

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2489

By Committee on Judiciary

1-23

1 AN ACT concerning legislative review of exceptions to open records;  
2 amending K.S.A. 2013 Supp. 40-5515 ~~and~~, 45-229 ~~and~~ 74-99b06 and  
3 repealing the existing sections.  
4

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

6 Section 1. K.S.A. 2013 Supp. 40-5515 is hereby amended to read as  
7 follows: 40-5515. (a) A public adjuster shall maintain a complete record of  
8 each transaction as a public adjuster. The records required by this section  
9 shall include the following:

- 10 (1) Name of the insured;  
11 (2) date, location and amount of the loss;  
12 (3) copy of the contract between the public adjuster and insured;  
13 (4) name of the insurer and the amount, expiration date and number  
14 of each policy carried by the insured with respect to the loss;  
15 (5) itemized statement of the insured's recoveries;  
16 (6) itemized statement of all compensation received by the public  
17 adjuster, from any source whatsoever, in connection with the loss;  
18 (7) a register of all moneys received, deposited, disbursed or  
19 withdrawn in connection with a transaction with an insured, including  
20 fees, transfers and disbursements from a trust account and all transactions  
21 concerning all interest-bearing accounts;  
22 (8) name of public adjuster who executed the contract;  
23 (9) name of the attorney representing the insured, if applicable, and  
24 the name of the claims representatives of the insurance company; and  
25 (10) evidence of financial responsibility in the format prescribed by  
26 the commissioner.

27 (b) Records shall be maintained for at least five years after the  
28 termination of the transaction with an insured and shall be open to  
29 examination by the commissioner at all times.

30 (c) Records submitted to the commissioner in accordance with this  
31 section that contain information identified in writing as proprietary by the  
32 public adjuster shall be treated as confidential by the commissioner and  
33 shall not be open for inspection under the Kansas open records act.

34 ~~(d) The provisions of subsection (c) shall expire on July 1, 2014,~~  
35 ~~unless the legislature acts to reenact such provisions. The provisions of~~  
36 ~~subsection (c) shall be reviewed by the legislature prior to July 1, 2014.~~

1       Sec. 2. K.S.A. 2013 Supp. 45-229 is hereby amended to read as  
2 follows: 45-229. (a) It is the intent of the legislature that exceptions to  
3 disclosure under the open records act shall be created or maintained only  
4 if:

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

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

9       (3) the public record affects confidential information.

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

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

27       (c) For purposes of this section, an exception is substantially  
28 amended if the amendment expands the scope of the exception to include  
29 more records or information. An exception is not substantially amended if  
30 the amendment narrows the scope of the exception.

31       (d) This section is not intended to repeal an exception that has been  
32 amended following legislative review before the scheduled repeal of the  
33 exception if the exception is not substantially amended as a result of the  
34 review.

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

1 include the exception in the following year's certification after that  
2 determination.

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

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

10 (1) Is required by federal law;

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

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

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

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

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

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

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

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

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

30 (A) Allows the effective and efficient administration of a  
31 governmental program, which administration would be significantly  
32 impaired without the exception;

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

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

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

7 (i) (1) Exceptions contained in the following statutes as continued in  
8 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas  
9 and which have been reviewed and continued in existence twice by the  
10 legislature as provided in subsection (g) are hereby continued in existence:  
11 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189,  
12 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-  
13 1312e, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321, 21-  
14 2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312,  
15 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934,  
16 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,  
17 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b,  
18 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635,  
19 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43) of 45-  
20 221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614,  
21 49-406, 49-427, 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-  
22 29b79, 60-3333, 60-3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-  
23 177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-  
24 1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-  
25 531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438,  
26 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126,  
27 65-4019, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-  
28 6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-  
29 1,190, 66-1,203, 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214,  
30 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-  
31 4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705,  
32 74-8804, 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332,  
33 75-4362, 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359,  
34 76-493, 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-  
35 3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

36 (2) Exceptions contained in the following statutes as certified by the  
37 revisor of statutes to the president of the senate and the speaker of the  
38 house of representatives pursuant to subsection (e) during 2009 are hereby  
39 continued in existence until July 1, 2015, at which time such exceptions  
40 shall expire: 17-2036, 40-5301, subsections (a)(45) and (a)(46) of 45-221,  
41 60-3351, 72-972a, 74-99d05 and 75-53,105.

42 (j) (1) Exceptions contained in the following statutes as continued in  
43 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas

1 and which have been reviewed and continued in existence twice by the  
2 legislature as provided in subsection (g) are hereby continued in existence:  
3 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016, 65-6017 and  
4 74-7508.

