

SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2301**

As Agreed to May 1, 2017

Brief*

HB 2301 would amend law related to public records and public meetings, as follows.

Juror Information

The bill would amend law within the Kansas Code of Criminal Procedure relating to trial jurors. The bill would remove addresses of prospective jurors from the information included in the list of prospective jurors filed as a public record with the clerk of the court.

Open Records Exceptions

The bill would continue in existence the following exceptions to the Kansas Open Records Act (KORA):

- KSA 2016 Supp. 74-2012, concerning motor vehicle records;
- KSA 2016 Supp. 22-4909, concerning criminal offender registration;
- KSA 2016 Supp. 45-221(a)(51) and (52), concerning home addresses of law enforcement officers and judges;

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- KSA 2016 Supp. 65-1505, concerning criminal history records checks;
- KSA 2016 Supp. 74-5607, concerning peace officers standards and training;
- KSA 2016 Supp. 75-7d01 and 75-7d05, concerning the batterer intervention program certification;
- KSA 2016 Supp. 75-5133, concerning charitable gaming and microdistillery information;
- KSA 2016 Supp. 79-3234, concerning social security numbers;
- KSA 2016 Supp. 75-7d08, concerning the batterer intervention program;
- KSA 2016 Supp. 12-5711, concerning the Fort Scott/Bourbon County Riverfront Authority;
- KSA 2016 Supp. 21-2511, concerning biological samples for the Kansas Bureau of Investigation;
- KSA 2016 Supp. 38-2313, concerning fingerprints and photographs of juvenile offenders;
- KSA 2016 Supp. 65-516, concerning child care facilities;
- KSA 2016 Supp. 74-8745, concerning the multistate lottery;
- KSA 2016 Supp. 74-8752, concerning the multistate lottery investigation and audit;
- KSA 2016 Supp. 74-8772, concerning the Kansas Racing and Gaming Commission; and
- KSA 2016 Supp. 75-7427, concerning the Office of Inspector General.

The bill would also remove the sunset date of July 1, 2021, placed on the following exceptions to KORA by the 2016 Legislature following its review of the exceptions:

- KSA 2016 Supp. 40-955, concerning insurance rate filings;
- KSA 2016 Supp. 45-221(a)(10)(F), concerning victims of sexual offenses;
- KSA 2016 Supp. 45-221(a)(50), concerning information provided to the 911 Coordinating Council;
- KSA 2016 Supp. 65-4a05, concerning individual identification present in documents related to licensing of abortion clinics;
- KSA 2016 Supp. 65-445(g), concerning child sexual abuse reports;
- KSA 2016 Supp. 12-5611, concerning the Topeka/Shawnee County Riverfront Authority;
- KSA 2016 Supp. 22-4906 and 22-4909, concerning criminal offender registration;
- KSA 2016 Supp. 38-2310, concerning records concerning certain juveniles;
- KSA 2016 Supp. 38-2311, concerning juvenile treatment records;
- KSA 2016 Supp. 38-2326, concerning juvenile offender information systems;
- KSA 2016 Supp. 44-1132, concerning discrimination in employment;
- KSA 2016 Supp. 60-3333, concerning environmental audit reports;

- KSA 2016 Supp. 65-6154, concerning emergency medical services reports;
- KSA 2016 Supp. 71-218, concerning community colleges and employee evaluation documents;
- KSA 2016 Supp. 75-457, concerning substitute mailing addresses;
- KSA 2016 Supp. 75-712c, concerning reports of missing persons;
- KSA 2016 Supp. 75-723, concerning the Abuse, Neglect, and Exploitation of Persons Unit in the Office of the Attorney General; and
- KSA 2016 Supp. 75-7c06, concerning concealed firearm records.

The bill would also remove a reference to a repealed statute.

Procedure and Justifications for Closed or Executive Meetings

The bill would amend the Kansas Open Meetings Act (KOMA) with respect to closed or executive meetings. The bill would require any motion to recess for a closed or executive session to include a statement describing the subjects to be discussed during the closed or executive session and the justification for closing the meeting. Current law requires a statement of the justification for closing the meeting and the subjects to be discussed during the closed meeting. The bill would leave unchanged the requirement the motion contain the time and place at which the open meeting will resume.

The bill would require the complete motion be recorded in the minutes of the meeting.

Justifications for closing meetings would be limited to the circumstances listed in the bill. The justifications would be substantively similar to the list of subjects allowed to be discussed at closed or executive sessions under current law, with the following exceptions:

- The bill would amend language related to KSA 22a-243(j) to specify matters relating to the investigation of child deaths could be discussed;
 - Current law states matters related to district coroners could be discussed in executive session pursuant to the statute;
- The bill would specify what matters could be discussed pursuant to statute in the following instances:
 - Matters relating to parimutuel racing pursuant to KSA 74-8804 and amendments thereto;
 - Matters relating to the care of children pursuant to KSA 2016 Supp. 38-2212(d)(1) or 38-2213(e) and amendments thereto;
 - Matters relating to patients and providers pursuant to KSA 39-7,119(g) and amendments thereto;
 - Matters relating to maternity centers and child care facilities pursuant to KSA 65-525(d) and amendments thereto; and
 - Matters relating to the office of inspector general pursuant to KSA 2015 Supp. 75-7427 and amendments thereto;
- The bill would add a justification allowing the Governor's Domestic Violence Fatality Review Board (DVFRB) to conduct case reviews in closed or executive meetings; and
- The bill would strike language related to repealed statutes.

