AN ACT concerning financial institutions; enacting the Kansas right to financial privacy act.

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

Section 1. (a) Sections 1 through 12, and amendments thereto, shall be known and may be cited as the Kansas right to financial privacy act.

(b) As used in the Kansas right to financial privacy act:

(1) "Customer" means any person or such person's authorized representative who utilized services of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in such person's name.

(2) "Financial institution" means a bank, savings and loan association, trust company, credit union, consumer credit lender, consumer finance institution, persons who act as lender on loans, persons who are sellers under a retail time contract or retail time transactions and any other persons, including, but not limited to, stockbrokers and brokerage firms, which accept money for deposit to an account on which checks may be drawn by the owner of such account.

(3) "Financial record" means an original, a copy or information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(4) "Government authority" means any agency or department of the state of Kansas or any agent thereof.

(5) "Law enforcement inquiry" means a lawful investigation, official proceeding or grand jury proceeding relating to the commission of any crime.

(6) "Subpoena" means a judicial subpoena, an administrative subpoena or other process expressly authorized by law.

(7) "Supervisory agency" means any agency or department of Kansas having statutory authority to examine the financial condition or business operations of a financial institution.

(8) "Government investigation" means a lawful proceeding inquiring into a violation of any civil statute or any valid regulation.

Sec. 2. (a) Except as provided in section 7, and amendments thereto, a government authority shall not have access to or obtain copies of the information contained in the financial records of any customer unless the
financial records are reasonably described and:

(1) Such customer has authorized such disclosure in accordance with section 3, and amendments thereto;
(2) such financial records are disclosed in response to a subpoena which meets the requirements of section 4, and amendments thereto; or
(3) such financial records are disclosed in response to a written request which meets the requirements of section 4, and amendments thereto.

(b) (1) A financial institution, or officer, employee or agent thereof shall not provide to any government authority access to the financial record of any customer except in accordance with the provisions of the Kansas right to financial privacy act.
(2) A financial institution shall not release the financial records of a customer until the government authority seeking such records provides notice in writing to the financial institution that it has complied with the applicable provisions of the Kansas right to financial privacy act.

Sec. 3. (a) A customer may authorize disclosure of such customer's financial records if the customer furnishes to the financial institution and to the government authority seeking to obtain such disclosure a signed and dated statement which:
(1) Authorizes such disclosure for such period as may be agreed upon;
(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;
(3) identifies the financial records which are authorized to be disclosed;
(4) specifies the purpose and government authority to which such records may be disclosed; and
(5) states the customer's rights under the Kansas right to financial privacy act. Such authorization shall not be required as a condition of doing business with any financial institution.
(b) The customer has the right to obtain a copy of the information which shall be disclosed to a government authority pursuant to the Kansas right to financial privacy act, and the identity of the government authority to which such disclosure was made.

Sec. 4. (a) A government authority may obtain financial records pursuant to a subpoena if:
(1) There is reason to believe that the records sought are relevant to a government investigation;
(2) a copy of the subpoena has been served upon the customer or mailed to such customer's last known address on or before the date on which the subpoena is served on the financial institution together with the following notice:
"Records or information concerning your transactions held by the
financial institution named in the attached subpoena (or other process) are
being sought by the (agency or department) in accordance with the Kansas
right to financial privacy act, sections 1 through 12, and amendments
thereto, for the following purpose: (state purpose with reasonable
specificity)

If you desire that such records or information not be made available,
you must:
(A) State in writing that you are the customer whose records are
being requested and give the reasons you believe the records are not
relevant to the law enforcement inquiry stated in this subpoena or any
other basis for objecting to the release of the records;
(B) file the statement by mailing or delivering it to the clerk of the
district court which issued or has the power to enforce the subpoena;
(C) serve the government authority requesting the records by mailing
or delivering a copy of your statement to it at the address stated in the
notice; and
(D) be prepared to go to court or to the issuing authority and present
your position in further detail. You do not need to have a lawyer to
represent yourself, although you may wish to employ one to represent you
and protect your rights. If you do not follow the above procedures, upon
the expiration of 10 days from the date of service or 14 days from the date
of mailing of this notice, the records or information requested therein will
be made available. These records may be transferred to other government
authorities for legitimate government investigations."

