

## MINUTES

### SPECIAL COMMITTEE ON LOCAL GOVERNMENT

September 14-15, 2004  
Room 519-S and Room 313-S —Statehouse

#### Members Present

Senator Barbara Allen, Chairperson  
Representative Jene Vickrey, Vice Chairman  
Senator Mark Buhler  
Senator Kay O'Connor  
Representative Joe Humerickhouse  
Representative Lance Kinzer  
Representative Harold Lane  
Representative Todd Novascone  
Representative Jerry Williams

#### Staff

Norm Furse, Revisor of Statutes Office  
Mike Heim, Kansas Legislative Research Department  
Russell Mills, Kansas Legislative Resesarch Department  
Ken Wilke, Revisor of Statutes Office  
Theresa Kiernan, Revisor of Statutes Office  
Nancy Kirkwood, Committee Secretary

#### Conferees

T.C. Anderson, Executive Director, Kansas Society of CPA's  
Judi Stork, Deputy Bank Commissioner  
Kevin Glendening, Deputy Bank Commissioner for Consumer Mortgage and Lending  
Melissa Wangemann, Legal Counsel, Secretary of State Office  
Bill Miskell, Public Information Officer, Department of Corrections  
Jarrod Forbes, Executive Director of Governmental Affairs, Insurance Commissioner's Office  
Brenda Clary, Insurance Commissioner's Office  
Lisa Clary, Staff Attorney, Insurance Commissioner's Office  
Laurie McKinnon, Legal Counsel, Kansas Public Employee Retirement System  
Chip Wheelen, Executive Director, Kansas Society of Osteopathic Medicine  
Yvonne Anderson, General Counsel, Kansas Department Health and Environment  
Jennifer Findley, Kansas Hospital Association  
Larry Buening, Executive Director, Board of Healing Arts  
Mark Tallman, Kansas Association of School Boards

**Tuesday, September 14  
Morning Session**

Senator Barbara Allen, Chairperson called the meeting to order at 10:05 a.m. The Chairperson asked the Committee to introduce themselves. Chairperson Allen then informed the Committee that Senator Goodwin was to be replaced by Senator Mark Gilstrap.

She explained the Committee had six meetings approved by the Legislative Coordinating Council and that five and one-half of the days the Committee will be focused on the Kansas Open Records Act.

Norman Furse, Revisor of Statutes, distributed a memorandum dealing with the Open Records Review. Mr Furse stated the study is rather unique involving exceptions to the Open Records Law ([Attachment 1](#)). The Committee is charged to review exceptions to disclosure under the Kansas Open Records Act and recommend which exceptions should be continued and whether any new exceptions should be added.

He reviewed KSA 45-229 which provides that exceptions in existence on July 1, 2000, will expire July 1, 2005, unless the Legislature following legislative review re-enacts or amends the statutory exceptions or has previous to the expiration, substantially amended the exceptions. In the year before the expiration of an exception, the Revisor of Statutes is required to certify to the President of the Senate and the Speaker of the House by June 1 the statutory language and statutory citation of each exception which will expire the following year ([Attachment 2](#)). Under subsection (h) of KSA 45-229, the legislature is directed to "review the exception before its scheduled expiration." Also, under subsection (b), the Legislature is to review new exceptions or substantially amended exceptions before their scheduled expiration date. He suggested the Committee consider changing the date for certifying to July 15 instead of June 1, which would allow a more timely consideration of the changes the Legislature makes.

Mr. Furse distributed copies of the certified list which was submitted to the President of the Senate and the Speaker of the House as provided by law, which has 256 exceptions identified in the statutes and the sections highlighted in the statutes to the Committee ([Attachment 3](#)). He reaffirmed it is the **exceptions** the Committee will be reviewing and not the statute. An "exception" means any provision of law which creates an exception to disclosure or limits disclosure under the Open Records Act pursuant to KSA 45-221 or pursuant to any other provision of law. An Open Records Act Exceptions Summary review sheet was distributed to the Committee detailing the section, who at the exception covers; the government program affected; the type of information excepted and a column for the Committee to make its comments ([Attachment 4](#)).

