

## **Kansas Open Records Act—Enforcement, Exceptions; Kansas Open Meetings Act—Enforcement; HB 2256**

**HB 2256** creates and amends law related to the enforcement of the Kansas Open Records Act (KORA) and Kansas Open Meetings Act (KOMA.) The bill also adds exceptions to KORA.

### ***Enforcement of KORA and KOMA***

(Note: KOMA applies to a “public body or agency,” while KORA applies to a “public agency.” When describing provisions of this bill that are substantially similar between the KORA and KOMA versions, this summary uses the term “public agency” where “public agency” is used in the KORA version and “public body or agency” is used in the KOMA version.)

The bill allows the Attorney General to determine, by a preponderance of the evidence after investigation, that a public agency has violated KORA or KOMA, and allows the Attorney General to enter into a consent order with the public agency or issue a finding of violation to the public agency prior to filing an action in district court.

A consent order may:

- Contain admissions of fact;
- Require completion of training approved by the Attorney General;
- Impose a civil penalty of up to \$250 for each violation; and
- Set forth the public agency’s agreement to comply with the requirements of KORA or KOMA.

The consent order must be signed by the head of the public agency, any officer found to have violated KORA or KOMA, and any other person required by the Attorney General. For a KORA violation, if the public agency is a governing body, all members of the governing body must sign the order.

A finding of violation may contain findings of fact and conclusions of law and require the public agency to do any or all of the following:

- Cease and desist from further violation;
- Comply with KORA or KOMA provisions;
- Complete training approved by the Attorney General; and
- Pay a civil penalty of up to \$500 for each violation.

The Attorney General may require submission of proof that requirements of a consent order or finding of violation have been satisfied.

The Attorney General may apply to the district court to enforce a consent order or finding of violation, after making a demand to the public agency to comply and giving the public agency a reasonable opportunity to cure the violation. Such enforcement action may be filed in the district court of the county where the consent order or finding of violation is issued or is effective, and district courts are given jurisdiction over such enforcement actions. In an action involving KORA, the court is allowed to view the records in controversy *in camera* before reaching a decision. If the court finds the Attorney General did not abuse the Attorney General's discretion in entering into the consent order or issuing the finding of violation, the court shall enter an order:

- Enjoining the public agency to comply with the consent order or finding of violation;
- Imposing a civil penalty not less than the amount ordered by the Attorney General and not more than \$500 for each violation;
- Requiring the public agency to pay the Attorney General's court costs and costs incurred in investigating the violation; and
- Providing any other remedy authorized by KORA or KOMA that the court deems appropriate.

If the court finds a violation, it may require the public agency to pay the Attorney General's reasonable attorney fees. Payment of such fees is required if the violation was not made in good faith and was without a reasonable basis in fact or law.

The bill provides specific requirements for service of a finding of violation on a public agency and requires the Attorney General to maintain and make available for public inspection all consent orders and findings of violation.

In lieu of filing an action in district court to enforce KORA or KOMA, the bill allows the Attorney General or a county or district attorney to accept a consent judgment with respect to any act or practice violating KORA or KOMA. A consent judgment must be approved by the district court and an entry of judgment must be made. After approval, any breach of the conditions of the consent judgment will be treated as a violation of a court order and subject to the penalties for such violations. A consent judgment may contain any remedy available to the district court except for an award of reasonable expenses, investigation costs, or attorney fees. For a KORA violation, the consent judgment may include a stipulation regarding the production of the requested records, subject to any permissible redactions as described in the consent judgment.

Any KORA or KOMA complaint submitted to the Attorney General must be on a form prescribed by the Attorney General setting forth the facts the complaining party believes show a violation. The complaining party must attest to the facts under penalty of perjury.

The bill creates, in the State Treasury, the Attorney General's Open Government Fund (Fund) to be used to carry out the provisions and purposes of KORA and KOMA. All civil penalties, expenses, costs, and attorney fees awarded in an action brought by the Attorney General pursuant to KORA or KOMA, or pursuant to a consent order or finding of violation under the provisions of the bill, will be credited to the Fund. The bill redirects from the State General Fund to the Fund civil penalties recovered by the Attorney General under KORA and KOMA.

The bill requires the Attorney General, subject to appropriations, to provide and coordinate KORA and KOMA training throughout the state and allow the Attorney General to consult and coordinate with appropriate organizations to provide training. The Attorney General may establish and make available a computerized training program and may approve training programs that satisfy requirements imposed by the district court or by any order or judgment pursuant to KORA or KOMA.

The Attorney General is given authority to adopt rules and regulations to implement and administer KORA and KOMA.

The bill amends the statutes governing civil KORA and KOMA remedies to add declaratory judgments to the orders that a district court may use to enforce KORA and KOMA and to allow a district court to require a defendant to complete training approved by the Attorney General. A provision is added allowing the court to award the Attorney General or the county or district attorney reasonable expenses, investigation costs, and attorney fees if the court finds a violation. Such award will be required if the court determines the violation was not in good faith and without reasonable basis in fact or law. A provision specifying the burden of proof is on the public agency is added for KORA.

Statutes governing investigations of alleged KORA or KOMA violations are amended to allow the Attorney General or county or district attorney to subpoena, examine, or cause to be examined records and administer oaths and affirmations. Specific requirements for service of interrogatories or subpoenas were added. The bill adds provisions allowing the Attorney General or county or district attorney, when a person willfully fails or refuses to respond to a request for information, records, or other materials; respond to interrogatories; or obey a subpoena to apply to the district court for an order requiring a response or compliance. The district court is given authority to issue such orders or grant other relief as required until a response is provided or the person complies.

For KORA investigations, the bill adds a provision prohibiting the Attorney General or county or district attorney from further disclosing a record or document, or the contents of such, if a public agency claims in writing that such record or document is exempt from disclosure. Such records or documents may be disclosed by order of a district court in enforcing KORA. Such records or documents in the possession of the Attorney General or a county or district attorney are not subject to a KORA request or to discovery, subpoena, or other process.

### ***KORA Exceptions***

The bill adds exceptions to KORA for records of a public agency on a public website that are searchable by a keyword search and identify the home address or home ownership of a municipal judge, city attorney, assistant city attorney, special assistant city attorney, special assistant U.S. attorney, special assistant attorney general, special assistant county attorney, or special assistant district attorney.