(3) ten days have expired from the date of service of the notice or 14
days have expired from the date of mailing the notice to the customer and
within such time period the customer has not filed a statement or a motion
to quash in an appropriate court or the customer challenge provisions of
section 6, and amendments thereto, have been complied with.

Sec. 5. (a) Upon application of the government authority, the
customer notice required under section 3, 4 or 7, and amendments thereto,
may be delayed by order of the district court for the principal office of the
governmental agency if the court finds that:
(1) The investigation being conducted is within the lawful jurisdiction
of the government authority seeking the financial records;
(2) there is reason to believe that the records being sought are
relevant to a legitimate government investigation; and
(3) there is reason to believe that such notice will result in:
(A) Destruction of or tampering with evidence;
(B) intimidation of potential witnesses; or
(C) otherwise seriously jeopardizing an investigation or official
proceeding or unduly delaying a trial or ongoing official proceeding. An
application for delay must be made with reasonable specificity.

(b)(1) Except as provided by subsection (b)(2), if the court makes the findings required under subsection (a), it may enter an order granting the requested delay for a period not to exceed 90 days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made.

(2) If the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a person or group of persons, the court may specify that the delay be indefinite. Extensions of the delay of notice of up to 90 days each may be granted by the court upon application, but only in accordance with this section.

(c) Upon expiration of the period of delay of notification under this section, the customer shall be served with or mailed a copy of the process or request together with the following notice:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Kansas right to financial privacy act that such notice might (state reason). The purpose of the investigation or official proceeding was (state purpose in reasonable specificity)."

(d) When access to financial records is obtained pursuant to section 3, and amendments thereto, the government authority shall, unless a court has authorized delay of notice, as soon as practicable after such records are obtained, serve upon the customer, or by mail to last known address a copy of the request to the financial institution together with the following notice:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by the (agency or department) under the Kansas right to financial privacy act on (date) for the following purpose: Emergency access to such records was obtained on the grounds that (state purpose in reasonable specificity)."

(e) Any memorandum, affidavit or other paper filed in connection with a request for delay in notification shall be filed with the court. Upon petition by the customer to whom such records pertain the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection (a).

Sec. 6. (a) Within 10 days of service or within 14 days of mailing of a subpoena, a customer may file a motion to quash the subpoena, or an action to enjoin a government authority from obtaining financial records pursuant to a written process. A motion to quash the subpoena shall be filed in the court which issued the subpoena or with the court that has the
power to enforce the subpoena. Such motion or application shall contain a sworn statement:

(1) Stating that the applicant is a customer of the financial institution from which financial records pertaining to such customer have been sought; and

(2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the government authority in its notice or that there has not been substantial compliance with the provisions of the Kansas right to financial privacy act. Service shall be made under this section upon a government authority by delivering or mailing a copy of the papers to the address in the notice the customer received.

(b) The government authority may file a response, which may be the subject of a protective order, if the government includes in its response the reason such order is appropriate. The court may conduct such additional proceedings as it deems appropriate. If the court finds that there is substantial and competent evidence that the government investigation is legitimate and a reasonable belief that the records sought are relevant to that inquiry, the court shall deny the motion and order such process enforced. However, the court may order a limitation on the subpoena as a condition of enforcement. If the court finds that there is not evidence that the law enforcement inquiry is legitimate, or that there is no evidence that the records sought are relevant to that inquiry or that there has not been substantial compliance with the provisions of the Kansas right to financial privacy act, it shall order the process quashed or shall enjoin the government authority's subpoena. Any appeal from an order issued under this section shall be in accordance with the code of civil procedure.

(c) The governmental authority obtaining the records shall promptly notify the customer if a determination has been made that no legal proceeding against such customer is contemplated. If no decision has been made within 180 days from the date of the order granting access to the financial records, the governmental authority shall notify the court and continue such notification at such intervals thereafter as the court may order.

