

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2109**

As Agreed to March 30, 2022

Brief*

HB 2109 would enact the Charitable Privacy Act (Act) and would continue in existence several exceptions in the Kansas Open Records Act (KORA).

Charitable Privacy Act

The Act would define “personal information” to mean any list, record, register, registry, roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, or volunteer of, or donor of financial or nonfinancial support to, a nonprofit organization.

The Act would define “nonprofit organization” to mean:

- An organization exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code;
- An organization that has submitted an application with the Internal Revenue Service for a Section 501(c) exemption; or
- An organization that is a not-for-profit business entity organized under the Kansas General Corporation Code.

The Act would define “public agency” to mean the state or any political or taxing subdivision of the state, or any office, agency, or instrumentality thereof.

The Act would prohibit a public agency from:

- Requiring an individual or a nonprofit organization to provide the agency with personal information or compelling the release of personal information;
- Releasing or publicly disclosing personal information in the possession of the agency; or

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- Requesting or requiring a current or prospective contractor or grant recipient to provide the public agency with a list of nonprofit organizations to which the contractor or grantee has provided financial or nonfinancial support.

The Act would provide that personal information shall be confidential and not subject to the Kansas Open Records Act (KORA). This provision would expire on July 1, 2027, unless the Legislature reviews and reenacts it before that date.

The Act would provide that a person alleging a violation of its provisions could bring a civil action for injunctive relief or damages, and damages awarded would not be less than \$7,500 for each violation of the Act's provisions. The court would be allowed to award reasonable attorney fees and costs to the complainant when the court determines such award is appropriate.

A person who knowingly violates the Act's provisions would be guilty of a class C nonperson misdemeanor.

The Act would specify its provisions would not apply to:

- Reports or disclosures required under the Campaign Finance Act or the State Governmental Ethics Law;
- A valid warrant issued for personal information by a court of competent jurisdiction;
- A lawful request for discovery of personal information in litigation, under specified circumstances;
- Admission of personal information as relevant evidence before a court of competent jurisdiction, except that no court shall disclose personal information unless the court makes a finding of good cause;
- A national securities association as defined by the Securities Exchange Act of 1934, and regulations adopted thereunder;
- Any adult care home as defined in the Adult Care Home Licensure Act;
- Certain information provided to the Attorney General involving the Charitable Organizations and Solicitations Act (COSA) or the Kansas Consumer Protection Act, except that certain disclosures regarding donors would be prohibited without consent of the donor;
- Information concerning staff, officers, and individuals designated to control funding needed to process and verify a request for a grant of funds from or a contract for goods and services with any public agency, except that information directly identifying an individual as a donor of financial support to a nonprofit organization would not be subject to disclosure;
- A request by the Department of Revenue, the Kansas Bureau of Investigation, or the Kansas Legislature for information required for an audit, background check, examination, or investigation, only for use in connection with such proceeding or any related proceedings; and

- The collection of information related to boards of directors, officers, resident agents, incorporators, and large capital holders of an organization in any report or disclosure required by any statute to be made with the Secretary of State with the intent that it becomes a public record, except that information directly identifying an individual as a donor of financial support to a nonprofit organization would not be subject to disclosure.

KORA Exception Continuations

The bill would continue in existence the following exceptions to KORA:

- KSA 9-2216a, concerning licensed mortgage business annual reports;
- KSA 22-4620, concerning electronic recordings of felony custodial interrogations;
- KSA 40-2,203, concerning insurer corporate governance annual disclosures;
- KSA 40-3805, concerning insurance third-party administrator transaction records;
- KSA 40-6001 and KSA 40-6007, concerning insurance risk management and own risk and solvency assessment records;
- KSA 50-1124, concerning licensed credit services organization annual reports; and
- KSA 50-1128, concerning State Bank Commissioner examination reports of credit services organizations.

The bill would also make technical amendments to ensure consistency in statutory phrasing and to remove outdated statutory references.

Conference Committee Action

As it entered conference, HB 2109 contained provisions regarding membership of the Board of Indigents' Defense Services. The Conference Committee agreed to remove these provisions and insert the contents of HB 2495, as amended by the House Committee of the Whole, enacting the Charitable Privacy Act, and SB 507, as passed by the Senate, concerning KORA exception continuations.