Mr. Furse distributed an options sheet for the Committee to consider ([Attachment 5](#)).

Mike Heim, Legislative Research, reviewed last year's interim report on open records exceptions ([Attachment 6](#)). The 2003 Interim Committee recommended that during the 2004 Session the House and Senate appoint a special committee to begin a study for exceptions. The Committee also urged special interest groups to get together with state agencies and meet prior to the 2004 Session and arrive at a consensus about needed changes. They met and came up with recommendations. Some of the recommendations of this group were incorporated in **SB 552**, which was enacted by the 2004 Legislature ([Attachment 7](#)). Other bills dealing with open records which were enacted in 2004 included the following:

- **SB 418** which created a birth defects information system to be administered by the Secretary of Health and Environment;
- **HB 2571** which created an exception in state law to allow state staff and federal auditors access to birth record information, when the information is necessary to comply with the reporting and audit requirements of IV-D;
- **Senate Sub. For HB 2593** which authorized the Livestock Commissioner to cooperate with the United State Department of Agriculture (USDA), and others to promulgate rules and regulations, to define premises where animals are located, and to coordinate and share records in data systems;
- **HB 2742** which amended the Code for the Care of Children to reorganize, clarify, and add to the Code provisions relating to the confidentiality of reports and records;
- **HB 2758** which added two new exceptions to the Kansas Open Records Act (KORA). One deals with military discharge papers of some retired persons deposited with county register of deeds offices. The second exception prohibits revealing the location of safe shelter house or similar place where persons are provided protection from abuse; and
- **HB 2813** which created a procedure for gaining access to abandoned records of certain health care providers (Attachment 8).

Chairperson recognized Ken Wilke, from the Revisor of Statutes Office, to begin the review of the exceptions to the Kansas Open Records Act. The statutory sections include the following:

- 1-401 This particular statute deals with working papers of CPA or employees of a CPA. This statute creates a client-CPA privilege;
- 2-1202 The fertilizer law deals with disclosure of information regarding formulation of fertilizers;
- 5-512 Statements that occur during dispute resolution are confidential;
- 9-1137 Compliance review proceedings under the banking code are confidential;
- 9-1712 Records that bank commissioner gathers in the process of a investigation are closed;
- 9-2217 Examinations and reports made under the mortgage regulation statutes are closed;
- 10-630 Registration records relative to the ownership or pledge of municipal bonds are closed; and
- 11-306 Personally identifiable data obtained by the Secretary of State, under a census statute are closed.

Chairperson Allen noted the Committee would reconvene at 1:30 p.m., in Room 313-S (Old Supreme Court Room) for the remainder of the day and would be meeting the following day in Room 313-S, also.

## Afternoon Session

The meeting reconvened at 1:30 p.m.

Mike Heim, Legislative Research, continued with the review of the exceptions:

- 12-189 Information collected by cities or counties is closed regarding individual retailers and the retail sales taxes collected;
- 12-1,108 Intangibles tax information regarding individuals is confidential;
- 12-1694 Transient guest tax information collected from individual business is confidential;
- 12-1698 Same as above;
- 12-2819 Certain information regarding metropolitan transient authority boards is closed. Questions from Committee to staff will keep this exception open for review.
- 12-4516 Municipal court records and expungement records are closed.
- 16-715 Pawn brokers and precious metal dealers records are closed.
- 16a-2-304 Information contained in Consumer Credit Commission reports is closed. Kevin Glendening, Credit Credit Commission, answered Committee's question regarding the statute.
- 17-1312e Cemetery corporations records regarding permanent maintenance funds are closed. Melissa Wangemann, Legal Counsel Secretary of State, answered questions regarding disclosure of financial information. Questions from Committee to staff will keep this exception open for review;
- 17-2227 All information secured or produced by the credit union administrator in making an investigation or examination shall be deemed confidential;
- 17-5832 State charter and federal chartered savings and loan associations compliance review documents are closed;
- 17-7503 The amount of franchise taxes paid by corporations is closed;
- 17-7505 Foreign corporation franchise taxes are closed;
- 17-7511 Secretary of State inspection of corporations' annual income tax returns are confidential;
- 17-7514 Copies of request of extension of time in filing annual corporation reports are confidential;
- 17-76,139 Franchise taxes paid by limited liability companies are closed;

