

HOUSE BILL No. 2137

By Committee on Judiciary

2-5

1 AN ACT concerning the Kansas open records act; relating to exceptions to
2 disclosure of public records; legislative review; amending K.S.A. 2018
3 Supp. 9-513c, 40-3407 and 45-229 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2018 Supp. 9-513c is hereby amended to read as
7 follows: 9-513c. (a) Notwithstanding any other provision of law, all
8 information or reports obtained and prepared by the commissioner in the
9 course of licensing or examining a person engaged in money transmission
10 business shall be confidential and may not be disclosed by the
11 commissioner except as provided in subsection (c) or (d).

12 (b)-(1) All confidential information shall be the property of the state
13 of Kansas and shall not be subject to disclosure except upon the written
14 approval of the state bank commissioner.

15 ~~(2) The provisions of this subsection shall expire on June 30, 2019,~~
16 ~~unless the legislature acts to reenact such provisions. The provisions of this~~
17 ~~paragraph shall be reviewed by the legislature prior to July 1, 2019.~~

18 (c) (1) The commissioner shall have the authority to share
19 supervisory information, including reports of examinations, with other
20 state or federal agencies having regulatory authority over the person's
21 money transmission business and shall have the authority to conduct joint
22 examinations with other regulatory agencies.

23 (2) The requirements under any federal or state law regarding the
24 confidentiality of any information or material provided to the nationwide
25 multi-state licensing system, and any privilege arising under federal or
26 state law, including the rules of any federal or state court, with respect to
27 such information or material, shall continue to apply to such information
28 or material after the information or material has been disclosed to the
29 system. Such information and material may be shared with all state and
30 federal regulatory officials with financial services industry oversight
31 authority without the loss of confidentiality protections provided by
32 federal and state laws.

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

36 (e) The commissioner may accept a report of examination or

1 investigation from another state or federal licensing agency, in which the
2 accepted report is an official report of the commissioner. Acceptance of an
3 examination or investigation report does not waive any fee required by this
4 act.

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

8 (g) The provisions of subsection (a) shall expire on July 1, 2021,
9 unless the legislature acts to reauthorize such provisions. The provisions of
10 subsection (a) shall be reviewed by the legislature prior to July 1, 2021.

11 Sec. 2. K.S.A. 2018 Supp. 40-3407 is hereby amended to read as
12 follows: 40-3407. (a) Except for investment purposes, all payments from
13 the fund shall be upon warrants of the state of Kansas issued pursuant to
14 vouchers approved by the executive director or the executive director's
15 designee, and, with respect to claim payments, accompanied by: (1) A file
16 stamped copy of a final judgment against a healthcare provider or inactive
17 healthcare provider for which the fund is liable; or (2) a file stamped copy
18 of a court approved settlement against a healthcare provider or inactive
19 healthcare provider for which the fund is liable.

20 (b) For investment purposes amounts shall be paid from the fund
21 upon vouchers approved by the chairperson of the pooled money
22 investment board.

23 (c)-(f) Payments from the fund for attorney fees, expert witness fees,
24 and other costs related to claims, including invoices, statements and other
25 documentation thereof, shall not be subject to K.S.A. 45-218, and
26 amendments thereto.

27 ~~(2) The provisions of this subsection shall expire on June 30, 2019,~~
28 ~~unless the legislature acts to reenact such provisions. The provisions of this~~
29 ~~section shall be reviewed by the legislature prior to July 1, 2019.~~

30 Sec. 3. K.S.A. 2018 Supp. 45-229 is hereby amended to read as
31 follows: 45-229. (a) It is the intent of the legislature that exceptions to
32 disclosure under the open records act shall be created or maintained only
33 if:

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

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

38 (3) the public record affects confidential information.

39 The maintenance or creation of an exception to disclosure must be
40 compelled as measured by these criteria. Further, the legislature finds that
41 the public has a right to have access to public records unless the criteria in
42 this section for restricting such access to a public record are met and the
43 criteria are considered during legislative review in connection with the

1 particular exception to disclosure to be significant enough to override the
2 strong public policy of open government. To strengthen the policy of open
3 government, the legislature shall consider the criteria in this section before
4 enacting an exception to disclosure.

5 (b) Subject to the provisions of subsections (g) and (h), any new
6 exception to disclosure or substantial amendment of an existing exception
7 shall expire on July 1 of the fifth year after enactment of the new
8 exception or substantial amendment, unless the legislature acts to continue
9 the exception. A law that enacts a new exception or substantially amends
10 an existing exception shall state that the exception expires at the end of
11 five years and that the exception shall be reviewed by the legislature
12 before the scheduled date.

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

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

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

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

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

- 39 (1) Is required by federal law;
- 40 (2) applies solely to the legislature or to the state court system;
- 41 (3) has been reviewed and continued in existence twice by the
42 legislature; or
- 43 (4) has been reviewed and continued in existence by the legislature

1 during the 2013 legislative session and thereafter.