Background

HB 2495 (Charitable Privacy Act)

HB 2495 was introduced by the House Committee on Judiciary at the request of a representative of the Kansas Black Leadership Council and Philanthropy Roundtable.

House Committee on Judiciary

In the House Committee hearing on January 25, 2022, representatives of the Kansas Black Leadership Council and Philanthropy Roundtable provided **proponent** testimony, stating the bill would protect anonymous donations and protect donors from harassment or retaliation. Representatives of Kansas Family Voice, Kansas Policy Institute, and NAACP provided written-only proponent testimony.

A representative of Equality Kansas provided neutral testimony requesting the bill's protections be expanded to include nonprofit organizations organized under Kansas law or nonprofit organizations that have applied for Section 501(c) exemptions. A representative of the Office of Secretary of State provided neutral testimony requesting the bill be clarified to avoid conflict with the Secretary of State's statutory duties regarding nonprofit organizations. A representative of the Office of the Attorney General (OAG) provided written-only neutral testimony requesting the bill be clarified to avoid possible conflicts with COSA.

On March 15, 2022, the House Committee amended the bill pursuant to the requests of the neutral conferees and added other exceptions to the bill's provisions. [Note: The Conference Committee retained this amendment.]

House Committee of the Whole

On March 23, 2022, the House Committee of the Whole amended the bill to add the Kansas Bureau of Investigation and the Kansas Legislature as entities that may request personal information required for an audit, examination, or investigation, and to add background checks to this list of proceedings. [Note: The Conference Committee retained this amendment.]

SB 507 (KORA Exception Continuations)

A sunset provision for all exceptions to KORA was added in 2000, requiring a review of existing exceptions within five years and of any new exception or substantial amendment to an exception by July 1 of the fifth year of enactment. Absent such review, the exceptions would expire. The law also required any exceptions continued after legislative review to be reviewed again five years later; however, 2013 HB 2012 modified the requirement so that exceptions would no longer be subject to review and expiration if the Legislature reviews and continues the exception during the 2013 Session or thereafter.

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Olson.

Senate Committee on Judiciary

In the Senate Committee hearing on March 9, 2022, a representative of the League of Kansas Municipalities provided written-only proponent testimony in support of continuing the exception concerning recordings of custodial interrogations. No other testimony was provided.

On March 9, 2022, the Senate Committee recommended the bill be placed on the Consent Calendar.

Fiscal Information

HB 2495 (Charitable Privacy Act)

According to the fiscal note prepared by the Division of the Budget on HB 2495, as introduced, the Office of Judicial Administration (OJA) states enactment of the bill could increase the number of cases filed in district court, which could result in more time spent by court employees and judges. There also could be more supervision of offenders required to be performed by court service officers. The OJA estimates enactment of the bill could result in the collection of docket and supervision fees in those cases filed under the bill's provisions. According to the OJA, a fiscal effect cannot be estimated.

The Department of Revenue estimates enactment of the bill would require additional State General Fund expenditures of \$11,835 in FY 2023 for programming changes to the agency's systems.

The OAG states the agency administers and enforces COSA. Because the bill, as introduced, does not exempt COSA, the OAG would no longer be able to collect this information. This would require a modification of the COSA registration forms, which the OAG states could be done within existing resources. Further, the OAG states the bill's enactment could hinder the ability of the OAG to enforce COSA. [*Note: The House Committee amended the bill to exempt COSA from the bill's provisions.*]

The bill's enactment would also require additional time for the OAG to review and redact information on documents that may contain information prohibited from disclosure under the KORA. Also, the OAG states that enactment of HB 2495 could result in additional litigation against the State, requiring a defense by the OAG under the Kansas Tort Claims Act. State agencies that violate the bill's provisions would be subject to the civil penalties and attorney fees as described in the bill, according to the OAG.

Any fiscal effect associated with enactment of HB 2495 is not reflected in *The FY 2023 Governor's Budget Report*.

SB 507 (KORA Exception Continuations)

According to the fiscal note prepared by the Division of the Budget on the bill, enactment of SB 507 would have no fiscal effect.

Charitable Privacy Act; nonprofit organizations; personal information; confidentiality; Kansas Open Records Act; exceptions

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