AN ACT concerning open records; relating to exceptions to disclosure; amending K.S.A. 2010 Supp. 9-513c, 40-2,118, 40-4913 and 45-229 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 9-513c is hereby amended to read as follows: 9-513c. (a) Notwithstanding any other provision of law, all information or reports obtained by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (b) or (c).

(b) The commissioner shall have the authority to share supervisory information, with other state or federal agencies having regulatory authority over the person's money transmission business and shall have the authority to conduct joint examinations with other regulatory agencies.

(c) The commissioner may provide for the release of information to law enforcement agencies or prosecutorial agencies or offices who shall maintain the confidentiality of the information.

(d) Nothing shall prohibit the commissioner from releasing to the public a list of persons licensed or their agents or from releasing aggregated financial data on such persons.

(e) The provisions of subsection (a) shall expire on July 1, 2016, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2016.

Sec. 2. K.S.A. 2010 Supp. 40-2,118 is hereby amended to read as follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false
information concerning any fact material thereto; or conceals, for the
purpose of misleading, information concerning any fact material thereto.

(b) An insurer that has knowledge or a good faith belief that a
fraudulent insurance act is being or has been committed shall provide to
the commissioner, on a form prescribed by the commissioner, any and all
information and such additional information relating to such fraudulent
insurance act as the commissioner may require.

(c) Any other person that has knowledge or a good faith belief that a
fraudulent insurance act is being or has been committed may provide to
the commissioner, on a form prescribed by the commissioner, any and all
information and such additional information relating to such fraudulent
insurance act as the commissioner may request.

(d) (1) Each insurer shall have antifraud initiatives reasonably
calculated to detect fraudulent insurance acts. Antifraud initiatives may
include: fraud investigators, who may be insurer employees or
independent contractors; or an antifraud plan submitted to the
commissioner no later than July 1, 2007. Each insurer that submits an
antifraud plan shall notify the commissioner of any material change in the
information contained in the antifraud plan within 30 days after such
change occurs. Such insurer shall submit to the commissioner in writing
the amended antifraud plan.

The requirement for submitting any antifraud plan, or any amendment
thereof, to the commissioner shall expire on the date specified in
paragraph (2) of this subsection unless the legislature reviews and
reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229, and
amendments thereto.

(2) Any antifraud plan, or any amendment thereof, submitted to the
commissioner for informational purposes only shall be confidential and
not be a public record and shall not be subject to discovery or subpoena
in a civil action unless following an in camera review, the court
determines that the antifraud plan is relevant and otherwise admissible
under the rules of evidence set forth in article 4 of chapter 60 of the
Kansas Statutes Annotated, and amendments thereto. The provisions of
this paragraph shall expire on July 1, 2011, unless the legislature
reviews and reenacts this provision pursuant to K.S.A. 45-229, and
amendments thereto, prior to July 1, 2016.

(e) Except as otherwise specifically provided in K.S.A. 21-3718 and
amendments thereto and K.S.A. 44-5,125, and amendments thereto, a
fraudulent insurance act shall constitute a severity level 6, nonperson
felony if the amount involved is $25,000 or more; a severity level 7,
nonperson felony if the amount is at least $5,000 but less than $25,000; a
severity level 8, nonperson felony if the amount is at least $1,000 but less
than $5,000; and a class C nonperson misdemeanor if the amount is less
than $1,000. Any combination of fraudulent acts as defined in subsection (a) which occur in a period of six consecutive months which involves $25,000 or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block.

(f) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(g) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.

Sec. 3. K.S.A. 2010 Supp. 40-4913 is hereby amended to read as follows: 40-4913. (a) (1) Each insurer shall notify the commissioner whenever such insurer terminates a business relationship with an insurance agent if:

(A) The termination is for cause;

(B) such insurance agent has committed any act which would be in violation of any provision of subsection (a) of K.S.A. 2010 Supp. 40-4909, and amendments thereto; or

(C) such insurer has knowledge that such insurance agent is engaged in any activity which would be in violation of any provision of subsection (a) of K.S.A. 2010 Supp. 40-4909, and amendments thereto.

(2) The notification shall:

(A) Be made in a format prescribed by the commissioner;

(B) be submitted to the commissioner within 30 days of the date of the termination of the business relationship; and

(C) contain:

(i) The name of the insurance agent; and

(ii) the reason for the termination of the business relationship with such insurer.

(3) Upon receipt of a written request from the commissioner, each insurer shall provide to the commissioner any additional data, documents, records or other information concerning the termination of the insurer's business relationship with such agent.

(4) Whenever an insurer discovers or obtains additional information which would have been reportable under paragraph (1) of this subsection, the insurer shall forward such additional information to the commissioner within 30 days of its discovery.