- 19-4321 Sheriffs and civil service boards may prescribe by rule the extent which employee ratings and reports are open to inspection;
- 21-2511 DNA records may be released only to criminal justice agencies;
- 22-3711 Supervision history collected by state parole officers is closed.  
Bill Miskell, Public Information Officer with the Department of Corrections, answered questions from Committee relating to public records.  
Questions from Committee to staff will keep this exception open for review;
- 22-4707 A criminal justice agency may not request information from the central repository or another criminal justice agency unless it has a legitimate need.  
Mr. Miskell answered questions regarding the statute.  
Questions from Committee to staff will keep this exception open for review;
- 22-4909 A crime victim's name, address, telephone number or any other information that specifically and individually identifies the victim of an offender required to register is closed;
- 22a-243 Child death review board information acquired by the director of the state review board is closed, except to legislators and certain others;
- 22a-244 Books, records or papers received by the Child Death Review Board are closed;
- 23-605 Information regarding domestic disputes and child custody and visitation are closed.  
Questions from Committee to staff will keep this exception open for review;
- 23-9,312 Putting a child at risk by disclosure of identifying information is prohibited.

Ken Wilke, Revisor of Statutes, reviewed the election and other statutes:

- 25-4161 The campaign finance act imposes a confidentiality requirement on the ethics complaints.  
Questions from Committee to staff will keep this exception open for review;
- 25-4165 The Campaign Finance Act imposes a confidentiality requirement on the ethics complaints.  
Questions from Committee to staff will keep this exception open for review;
- 31-405 Arson investigation information received by the state Fire Marshall's Office or Insurance Commissioner's Office is closed;
- 34-251 Certain information obtained by Department of Agriculture is closed.  
Questions from Committee to staff will keep this exception open for review;
- 35-1508 Records with law enforcement agencies in child abuse and child-in-need-of-care cases are closed.  
Questions from Committee to staff will keep this exception open for review;

- 38-1520 Child-in-need-of-care information is closed;
- 38-1565 Reports of foster parents are closed;
- 38-1609 Diagnostic and medical records of juvenile offenders in medical facilities are closed;
- 38-1610 Expungement records of juvenile offenders are closed;
- 38-1618 SRS and the Kansas Juvenile Authority are allowed to develop statistics from records on juvenile offenders in their custody;
- 38-1664 Reports submitted by juvenile offender's foster parents are closed;
- 39-709b Applications for assistance from SRS remain confidential;
- 39-719e Information regarding medical assistance recipients, information provided by medical benefit plan providers is confidential;
- 39-934 Information received by the SRS as a licensing agency is closed. The creation of statistics is permitted. Questions from Committee to staff will keep this exception open for review;
- 39-1434 SRS reports or evaluations of mentally ill persons who are in SRS custody are closed;
- 39-1704 Information received by a regional interagency council is closed and members are responsible to maintain confidentially;
- 40-222 Examination of insurance companies and the condition of any insurance company being examined by the Insurance Commissioner is closed.  
Jarrod Forbes, Insurance Commissioner's Office, answered question regarding who would have access to the information.  
Questions from Committee to staff will keep this exception open for review;
- 40-2,156 Certain reports obtained by the Insurance Commissioner are closed.  
Lisa Clary, Staff Attorney, Kansas Insurance Commissioner's Office, answered questions from Committee regarding the exception.  
Questions from Committee to staff will keep this exception open for review;
- 40-2c20 Risk based capital reports are closed.  
Questions from Committee to staff will keep this exception open for review;
- 40-2c21 Risk based capital reports of insurance companies are closed.  
Questions from Committee to staff will keep this exception open for review;
- 40-2d20 Information regarding health insurers and health organizations under regulatory supervision of the insurance commissioner is confidential.  
Questions from Committee to staff will keep this exception open for review;
- 40-2d21 Similar to 4-2d20 above.

