S.A. 40-222, and amendments thereto, is not held as private and confidential information under K.S.A. 40-222, and amendments thereto, an examination report or other material prepared in connection with an examination made under subsection (g)(6) shall not be "confidential information" to the same extent as if such examination report or other material had been prepared under K.S.A. 40-222, and amendments thereto;

(C) any reports, documents, materials and other information developed by a company in support of, or in connection with, an annual certification by the company under subsection (h)(2)(B) evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials or other information;

(D) any principle-based valuation report developed under subsection (h)(2)(C) and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such report; and

(E) any documents, materials, data and other information submitted by a company under subsection (i), collectively, "experience data," and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner, together with any "experience data," the "experience materials," and any other documents, materials, data and other information, including, but not limited to, all working papers,

and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

(2) *Privilege for, and confidentiality of, confidential information.*

(A) Except as provided in this subsection, a company's confidential information is confidential by law and privileged, and shall not be subject to K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action; except, that the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(B) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential information.

(C) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information: (i) With other state, federal and international regulatory agencies and with the NAIC and its affiliates and subsidiaries; and (ii) in the case of confidential information specified in subsections (j)(1)(A) and (j)(1)(D) only, with the actuarial board for counseling and discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal and international law enforcement officials; in the case of (i) and (ii), provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data and other information in the same manner and to the same extent as required for the commissioner.

(D) The commissioner may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the actuarial board for counseling and discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(E) The commissioner may enter into agreements governing sharing and use of information consistent with this subsection (j)(2).

(F) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the commissioner under this subsection or as a result of sharing as authorized in subsection (j)(2)(C).

(G) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection (j)(2) shall be available and enforced in any proceeding in, and in any court of, this state.

(H) In this subsection, "regulatory agency," "law enforcement agency" and the "NAIC" include, but are not limited to, their employees, agents, consultants and contractors.

(3) Notwithstanding subsection (j)(2), any confidential information specified in subsections (j)(1)(A) and (j)(1)(D):

(A) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsections (b) or (b-1) or principle-based valuation report developed under subsection (h)(2)(C) of

this section by reason of an action required by this section or by rules and regulations promulgated hereunder;

(B) may otherwise be released by the commissioner with the written consent of the company; and

(C) once any portion of a memorandum in support of an opinion submitted under subsections (b) or (b-1) or a principle-based valuation report developed under subsection (h)(2)(C) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

(k) *Single state exemption.*

(1) The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in Kansas from the requirements of subsection (g) if:

(A) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(B) the company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and promulgated by rules and regulations.

(2) For any company granted an exemption under this subsection, subsections (b), (b-1), (d) and (f) shall be applicable. With respect to any company applying this exemption, any reference to subsection (g) found in subsections (b), (b-1), (d) and (f) shall not be applicable.

History: L. 1927, ch. 231, 40-409; L. 1947, ch. 277, § 1; L. 1957, ch. 280, § 1; L. 1959, ch. 213, § 1; L. 1965, ch. 302, § 1; L. 1973, ch. 193, § 1; L. 1978, ch. 175, § 1; L. 1980, ch. 129, § 2; L. 1982, ch. 202, § 1; L. 1994, ch. 101, § 1; L. 2004, ch. 128, § 1; L. 2007, ch. 105, § 1; L. 2015, ch. 10, § 1; July 1.

40-6007. Same; confidentiality. (a) Documents, materials or other information, including the ORSA summary report, in the possession or control of the department of insurance that are obtained or created by or disclosed to the commissioner or any other person under this act, are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged; shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto; and shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

(b) Neither the commissioner nor any person who received documents, materials or other ORSA-related information, through examination or otherwise while acting under the authority of the commissioner, or with whom such documents, materials or other information are shared pursuant to this act, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a).