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

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

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

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

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

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

16 (A) Allows the effective and efficient administration of a
17 governmental program, ~~which administration~~ *that* would be significantly
18 impaired without the exception;

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

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

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

37 (i) (1) Exceptions contained in the following statutes as continued in
38 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas
39 and that have been reviewed and continued in existence twice by the
40 legislature as provided in subsection (g) are hereby continued in existence:
41 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189,
42 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-
43 1312e, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321, 21-

1 2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312,
 2 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934,
 3 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,
 4 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b,
 5 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635,
 6 44-714, 44-817, 44-1005, 44-1019, 45-221(a)(1) through (43), 46-256, 46-
 7 259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427,
 8 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-
 9 3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-
 10 1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-
 11 1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-
 12 1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a,
 13 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922,
 14 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-
 15 67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203,
 16 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-
 17 5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-
 18 50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804,
 19 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362,
 20 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493,
 21 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-
 22 3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

23 (2) Exceptions contained in the following statutes as certified by the
 24 revisor of statutes to the president of the senate and the speaker of the
 25 house of representatives pursuant to subsection (e) and that have been
 26 reviewed during the 2015 legislative session and continued in existence by
 27 the legislature as provided in subsection (g) are hereby continued in
 28 existence: 17-2036, 40-5301, 45-221(a)(45), (46) and (49), 48-16a10, 58-
 29 4616, 60-3351, 72-972a, 74-50,217 and 75-53,105.

30 (j) (1) Exceptions contained in the following statutes as continued in
 31 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas
 32 and that have been reviewed and continued in existence twice by the
 33 legislature as provided in subsection (g) are hereby continued in existence:
 34 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016, 65-6017 and
 35 74-7508.

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 2015 and that
 39 have been reviewed during the 2016 legislative session are hereby
 40 continued in existence: 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-
 41 2326, 40-955, 44-1132, 45-221(a)(10)(F) and (a)(50), 60-3333, 65-4a05,
 42 65-445(g), 65-6154, 71-218, 75-457, 75-712c, 75-723 and 75-7c06.

43 (k) Exceptions contained in the following statutes as certified by the

1 revisor of statutes to the president of the senate and the speaker of the
2 house of representatives pursuant to subsection (e) and that have been
3 reviewed during the 2014 legislative session and continued in existence by
4 the legislature as provided in subsection (g) are hereby continued in
5 existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-
6 17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-
7 2905, 41-2906, 44-706, 44-1518, 45-221(a)(44), (45), (46), (47) and (48),
8 50-6a11, 56-1a610, 56a-1204, 65-1,243, 65-16,104, 65-3239, 74-50,184,
9 74-8134, 74-99b06, 77-503a and 82a-2210.

10 (l) Exceptions contained in the following statutes as certified by the
11 revisor of statutes to the president of the senate and the speaker of the
12 house of representatives pursuant to subsection (e) during 2016 and that
13 have been reviewed during the 2017 legislative session are hereby
14 continued in existence: 12-5711, 21-2511, 22-4909, 38-2313, 45-221(a)
15 (51) and (52), 65-516, 65-1505, 74-2012, 74-5607, 74-8745, 74-8752, 74-
16 8772, 75-7d01, 75-7d05, 75-5133, 75-7427 and 79-3234.

17 (m) Exceptions contained in the following statutes as certified by the
18 revisor of statutes to the president of the senate and the speaker of the
19 house of representatives pursuant to subsection (e) during 2012 and that
20 have been reviewed during the 2013 legislative session and continued in
21 existence by the legislature as provided in subsection (g) are hereby
22 continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,
23 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-
24 712 and 75-5366.

25 (n) Exceptions contained in the following statutes as certified by the
26 revisor of statutes to the president of the senate and the speaker of the
27 house of representatives pursuant to subsection (e) and that have been
28 reviewed during the 2018 legislative session are hereby continued in
29 existence: 9-513c(c)(2), 39-709, 45-221(a)(26), (53) and (54), 65-6832,
30 65-6834, 75-7c06 and 75-7c20.

31 (o) *Exceptions contained in the following statutes as certified by the*
32 *revisor of statutes to the president of the senate and the speaker of the*
33 *house of representatives pursuant to subsection (e) that have been*
34 *reviewed during the 2019 legislative session are hereby continued in*
35 *existence: 21-2511(h)(2), 21-5905(a)(7), 22-2302(b) and (c), 22-2502(d)*
36 *and (e), 40-222(k)(7), 44-714(e), 45-221(a)(55), 46-1106(g) regarding 46-*
37 *1106(i), 65-2836(i), 65-2839a(c), 65-2842(d), 65-28a05(n), article 6(d) of*
38 *65-6230, 72-6314(a) and 74-7047(b).*

39 Sec. 4. K.S.A. 2018 Supp. 9-513c, 40-3407 and 45-229 are hereby
40 repealed.

41 Sec. 5. This act shall take effect and be in force from and after its
42 publication in the statute book.