Session of 2020

SENATE BILL No. 427

By Committee on Judiciary

2-13

AN ACT concerning the open records act; relating to exceptions to the disclosure of public records; legislative review of expiring exceptions; continuing such exceptions; amending K.S.A. 2019 Supp. 9-1810, 40-223j, 45-229 and 50-6a11 and repealing the existing sections.

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

Section 1. K.S.A. 2019 Supp. 9-1810 is hereby amended to read as follows: 9-1810. (a) The commissioner may enter into any informal agreement with any bank or trust company for a plan of action to address possible safety or soundness concerns, violations of law or any weakness displayed by the bank or trust company if the commissioner determines that the bank or trust company displays:

(1) Possible safety and soundness concerns or is violating, has violated or is about to violate any law, rule and regulation or order of the commissioner or the state banking board resulting in a less than satisfactory condition, but not to a degree requiring formal administrative action; or

(2) any weakness that if not properly addressed and corrected would reasonably be expected to result in future safety and soundness concerns, violations of applicable laws, rules and regulations and further deterioration in the condition of the bank or trust company.

(b) The adoption of an informal agreement authorized by this section shall not be subject to the provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A. 77-601 et seq., and amendments thereto. Any informal agreement authorized by this section shall not be considered an order or other agency action and shall be considered confidential examination material pursuant to K.S.A. 9-1712, and amendments thereto. The provisions of this subsection shall expire on July 1, 2020, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.

Sec. 2. K.S.A. 2019 Supp. 40-223j is hereby amended to read as follows: 40-223j. (a) The statement of actuarial opinion shall be provided with the annual statement in accordance with the appropriate NAIC property and casualty annual statement instructions and shall be treated as a public document.

(b) (1) Any document, material or other information, in the control or
possession of the department that is furnished to the commissioner
pursuant to this act or obtained by the 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.

(2) (A) This subsection shall not be construed to limit the
commissioner's authority to release the documents to the actuarial board
for counseling and discipline so long as the material is required for the
purpose of professional disciplinary proceedings and that the actuarial
board for counseling and discipline establishes procedures satisfactory to
the commissioner for preserving the confidentiality of the documents.

(B) This subsection shall not be construed to limit the commissioner's
authority to use the documents, materials or other information in
furtherance of any regulatory or legal action brought as part of the
commissioner's official duties.

(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 (1).

(4) The commissioner may share or exchange any documents,
materials or other information, including confidential and privileged
documents referred to in paragraph (1), received in the performance of the
commissioner's duties under this act, with:

(A) The NAIC and its affiliates and subsidiaries;

(B) the actuarial board for counseling and discipline or any other
entity which regulates actuaries;

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

(D) 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
such documents, materials or information as authorized by this subsection.

(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.

(c) The provisions of subsection (b)(2) shall expire on July 1, 2020, unless the legislature acts to reenact such provision. The provisions of subsection (b)(2) shall be reviewed by the legislature prior to July 1, 2020.

d) For the purposes of this section:

1. "Commissioner"—shall mean means the commissioner of insurance.

2. "NAIC"—shall mean means the national association of insurance commissioners.

Sec. 3. K.S.A. 2019 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 subsections (g) and (h), 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 that will expire in the following year that 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 that 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 that 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;
3. Has been reviewed and continued in existence twice by the legislature; or
4. Has been reviewed and continued in existence by the legislature during the 2013 legislative session and thereafter.

(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 that would be significantly impaired without the exception;
   (B) Protects information of a sensitive personal nature concerning individuals, the release of such 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 that is used to protect or further a business advantage over those who do not know or use it, if the disclosure of such 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) would occur if the records were made public.

(i) (1) Exceptions contained in the following statutes as continued in existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas and that have been reviewed and continued in existence twice by the legislature as provided in subsection (g) are hereby continued in existence:


(2) 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) and that have been reviewed during the 2015 legislative session and continued in existence by the legislature as provided in subsection (g) are hereby continued in existence: 17-2036, 40-5301, 45-221(a)(45), (46) and (49), 48-16a10, 58-4616, 60-3351, 72-972a, 74-50,217 and 75-53,105.