(d) The challenge procedures under the Kansas right to financial privacy act constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to the Kansas right to financial privacy act.

(e) Nothing under the Kansas right to financial privacy act shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a government authority under existing law.

Sec. 7. (a) Upon receipt of a request for financial records made by a government authority under section 4, and amendments thereto, the
financial institution shall, unless otherwise provided by law, proceed to
assemble the records requested and must be prepared to deliver the records
to the government authority upon receipt of the notice required under
section 2, and amendments thereto.

(b) Financial records originally obtained pursuant to the Kansas right
to financial privacy act, and amendments thereto, shall not be transferred
to another agency or department unless the transferring agency or
department makes a written finding that there is reason to believe that the
records are relevant to a legitimate law enforcement inquiry within the
jurisdiction of the receiving agency or department.

(c) When financial records subject to the Kansas right to financial
privacy act are transferred pursuant to this section the transferring agency
or department shall within 14 days send to the customer the following
notice:

"Copies of, or information contained in, your financial records lawfully
in possession of (the agency or department) have been furnished to (the
agency or department) pursuant to the Kansas right to financial privacy
act, sections 1 through 12, and amendments thereto, for the following
purpose (state with reasonable specificity). If you believe that this transfer
has not been made to further a legitimate law enforcement inquiry, you
may have legal rights under the Kansas right to financial privacy act.".

(d) Notwithstanding subsection (c), notice to the customer may be
delayed if the transferring agency or department has obtained a court order
delaying notice or if the receiving agency or department obtains a court
order authorizing a delay in notice. Upon the expiration of any such period
of delay, the transferring agency or department shall serve the customer
the notice specified in subsection (c) and the agency or department that
obtained the court order authorizing a delay in notice shall serve the
notice.

Sec. 8. (a) Nothing under the Kansas right to financial privacy act
prohibits any supervisory agency from exchanging examination reports or
other information with another supervisory agency. Nothing under the
Kansas right to financial privacy act prohibits the transfer of a customer's
financial records needed by counsel for a government authority to defend
an action brought by the customer. Nothing under the Kansas right to
financial privacy act shall authorize the withholding of information by any
officer or employee of a supervisory agency from a duly authorized
committee of the general assembly.

(b) (1) Nothing under the Kansas right to financial privacy act
prohibits the exchange of financial records or other information with
respect to a financial institution among and between the supervisory
agencies of the federal financial institutions examination council, the state
banking commissioner and credit union administrator.
(2) Nothing under the Kansas right to financial privacy act prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(3) Nothing under the Kansas right to financial privacy act prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(4) Nothing under the Kansas right to financial privacy act shall prohibit the disclosure of financial records or information required to be reported in accordance with any federal statute or rule promulgated thereunder.

(5) Nothing under the Kansas right to financial privacy act prohibits disclosure if the financial records are sought by a government authority under the code of civil procedure or Kansas code of criminal procedure or comparable rules of other courts in connection with litigation to which a government authority is a party.

(6) Nothing under the Kansas right to financial privacy act shall prohibit disclosure of financial records to the department for children and families.

(7) Nothing under the Kansas right to financial privacy act shall apply to requests made by the department for children and families to obtain information from the federal parent locator service of the United States department of health and human services.

(8) Nothing under the Kansas right to financial privacy act shall apply to prohibit a financial institution from complying with a properly served summons to garnishee or to written interrogatories exhibited to a financial institution which has been properly summoned as garnishee.

(9) Nothing under the Kansas right to financial privacy act shall apply to prohibit a financial institution from complying with a properly served income withholding order issued pursuant to the Kansas family law code.

