

## **Kansas Open Records Act; Exceptions; Cybersecurity; Public Employees; Home Address; Fraudulent Liens; Criminal Penalties; HB 2390**

**HB 2390** reviews, amends, and adds exceptions to the Kansas Open Records Act (KORA) and creates and amends law regarding the filing of fraudulent liens.

### ***Kansas Open Records Act Exception Review***

The bill continues in law the following exceptions to KORA:

- KSA 9-513c(a), concerning money transmitter license or examination reports obtained and prepared by the State Bank Commissioner;
- KSA 9-2209(a)(19), concerning mortgage company examination action plan agreements by the State Bank Commissioner;
- KSA 12-5374(e), concerning information provided to local collection point administrators or the 911 Coordinating Council;
- KSA 16-335(a), concerning cemetery merchandise trust funds investigation by the Secretary of State;
- KSA 17-1312e(a), concerning records of cemetery corporation examination by the Secretary of State;
- KSA 22-2302(c)(4)(J), concerning affidavits supporting search warrants with information constituting a “clearly unwarranted invasion of personal privacy”;
- KSA 22-2302(c)(6)(B), concerning court records containing sealed affidavits supporting search warrants;
- KSA 22-2502(e)(4)(J), concerning affidavits supporting electronic search warrants with information constituting a “clearly unwarranted invasion of personal privacy”;
- KSA 22-2502(e)(6)(B), concerning court records containing sealed affidavits supporting electronic search warrants;
- KSA 25-2309(r), concerning documents submitted as evidence of citizenship for voter registration purposes;
- KSA 40-2,118(d)(2), concerning insurer antifraud plans submitted to the Commissioner of Insurance;

- KSA 40-4913(e), concerning documents provided to the Commissioner of Insurance regarding an insurer terminating an insurance agent;
- KSA 45-254(a), concerning law enforcement body or vehicle camera footage;
- KSA 65-6111(d)(4), concerning patient records contained in investigation files of the Emergency Medical Services Board;
- KSA 75-5664(f), concerning records and findings from review of incidents of trauma injury or care by the Advisory Committee on Trauma; and
- KSA 75-5665(b), concerning reports following review of incidents of trauma injury or care by a regional trauma council.

The bill also removes outdated language regarding the establishment of the Advisory Committee on Trauma.

### ***Kansas Open Records Act Amendments***

The bill amends an exception in KORA related to records of emergency or security information or procedures of a public agency to not require a public agency to disclose records of or procedures related to cybersecurity plans, assessments, and vulnerabilities if disclosure would jeopardize public safety. The bill defines “cybersecurity assessment,” “cybersecurity plan,” and “cybersecurity vulnerability.”

The bill also amends a KORA provision requiring public agencies to restrict certain persons’ identifying information from public access on a public website that is searchable by a keyword search and identifies the home address or home ownership of such persons, upon request by such persons. Specifically, the bill adds local correctional officers, local detention officers, presiding officers who conduct hearings pursuant to the Kansas Administrative Procedure Act, members of the State Board of Tax Appeals, administrative law judges who conduct hearings pursuant to the Workers’ Compensation Act, administrative law judges employed by the Office of Administrative Hearings, and members of the Workers’ Compensation Appeals Board to the list of persons whose identifying information may be so restricted.

### ***Filing of Fraudulent Liens***

The bill adds a provision to the Kansas Criminal Code that prohibits the filing of certain liens or claims against real or personal property and provides for criminal penalties, as follows.

The bill provides it is a severity level 8 nonperson felony for any person to present for filing in any public record:

- Any lien or claim against any real or personal property when such person knows or reasonably should know such lien or claim is false or contains any materially false, fictitious, or fraudulent statement or representation;

- Any document that purports to assert a lien against real or personal property of any person or entity that is not expressly provided for in Kansas or federal law, does not depend on the consent of the owner of the real or personal property affected, and is not an equitable or constructive lien imposed by a court with proper jurisdiction;
- Any financing statement pursuant to Article 9 of the Uniform Commercial Code, when such person knows or reasonably should know the financing statement is not based on a *bona fide* security agreement or was not authorized or authenticated by the alleged debtor identified in the financing statement or the debtor's authorized representative; or
- Any document filed in an attempt to harass an entity, individual, or public official, or obstruct a governmental operation or judicial proceeding, when such person knows or reasonably should know the document contains false information.

Under the new crime, it also is unlawful for any person to violate a court order issued pursuant to the statute governing an expedited process to review and determine the validity of liens and claims against real or personal property. In the statute, the bill adds to the process a requirement that, if the court orders the lien or claim to be set aside, the court's findings of fact and conclusions of law must include:

- An order prohibiting the person who filed such lien or claim from filing any future lien or claim with any filing officer without approval of the court that enters the order; and
- A provision stating a violation of the order may subject the party in violation to civil and criminal penalties.

The bill also requires any order finding a lien or claim is fraudulent to include a provision stating a violation of the order may result in civil and criminal penalties and removes a provision providing for a specific penalty of imprisonment of up to 120 days, a fine not to exceed \$1,000, or both.