Questions from Committee to staff will keep this exception open for review;

- 40-409 Information in support of actuarial opinions, actuarial evaluations of policies and provisions are closed;
- 40-956 Information submitted by insurance rating organizations are closed;
- 40-1128 The Board of Healing Arts, in making certain information available to the public, must keep certain information closed.  
Questions from Committee to staff will keep this exception open for review;
- 40-2807 Income and other financial information that companies supply to the Insurance Commissioner is closed;
- 40-3012 Reports and recommendations regarding solvency liquidation or rehabilitation of insurance companies are closed;
- 40-3304 Providers of loans to insurance companies are required to keep certain information confidential.  
Questions from Committee will keep this exception open for review;
- 40-3308 Information documents and copies obtained or disclosed in course of investigations are closed.  
Questions from Committee to staff will keep this exception open for review;
- 40-3403b Certain information of actuarial firms evaluating the Health Care Stabilization Fund is closed;
- 40-3421 Certain reports by insurers of claims and actions are closed;
- 40-3613 Certain orders of the Insurance Commissioner regarding domestic insurers are closed;
- 40-3805 Records provided to the Insurance Commissioner that contain trade secret information are closed; and
- 40-4205 Certain insurance company books and records are closed;

The meeting adjourned at 3:45 p.m.

**Wednesday, September 15  
Morning Session**

Senator Barbara Allen, Chairperson, called the meeting to order at 9:10 a.m., and recognized Ken Wilke to begin the exceptions review.

- 44-510j Peer review information under workers compensation is not subject to discovery, subpoena or legal compulsion;
- 44-550b This statute keeps various types of information from public inspection.
- 44-594 Financial information of employers under the workers compensation law is closed;
- 44-635 Reports by the Secretary of Labor, identifying individuals or firms that supply information required under the act is closed;
- 44-714 Information obtained from an individual is closed under the Unemployment Compensation Act, and is governed by federal law;
- 44-817 Provisions dealing with dispute resolution and mediation information are closed;
- 44-1005 Certain information obtained by the Human Rights Commission in conciliation agreements are closed.  
Questions from Committee to staff will keep this exception open for review;
- 44-1019 Conciliation agreements are confidential unless the parties agree otherwise.  
Questions from Committee to staff will keep this exception open for review;
- 44-1514 Certain information regarding athletic agents is closed;
- 45-221 This Kansas Open Records Act exception provision has 44 exceptions and will be reviewed in more detail later;
- 46-256 Certain companion sections are in the Governmental Ethics Act dealing with certain financial information with lobbyists are closed;
- 46-259 Similar provisions in KSA 41-61 and 41-65, are closed.
- 46-259 Complaints for violation of reporting of lobbyists' expenses are confidential;
- 46-2201 This statute deals with background checks, other data that may be submitted regarding a proposed member of the Pension Board.  
Laurie McKinnon, KPERS, stated the members of the Board of Trustees have a KBI investigation of prospective members;
- 47-839 This statute creates a privilege for veterinarians regarding care of animals.
- 47-844 Certain information is confidential involving a veterinarian being disciplined by the Veterinary Board.  
Questions from Committee to staff will keep this exception open for review;
- 47-849 Investigations are confidential;
- 47-1709 Investigations by the examining board pertaining to complaints filed with the commissioner are confidential;



Mike Heim, Legislative Research, continued the review.