(c) In order to assist in the performance of the commissioner's regulatory duties, the commissioner:

(1) May, upon request, share documents, materials or other ORSA-related information, including the confidential and privileged documents, materials or information subject to subsection (a), including proprietary and trade secret documents and materials with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in K.S.A. 40-3316, and amendments thereto, the NAIC and with any third-party consultants designated by the commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(2) may receive documents, materials or other ORSA-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in K.S.A. 40-3316, and amendments thereto, and the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this act, consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this act, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(B) specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this act remains with the commissioner and use of the information by the NAIC or a third-party consultant is subject to the direction of the commissioner;

(C) prohibit the NAIC or third-party consultant from storing the information shared pursuant to this act in a permanent database after the underlying analysis is completed;

(D) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this act is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(E) require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this act; and

(F) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(d) The sharing of information and documents by the commissioner pursuant to this act shall not constitute a delegation of regulatory authority or rulemaking and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this act.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials or other ORSA-related information shall occur as a result of disclosure of such ORSA-related information or documents to the commissioner under this section or as a result of sharing as authorized in this act.

(f) Documents, materials or other information in the possession or control of the NAIC or third-party consultants pursuant to this act shall be confidential by law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible as evidence in any private civil action.

History: L. 2015, ch. 18, § 7; Jan. 1, 2017.

50-6a11. Disclosure of information, between director, attorney general, tobacco product manufacturer and stamping agent, other; confidentiality; master settlement agreement, confidentiality.

(a) The director is authorized to disclose to the attorney general any information received under this act, as requested by the attorney general for purposes of determining compliance with or enforcing the provisions of this act. The director and attorney general shall share with each other information received under this act and the director and the attorney general may share such information with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states, for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states. The director and attorney general may share the information specified under this subsection with any of the following:

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

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

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

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

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

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

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

History: L. 2009, ch. 110, § 4; L. 2015, ch. 79, § 6; June 4.

65-6747. Legal proceedings; public disclosure of name of woman, orders against such disclosure. In every civil, criminal or administrative proceeding or action arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 65-6724 or 65-6743, and amendments thereto, the court shall rule whether the anonymity of any woman upon whom an unlawful abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that such woman's anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an unlawful abortion has been performed or attempted to be performed, anyone other than a public official who brings an action arising out of a violation of K.S.A. 65-6703, 65-6721, K.S.A. 65-6724 or 65-6743, and amendments thereto, shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

History: L. 2015, ch. 22, § 7; July 1.

Previously Extended Exceptions

40-223j. Same; authority of commissioner; rules and regulations. (a) The statement of actuarial opinion shall be provided with the annual statement in accordance with the appropriate NAIC property and casualty annual statement instructions and shall be treated as a public document.

(b) (1) Any document, material or other information, in the control or possession of the department that is furnished to the commissioner pursuant to this act or obtained by the commissioner in an investigation pursuant to this section shall be kept confidential by the commissioner. Such information shall not be made public or subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this act or any other provision of the insurance laws of this state.

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

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

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

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

- (A) The NAIC and its affiliates and subsidiaries;
- (B) the actuarial board for counseling and discipline or any other entity which regulates actuaries;
- (C) other state, federal or international regulatory agencies; and
- (D) other state, federal or international law enforcement authorities.

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

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

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

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

(d) For the purposes of this section: (1) "Commissioner" shall mean the commissioner of insurance.

(2) "NAIC" shall mean the national association of insurance commissioners.

History: L. 2008, ch. 63, § 3; L. 2015, ch. 24, § 1; July 1.

Exceptions Not Certified in a Prior Year

46-1129. Confidentiality of responses to audit surveys; authorized use of information. (a) As used in this section:

(1) "Audit" means any financial-compliance audit, performance audit or any other audit or audit work conducted by the division of post audit or by a firm under the legislative post audit act;

(2) "survey" means any questionnaire or other survey instrument administered by the division of post audit or by a firm under the legislative post audit act for the purposes and in the course of an audit, regardless of form or characteristics; and

(3) any other words and phrases used in this section shall have the meanings respectively ascribed thereto by K.S.A. 46-1112, and amendments thereto.

(b) A response to any survey administered for the purposes and in the course of an audit approved by the legislative post audit committee shall be confidential and shall not be disclosed pursuant to the provisions of the open records act or under any other law except as required pursuant to the legislative post audit act. Nothing in this section shall limit the use of any information contained in responses to any survey by the division of post audit for the purposes of any audit or for any other purpose authorized or required under the legislative post audit act.

History: L. 2005, ch. 68, § 1; Apr. 14.