Conference Committee Action

The Conference Committee agreed to HB 2301, as amended by the Senate Committee on Judiciary, regarding KORA exceptions and juror information, modifying the juror information provision so the information would continue to be a public record but would not include the jurors' addresses. The Conference Committee further agreed to add the contents of HB 2128, as amended by the Senate Committee of the Whole, regarding closed or executive meetings under KOMA, with a clarifying modification to the provision allowing the DVFRB to conduct case reviews in closed or executive meetings.

Background

HB 2301—Open Records Exceptions

As introduced by the House Committee on Judiciary, HB 2301 contained the provisions continuing certain KORA exceptions. A sunset provision for all exceptions to KORA was added in 2000, requiring a review of exceptions within five years or they would expire. The law also required any exceptions continued after legislative review to be reviewed again five years later. More recently, 2013 HB 2012 modified the review 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. However, 2016 Sub. for SB 22 continued certain exceptions as specified in that bill only until July 1, 2021.

In the House Committee hearing, staff presented an overview of the bill. No other testimony was presented.

The House Committee recommended the bill be placed on the Consent Calendar.

In the Senate Committee on Judiciary hearing, staff presented an overview of the bill and requested an amendment to correct a typographical error.

The Senate Committee adopted the amendment requested by staff and an amendment adding the language of HB 2197, regarding juror information. Further background regarding HB 2197 is provided below.

According to the fiscal note prepared by the Division of the Budget on HB 2301, as introduced, enactment of the bill would have no fiscal effect. Fiscal note information for HB 2197 is provided below.

HB 2197——Juror Information

HB 2197 was introduced by the House Committee on Judiciary at the request of the Kansas District Judges Association (KDJA). In the House Committee and Senate Committee on Judiciary hearings, representatives of the KDJA testified in support of the bill. No opponent or neutral testimony was presented.

As introduced and incorporated into HB 2301, HB 2197 would have not only removed the addresses of prospective jurors from the list of prospective jurors but would also have amended the law to specify the list is not a public record. The Conference Committee on HB 2301 agreed to modify this provision so the list would remain a public record.

According to the fiscal note prepared by the Division of the Budget on HB 2197, the Office of Judicial Administration indicates any fiscal effect associated with the enactment of the bill would be negligible.

***HB 2128—Closed or Executive Meetings for DVFRB
Case Reviews***

HB 2128 was introduced in the House Committee on Judiciary at the request of the Governor's Grants Program. As introduced, the bill would have amended KOMA to allow the DVFRB to conduct case reviews in closed or executive meetings.

In the House Committee hearing, a representative of the Governor's Grants Program and two members of the DVFRB testified in support of the bill. Written-only testimony in support of the bill was provided by two members of the DVFRB, an advisory member of the DVFRB, the Kansas County and District Attorneys Association (KCDA), and the Kansas Coalition Against Sexual and Domestic Violence (KCSDV). Appearing before the House Committee in opposition to the bill was the Kansas Press Association. No neutral testimony was provided.

In the Senate Committee on Judiciary hearing, a representative of the Governor's Grants program and a member of the DVFRB testified in support of the bill. Written-only proponent testimony was provided by the KCDA, KCSDV, and the Family Peace Initiative. The Kansas Press Association submitted written-only testimony opposing the bill. No neutral testimony was provided.

The Senate Committee of the Whole amended the bill to add the contents of SB 70, as amended by the Senate Committee on Federal and State Affairs, regarding procedure and justifications for closed or executive meetings. Further background and fiscal information regarding SB 70 is presented below.

According to the fiscal note prepared by the Division of the Budget, enactment of HB 2128, as introduced, would have no fiscal effect.

SB 70—Procedure and Justifications for Closed or Executive Meetings

SB 70 was requested by Senators Francisco and Baumgardner. In the Senate Committee on Federal and State Affairs hearing, Senators Francisco and Baumgardner, as well as representatives from the Kansas Association of Counties, the Kansas Association of Broadcasters, the League of Women Voters of Kansas, the Kansas Press Association, and one citizen testified in favor of the bill. They testified the problem with the current statute is that “justification” is undefined. The proponents stated, in conjunction with other bills passed in recent years, this bill is the next step in ensuring open accountability. Written testimony in support of the bill was provided by the Kansas Policy Institute, the Kansas Sunshine Coalition for Open Government, the Garden City Telegram, and the Oskaloosa Independent.

Neutral, written-only testimony in support of the bill was provided by the League of Kansas Municipalities and the State Child Death Review Board.

No opponent testimony was provided.

The Senate Committee amended the bill to specify the complete motion to recess for executive session, rather than the motion “in its entirety,” be recorded in the minutes. The Senate Committee also changed language in the list of justifications to allow discussion of the investigation of child deaths pursuant to statute, rather than matters relating to district coroners.

According to the fiscal note prepared by the Division of the Budget on SB 70, as introduced, the Office of the Attorney General indicates the changes proposed by the bill could cause new issues to arise that have not been litigated or for which an Attorney General’s Opinion has not been issued. If the number of opinion requests significantly increases, additional staff attorneys could be required to handle the

added workload. If a court case were brought questioning the application of the new law, the Office of the Attorney General could be required to be involved to defend a state agency accused of violating the new provisions or to enforce violations of KOMA. The agency would be able to collect civil penalties for violations of KOMA. However, it is not possible to predict the number of opinion requests or court cases that would arise or how complex and time-consuming they would be. Therefore, a fiscal effect cannot be determined. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.

open meetings; governor's domestic fatality review board; public records; open records; jurors; open records exceptions; KORA; KOMA; closed meetings; executive meetings

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