(10) The requirements of the Kansas right to financial privacy act shall not apply when a government authority accesses or obtains information by a means described in section 2(a), and amendments thereto, and for a legitimate government investigation is seeking only the name, address, account number and type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

(11) Nothing under the Kansas right to financial privacy act shall preclude any financial institution, or any officer, employee or agent of a financial institution, from notifying a government authority that such institution, officer, employee or agent has information which may be relevant to a possible violation of any statute or regulation. Such
information may be disclosed notwithstanding any law or regulation of
this state or political subdivision of this state to the contrary. Any financial
institution, officer, employee or agent thereof making a disclosure of
information shall not be liable to the customer under any law or regulation
of this state or political subdivision of this state for such disclosure or for
any failure to notify the customer of such disclosure.

(12) Nothing under the Kansas right to financial privacy act shall
preclude a financial institution, as an incident to perfecting a security
interest or proving a claim in bankruptcy or collecting on a debt owing to
the financial institution itself or in its role as a fiduciary, from providing
copies of any financial record relevant to such action to any court of
competent jurisdiction or government authority.

(13) Nothing under the Kansas right to financial privacy act shall
preclude a financial institution as an incident to processing an application
for assistance to a customer in the form of a government loan, loan
guaranty, loan insurance agreement, administering or processing a default
on a government guaranteed or insured loan from initiating contact with an
appropriate government authority for the purpose of providing any
financial record necessary to permit such authority to carry out its
responsibilities under such loan, loan guaranty or loan insurance
agreement.

(14) Nothing under the Kansas right to financial privacy act shall
preclude a governmental authority from obtaining information that is a
part of a public record without regard to the provisions of the Kansas right
to financial privacy act even though such information may have been
derived from a financial institution.

(15) Nothing under the Kansas right to financial privacy act shall
apply to a law enforcement inquiry or to a government authority or
government employee engaged in a law enforcement inquiry.

(16) Nothing under the Kansas right to financial privacy act shall
apply to any requests made by any United States agency or department or
any official employee or agent thereof authorized to obtain information
from any financial institution if such agency or agencies are authorized by
the federal financial privacy act of 1978, as amended, to receive such
information without compliance with the federal financial privacy act of
1978, as amended.

(17) The requirements of the Kansas right to financial privacy act
shall not apply to the state treasurer or any person appointed by the state
treasurer.

(18) Nothing under the Kansas right to financial privacy act shall
apply to requests made by the department of labor pursuant to the
employment security law.

(19) Nothing under the Kansas right to financial privacy act shall
impose additional requirements upon a financial institution if such
requirements are currently mandated under federal law.

Sec. 9. (a) Except for section 12, and amendments thereto, nothing
under the Kansas right to financial privacy act shall apply when financial
records are sought by a government authority:

(1) In connection with a lawful proceeding, investigation,
examination or inspection directed at the financial institution in possession
of such records or at a legal entity which is not a customer; or

(2) in connection with the authority's consideration or administration
of assistance to the customer in the form of a government loan, loan
guaranty or loan insurance program.

(b) When financial records are sought pursuant to this section, the
government authority shall submit to the financial institution the notice
required by section 2, and amendments thereto. For access pursuant to
subsection (a)(2), no further certification shall be required for the
subsequent access by the applicable government authority during the term
of the loan, loan guaranty or loan insurance agreement.

(c) On and after July 1, 2015, whenever a customer applies for
participation in a government loan, loan guaranty or loan insurance
program, the government authority administering such program shall give
the customer written notice of the authority's access rights under this
section. No further notification shall be required for subsequent access by
that authority during the term of the loan, loan guaranty or loan insurance
agreement.

(d) Financial records obtained pursuant to this section may be used
only for the purpose for which they were originally obtained, and may be
transferred to another agency or department only when the transfer is to
facilitate a lawful proceeding, investigation, examination or inspection
directed at the financial institution in possession of such records, or at a
legal entity which is not a customer, except that:

(1) Nothing under the Kansas right to financial privacy act prohibits
the use or transfer of a customer's financial records needed by counsel
representing a government authority in a civil action arising from a
government loan, loan guaranty or loan insurance agreement;

(2) Nothing under the Kansas right to financial privacy act prohibits a
government authority providing assistance to a customer in the form of a
loan, loan guaranty or loan insurance agreement from using or transferring
financial records necessary to process, service or foreclose a loan, or to
collect on an indebtedness to the government resulting from a customer's
default.