- 48-1614 Trade secrets and industrial processes are closed in regard to nuclear energy involvement activities;
- 49-406 Certain information companies engaged in surface mining—strip mining for coal is closed;
- 49-427 In coal exploration operations—trade secrets or privileged commercial or financial information is closed;
- 55-1,102 Filing of rates and other information required;
- 56-1a606 The amount of franchise taxes paid by companies is closed;
- 56-1a607 Same as above;
- 56-1201 Certain partnership information is closed;
- 56-1202 Same as above;
- 58-4114 The addresses of State certified licensed appraisers shall not be subject to disclosure;
- 59-2135 Adoption records are closed;
- 59-2802 Certain probate proceedings of a person needing public assistance are closed;
- 59-2979 Records of the care and treatment of mentally ill are closed;
- 59-29b79 Care and treatment records of those with abuse and alcohol problems are closed. Chip Wheelen, former representative of the Kansas Psychiatric Association, now Director of Osteopathic Medicine, answered questions from Committee regarding the release of medical records to the patient;
- 60-3333 Environmental audit reports are closed;
- 60-3335 Same as above; and
- 60-3336 Same as above.

Norm Furse, Revisor of Statutes, continued with the exceptions review:

- 65-102b Confidential information relating to non-infectious diseases is closed;
- 65-118 Infectious or contagious diseases reports are closed;
- 65-119 Certain information gathered by local health officers is closed;

- 65-153f Prenatal serological tests for syphilis and hepatitis b are closed;
- 65-170g Disclosure of trade secrets in regard to discharge of water pollutants is prohibited. Yvonne Anderson, KDHE, answered questions of Committee relating to exception;
- 65-177 The Secretary of Health and Environment may conduct medical and research studies on particular data relating to morbidity or mortality, morbidity being disease and mortality being death;
- 65-1,106 Sickle cell anemia testing is confidential;
- 65-1,113 Health manpower monitoring availability records are closed;
- 65-1,116 Certain diabetes information is closed;
- 65-1,157a Certain newborn hearing screening process information is closed;
- 65-1,163 Pregnant women at risk information is closed;
- 65-1,165 Same as above;
- 65-1,168 Certain information obtained for the cancer registry is closed;
- 65-1,169 Collection of cancer data, reporting by health care providers in regard to individuals is closed;
- 65-1,171 Detailed information from the cancer registry shall not be disclosed;
- 65-1,172 Confidential data only for certain, specified purposes may be disclosed;
- 65-436 Information received by the licensing agency for hospitals is confidential. Jennifer Findley, Kansas Hospital Association, answered questions regarding hospital performance and history information. Questions from Committee to staff will keep this exception open for review;
- 65-445 Information collected by the Board of Healing Arts on individuals and medical care facilities may be disclosed only to the Attorney General. Questions from Committee to staff will keep this exception open for review;
- 65-507 Certain information relating to maternity centers and child care facilities is confidential;
- 65-525 Certain information regarding the licensing of child care facilities is closed. Yvonne Anderson, General Counsel, KDHE, answered questions of Committee regarding licensure of child care facilities. Questions from Committee to staff will keep this exception open for review;
- 65-531 Immunization records are closed;
- 65-657 Trade secrets regarding food, drugs, and cosmetics are closed;
- 65-1135 Information relating to complaints involving nurses is closed.

- Questions from Committee to staff will keep this exception open for review;
- 65-1467 Dental board complaints are confidential.  
Questions from Committee to staff will keep this exception open for review;
- 65-1627 Complaints about pharmacists are confidential.  
Questions from Committee to staff will keep this exception open for review;
- 65-1831 Information involving the licensure of barbers is closed;
- 65-2422d Certain records and monthly reports of deceased persons is closed under the Vital Statistics Act;
- 65-2438 Certain information regarding the transporting of dead bodies and infectious diseases is closed;
- 65-2836 Certain information collected by the Board of Healing Arts regarding drug screening is closed.  
Questions from Committee to staff will keep this exception open for review;
- 65-2839a Investigations and proceedings conducted by the State Healing Arts Board are closed; and
- 65-2898a Complaints submitted to the state Board of Healing Arts are confidential.

The meeting recessed at 11:45 a.m.