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

(2) 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 2015 and that have been reviewed during the 2016 legislative session are hereby continued in existence: 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 40-955, 44-1132, 45-221(a)(10)(F) and (a)(50), 60-3333, 65-4a05, 65-445(g), 65-6154, 71-218, 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) and that have been reviewed during the 2014 legislative session and continued in existence by the legislature as provided in subsection (g) are hereby continued in existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, 45-221(a)(44), (45), (46), (47) and (48), 50-6a11, 56-1a610, 56a-1204, 65-1,243, 65-16,104, 65-3239, 74-50,184, 74-8134, 74-99b06, 77-503a and 82a-2210.

(l) 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 2016 and that have been reviewed during the 2014 legislative session and continued in existence by the legislature as provided in subsection (g) are hereby continued in existence: 12-5711, 21-2511, 22-4909, 38-2313, 45-221(a) (51) and (52), 65-516, 65-1505, 74-2012, 74-5607, 74-8745, 74-8752, 74-8772, 75-7d01, 75-7d05, 75-5133, 75-7427 and 79-3234.

(m) 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 2012 and that have been reviewed during the 2013 legislative session and continued in existence by the legislature as provided in subsection (g) are hereby
continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,
40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-
712 and 75-5366.

(n) 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) and that have been
reviewed during the 2018 legislative session are hereby continued in
existence: 9-513c(c)(2), 39-709, 45-221(a)(26), (53) and (54), 65-6832,
65-6834, 75-7c06 and 75-7c20.

(o) 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) that have been
reviewed during the 2019 legislative session are hereby continued in
existence: 21-2511(h)(2), 21-5905(a)(7), 22-2302(b) and (c), 22-2502(d)
and (e), 40-222(k)(7), 44-714(e), 45-221(a)(55), 46-1106(g) regarding 46-
1106(i), 65-2836(i), 65-2839a(c), 65-2842(d), 65-28a05(n), article 6(d) of
65-6230, 72-6314(a) and 74-7047(b).

(p) 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) that have been
reviewed during the 2020 legislative session are hereby continued in
existence: 38-2310(c), 40-409(j)(2), 40-6007(a), 45-221(a)(52), 46-1129,
59-29a22(b)(10) and 65-6747.

Sec. 4. K.S.A. 2019 Supp. 50-6a11 is hereby amended to read as
follows: 50-6a11. (a) The director is authorized to disclose to the attorney
general any information received under this act, as requested by the
attorney general for purposes of determining compliance with or enforcing
the provisions of this act. The director and attorney general shall share
with each other information received under this act and the director and
the attorney general may share such information with federal agencies,
attorneys general of other states or directors of taxation or their equivalents
of other states, for purposes of enforcement of this act, the corresponding
federal laws or the corresponding laws of other states. The director and
attorney general may share the information specified under this subsection
with any of the following:

(1) Federal, state or local agencies for the purposes of enforcement of
the corresponding laws of other states.

(2) A court, arbitrator, data clearinghouse or similar entity for the
purpose of assessing compliance with or making calculations required by
the master settlement agreement or agreements regarding disputes under
the master settlement agreement, and with counsel for the parties or expert
witnesses in any such proceeding, if the information otherwise remains
confidential.
(b) Except as otherwise provided, any information provided to the attorney general or director for purposes of enforcement of this act may be shared between the attorney general and the director and shall not be disclosed publicly by the attorney general or the director except when necessary to facilitate compliance with and enforcement of this act.

(c) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, the attorney general or the director may provide the name of any stamping agent who reports selling the tobacco product manufacturer's products.

(d) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the attorney general or director pursuant to K.S.A. 2019 Supp. 50-6a10, and amendments thereto, provided that such information provided by the stamping agent to a tobacco product manufacturer shall be limited to the brand families of that manufacturer as listed in the directory established in K.S.A. 50-6a04(b), and amendments thereto.

(e) Unless disclosure is authorized under this section, all information obtained by the director and disclosed to the attorney general or shared with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states, shall be confidential. The penalties provided under K.S.A. 75-5133, and amendments thereto, shall not apply when information is lawfully disclosed pursuant to this section.

(f) Any tobacco sales data provided to the director, attorney general or data clearinghouse for the purpose of assessing compliance with or making calculations required by the master settlement agreement or related agreements, shall be confidential. The provisions of this subsection shall expire on July 1, 2020, unless the legislature reviews this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.

Sec. 5. K.S.A. 2019 Supp. 9-1810, 40-223j, 45-229 and 50-6a11 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.