(e) Notification that financial records obtained pursuant to this section
which may relate to a potential civil, criminal or regulatory violation by a
customer may be given to an agency or department with jurisdiction over
that violation, and such agency or department may then seek access to the
records pursuant to the Kansas right to financial privacy act.

(f) Nothing under the Kansas right to financial privacy act shall
prohibit a government authority from obtaining financial records from a
financial institution if the government authority determines that delay in
obtaining access to such records would create imminent danger of:

(1) Physical injury to any person;
(2) serious property damage; or
(3) flight to avoid prosecution.

(g) Within five days of obtaining access to financial records under
this subsection the government authority shall file with the appropriate
court a signed, sworn statement of a supervisory official of a rank
designated by the head of the government authority setting forth the
grounds for the emergency access. The government authority shall
thereafter comply with the notice provisions of section 5(d), and
amendments thereto. The government authority shall compile an annual
tabulation of the occasions in which this subsection was used.

(h) Except for records obtained pursuant to section 7, and
amendments thereto, a government authority shall pay to the financial
institution assembling or providing financial records pertaining to a
customer and in accordance with procedures established under the Kansas
right to financial privacy act a fee for reimbursement for such costs as are
reasonably necessary and which have been directly incurred in searching
for, reproducing, or transporting books, papers, records, or other data
required or requested to be produced. The state banking commissioner
may promulgate rules and regulations concerning the fees for
reimbursement and the conditions under which such payments may be
made.

Sec. 10. (a) An action to enforce any provision of the Kansas right to
financial privacy act may be brought in the district court within three years
from the date on which the violation occurs or on the date of discovery of
such violation, whichever is later.

(b) In addition to any other remedy contained under the Kansas right
to financial privacy act, injunctive relief shall be available to require that
the procedures of the Kansas right to financial privacy act are complied
with. In the event of a successful action, costs together with reasonable
attorney's fees as determined by the court may be recovered.

(c) If any individual files a motion or application under the Kansas
right to financial privacy act which has the effect of delaying the access of
a government authority to financial records pertaining to such individual,
any applicable statute of limitations shall be deemed to be tolled for the
period extending from the date such motion or application was filed until
the date upon which the motion or application is decided.
Sec. 11. (a) Any financial institution or an agency or department of the state of Kansas that knowingly obtains or discloses financial records or information contained therein in violation of the Kansas right to financial privacy act shall be liable to the customer to whom such records relate in an amount equal to the sum of:

1. $1,000, without regard to the volume of records involved;
2. any actual damages sustained by the customer as a result of the disclosure; and
3. in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees may be allowed by the court.

(b) Whenever the court determines that any employee of an agency or department of the state of Kansas has knowingly violated any provision of the Kansas right to financial privacy act and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted intentionally with respect to the violation, the agency or department supervising such violator shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The agency or department after investigation and consideration of the evidence submitted shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee.

(c) Any financial institution or agent or employee making a disclosure of financial records pursuant to the Kansas right to financial privacy act in good faith reliance upon a notice by any government authority shall not be liable to the customer or any other person for such disclosure.

(d) The remedies and sanctions described under the Kansas right to financial privacy act shall be the only judicially recognized remedies and sanctions for violations of the Kansas right to financial privacy act.

Sec. 12. Financial records relating to a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a grand jury:

(a) Shall be returned and actually presented to the grand jury;
(b) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by the applicable Kansas code of criminal procedure;
(c) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in subsection (b); and
(d) shall not be maintained, or a description of the contents of such
records shall not be maintained by any government authority other than in
the sealed records of the grand jury, unless such record has been used in
the prosecution of a crime for which the grand jury issued an indictment or
presentment or for a purpose authorized by the Kansas code of criminal
procedure.

Sec. 13. This act shall take effect and be in force from and after
January 1, 2016, and its publication in the statute book.