### **Afternoon Session**

The meeting reconvened at 1:35 p.m.

Vice Chairman Jene Vickrey welcomed the Committee back for continuing the exceptions review by Norman Furse, Revisor of Statutes.

- 65-3015 Air quality control information containing trade secrets is closed;
- 65-3447 The solid and hazardous waste act defines trade secret;
- 65-34,108 Information regarding trade secrets is closed.  
Yvonne Anderson answered questions regarding trade secrets.  
Questions from Committee to staff will keep this exception open for review;
- 65-34,126 Certain underground storage tank insurance information is closed;
- 65-4019 Certain information regarding alcohol treatment facility licensure is closed;
- 65-4608 Certain drug abuse treatment facility information is closed;

- 65-4922 Certain medical care facility risk management program information is closed;
- 65-4925 Certain reports of questionable practice of health care providers is closed.  
Larry Buening, Board of Healing Arts, explained the exception to Committee;
- 65-5602 Certain information regarding persons in treatment facilities is closed;
- 65-5603 Certain information obtained by a coroner is closed.  
Questions from Committee to staff will keep this exception open for review;
- 65-6002 Certain information relating to HIV or AIDS is closed;
- 65-6003 Similar to the above;
- 65-6004 Certain information regarding infectious diseases is closed;
- 65-6010 Certain information regarding infectious disease testing of persons incarcerated is closed;
- 65-67a05 Certain information dealing with the transferring of fetal tissue is closed;
- 65-6803 Certain health care data is closed; and
- 65-6804 Certain procedures developed for collection of health care data is closed.

Ken Wilke, Revisor of Statutes, continued with exceptions review:

- 66-101c Certain trade secret information furnished by utilities is closed;
- 66-117 Certain information regarding copies of tariffs, schedules and classifications made under rules and regulations is closed;
- 66-151 Certain information regarding electric tariffs and schedules is closed;
- 66-1,190 Information regarding telecommunications contracts is closed;
- 66-1,203 Natural gas customer contracts are closed;
- 66-1220a Disclosing or allowing inspection of confidential information is prohibited;
- 66-2010 Trade secret information is closed;
- 72-996 School mediation information is closed.  
Questions from Committee to staff will keep this exception open for review;
- 72-4311 Certain information regarding vocational rehabilitation is closed;
- 72-4452 Certain information collected by vocational educational institutions is closed;
- 72-5214 Health assessments are closed;

- 72-53,106 Certain information regarding students is confidential.  
Questions from Committee to staff will keep this exception open for review;
- 72-5427 Mediation information is closed;
- 72-8903 Due process hearings are closed.  
Mark Tallman, Kansas Association of School Boards, answered questions regarding this exception.  
Questions from Committee to staff will keep this exception open for review;
- 73-1228 Certain survey information is closed;
- 74-2424 Individual tax information is closed;
- 74-2433f Certain information in the tax small claims area is closed;
- 74-4905 Certain information about members of the KPERS Board is closed;
- 74-4909 Certain information regarding KPERS is closed;
- 74-50,131 Certain information relating to the Kansas high performance incentives program is closed;
- 74-5515 Certain information regarding developmental disabilities is closed;
- 74-7308 Reports regarding criminal victims are closed;
- 74-7338 Same as above;
- 74-7405a Certain records are closed.  
Questions from Committee to staff will keep this exception open for review;
- 74-8104 Information submitted to KTEC regarding trade secrets is closed;
- 74-8307 Certain information regarding Kansas venture capital companies is closed;
- 74-8705 Criminal record information in regard to procurement contracts is closed;
- 74-8804 Certain information collected by the Racing and Gaming Commission is closed;  
and
- 74-9805 Certain information regarding tribal gaming is closed.

Chairperson Allen informed the Committee it would be meeting again on October 12 and 13, 2004. The meeting adjourned at 3:45 p.m.

Prepared by Nancy Kirkwood  
Edited by Mike Heim

Approved by Committee on:

December 30, 2004  
(date)