5 (2) Exceptions contained in the following statutes as certified by the  
6 revisor of statutes to the president of the senate and the speaker of the  
7 house of representatives pursuant to subsection (e) during 2010 are hereby  
8 continued in existence until July 1, 2016, at which time such exceptions  
9 shall expire: 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-  
10 2326, 44-1132, 60-3333, 65-6154, 71-218, 75-457, 75-712c, 75-723 and  
11 75-7c06.

12 (k) Exceptions contained in the following statutes as certified by the  
13 revisor of statutes to the president of the senate and the speaker of the  
14 house of representatives pursuant to subsection (e) ~~during 2006, 2007 and~~  
15 ~~2008 and which have been reviewed during the 2014 legislative session~~  
16 ~~and continued in existence by the legislature as provided in subsection (g)~~  
17 ~~are hereby continued in existence until July 1, 2014, at which time such~~  
18 ~~exceptions shall expire: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-~~  
19 ~~1325, 12-17,150, 12-2001, ~~12-5332~~, 17-12a607, 38-1008, 38-2209, 40-~~  
20 ~~5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44),~~  
21 ~~(45), (46) and, (47) and (48) of 45-221, 50-6a11, 56-1a610, 56a-1204, 65-~~  
22 ~~1,243, 65-16,104, 65-3239, ~~66-1233~~, 74-50,184, 74-8134, ~~74-99b06~~ 74-~~  
23 ~~99b06, 77-503a and 82a-2210.~~

24 (l) Exceptions contained in the following statutes as certified by the  
25 revisor of statutes to the president of the senate and the speaker of the  
26 house of representatives pursuant to subsection (e) during 2011 are hereby  
27 continued in existence until July 1, 2017, at which time such exceptions  
28 shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-  
29 8772 and 75-7427.

30 (m) Exceptions contained in the following statutes as certified by the  
31 revisor of statutes to the president of the senate and the speaker of the  
32 house of representatives pursuant to subsection (e) during 2012 and which  
33 have been reviewed during the 2013 legislative session and continued in  
34 existence by the legislature as provided in subsection (g) are hereby  
35 continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,  
36 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-  
37 712 and 75-5366.

38 **Sec. 3. K.S.A. 2013 Supp. 74-99b06 is hereby amended to read as**  
39 **follows: 74-99b06. (a) All resolutions and orders of the board shall be**  
40 **recorded and authenticated by the signature of the secretary or any**  
41 **assistant secretary of the board. The book of resolutions, orders,**  
42 **minutes of open meetings, annual reports and annual financial**  
43 **statements of the authority shall be public records as defined by**

1 K.S.A. 45-215 et seq., and amendments thereto. All public records  
2 shall be subject to regular audit as provided in K.S.A. 46-1106, and  
3 amendments thereto.

4 (b) (+) Notwithstanding any provision of K.S.A. 45-215 et seq.,  
5 and amendments thereto, to the contrary, the following records of the  
6 authority shall not be subject to the provisions of the Kansas open  
7 records act, when in the opinion of the board, the disclosure of the  
8 information in the records would be harmful to the competitive  
9 position of the authority:

10 (A) (1) Proprietary information gathered by or in the possession  
11 of the authority from third parties pursuant to a promise of  
12 confidentiality;

13 (B) (2) contract cost estimates prepared for confidential use in  
14 awarding contracts for research development, construction,  
15 renovation, commercialization or the purchase of goods or services;  
16 and

17 (C) (3) data, records or information of a proprietary nature  
18 produced or collected by or for the authority, its employees, officers or  
19 members of its board; financial statements not publicly available that  
20 may be filed with the authority from third parties; the identity,  
21 accounts or account status of any customer of the authority;  
22 consulting or other reports paid for by the authority to assist the  
23 authority in connection with its strategic planning and goals; and the  
24 determination of marketing and operational strategies where  
25 disclosure of such strategies would be harmful to the competitive  
26 position of the authority.

27 ~~(2) The provisions of this subsection shall expire on July 1, 2009.~~  
28 ~~Prior to such date the legislature shall review the provisions of this~~  
29 ~~subsection.~~

30 (c) Notwithstanding any provision of this section to the contrary,  
31 the authority may claim the benefit of any other exemption to the  
32 Kansas open records act listed in K.S.A. 45-215 et seq., and  
33 amendments thereto.

34 Sec. ~~3~~. 4. K.S.A. 2013 Supp. 40-5515 and, 45-229 and 74-99b06 are  
35 hereby repealed.

36 Sec. ~~4~~. 5. This act shall take effect and be in force from and after its  
37 publication in the statute book.