(b) (1) Each insurer shall notify the commissioner whenever such insurer terminates a business relationship with an insurance agent for any reason not listed in subsection (a).

(2) The notification shall:

(A) Be made in a format prescribed by the commissioner;
(B) be submitted to the commissioner within 30 days of the date of
the termination of the business relationship.

(3) Upon receipt of a written request from the commissioner, each
insurer shall provide to the commissioner any additional data, documents,
records or other information concerning the termination of the insurer's
business relationship with such agent.

(4) Whenever an insurer discovers or obtains additional information
which would have been reportable under paragraph (1) of this subsection,
the insurer shall forward such additional information to the commissioner
within 30 days of its discovery.

(c) For the purposes of this section, the term "business relationship"
shall include any appointment, employment, contract or other relationship
under which such insurance agent represents the insurer.

(d) (1) No insurance entity, or any agent or employee thereof acting
on behalf of such insurance entity, regulatory official, law enforcement
official or the insurance regulatory official of another state who provides
information to the commissioner in good faith pursuant to this section
shall be subject to a civil action for damages as a result of reporting such
information to the commissioner. For the purposes of this section,
insurance entity shall mean any insurer, insurance agent or organization
to which the commissioner belongs by virtue of the commissioner's
office.

(2) Any document, material or other information in the control or
possession of the department that is furnished by an insurance entity or an
employee or agent thereof acting on behalf of such insurance entity, or
obtained by the insurance 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.

(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 (2).

(4) The commissioner may share or exchange any documents,
materials or other information, including confidential and privileged
documents referred to in paragraph (2) of subsection (d), received in the
performance of the commissioner's duties under this act, with:

(A) The NAIC;

(B) other state, federal or international regulatory agencies; and

(C) 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 as authorized by paragraph (1) of subsection (d).

(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.

(e) The provisions of paragraph (2) of subsection (d) shall expire on July 1, 2016, unless the legislature acts to reenact such provision. The provisions of paragraph (2) of subsection (d) shall be reviewed by the legislature prior to July 1, 2016.

(f) For the purposes of this section, insurance entity shall mean any insurer, insurance agent or organization to which the commissioner belongs by virtue of the commissioner's office.

(g) Any insurance entity, including any authorized representative of such insurance entity, that fails to report to the commissioner as required under the provisions of this section or that is found by a court of competent jurisdiction to have failed to report in good faith, after notice and hearing, may have its license or certificate of authority suspended or revoked and may be fined in accordance with K.S.A. 2010 Supp. 40-4909 and amendments thereto.

Sec. 4. K.S.A. 2010 Supp. 45-229 is hereby amended to read as follows: 45-229. (a) It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only if:

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

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

(3) the public record affects confidential information.

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

(b) Subject to the provisions of subsection (h), all exceptions to
disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and
any new exception to disclosure or substantial amendment of an existing
exception shall expire on July 1 of the fifth year after enactment of the
new exception or substantial amendment, unless the legislature acts to
continue the exception. A law that enacts a new exception or substantially
amends an existing exception shall state that the exception expires at the
end of five years and that the exception shall be reviewed by the
legislature before the scheduled date.

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

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

(e) In the year before the expiration of an exception, the revisor of
statutes shall certify to the president of the senate and the speaker of the
house of representatives, by July 15, the language and statutory citation
of each exception which will expire in the following year which meets the
criteria of an exception as defined in this section. Any exception that is
not identified and certified to the president of the senate and the speaker
of the house of representatives is not subject to legislative review and
shall not expire. If the revisor of statutes fails to certify an exception that
the revisor subsequently determines should have been certified, the
revisor shall include the exception in the following year's certification
after that determination.

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

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

(1) Is required by federal law;

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

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

(A) What specific records are affected by the exception;
(B) whom does the exception uniquely affect, as opposed to the general public;

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

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

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

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

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

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

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

(i) Exceptions contained in the following statutes as continued in existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas and exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section during 2009 are hereby continued in existence until July 1, 2015, at which time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, 17-2036, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-1664, 38-2212, 39-709b, 39-719e, 39-934, 39-1434, 39-1704,
(j) Exceptions contained in the following statutes as continued in existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas and exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 4, 2005 during 2010, are hereby continued in existence until July 1, 2016, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 38-1692, 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 39-970, 40-4913, 44-1132, 60-3333, 65-525, 65-5117, 65-6016, 65-6017 and 65-6154, 71-218, 74-7508, 75-457, 75-712c, 75-723 and 75-7c06.

(k) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1303, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 65-3123, 74-50,184, 74-8134, 75-99b06 and 82a-2210.

Sec. 5. K.S.A. 2010 Supp. 9-513c, 40-2,118, 40-4913 and 45-229 are hereby repealed.
Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.