AN ACT concerning disclosure of electronic communications; relating to civil procedure; discovery of electronic communications and electronically stored data.

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

Section 1. (a) Except as provided in subsection (c), a person or entity providing an electronic communications service or remote computing service to the public, or a third-party provider with whom such person or entity has contracted, shall not knowingly divulge to any person or entity the contents of an electronic communication or electronic storage provided or maintained by that service, except for the purposes of providing such electronic communications or remote computing services to the subscriber or customer, that is received by means of an electronic communications system from a subscriber or customer of the service.

(b) (1) (A) The contents of any electronic communications service or remote computing service that are divulged in violation of subsection (a) shall not be subject to discovery, subpoena or other means of legal compulsion to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding solely due to the release of such electronic communications or electronic storage.

(B) The contents of any electronic communications service or remote computing service, for reasons other than the prior divulgence of such communications or storage in violation of subsection (a), shall remain subject to legal means of discovery, subpoena or other means of legal compulsion in a civil action.

(2) If any contents of an electronic communication or electronic storage held by a person or entity providing an electronic communications service or a remote computing service to the public are protected by attorney-client privilege:

(A) Use of such electronic communications service or a remote computing service shall not constitute a waiver of such attorney-client privilege;

(B) any terms of use of such electronic communications or remote computing service waiving the attorney-client privilege are declared to be against the public policy of the state and are null and void in this state; and

(C) inadvertent disclosure of the contents of any such electronic communications or electronically stored data.
communication or electronic storage shall not constitute a waiver of such
attorney-client privilege.
(c) A person or entity may divulge the contents of an electronic
communication or electronic storage:
(1) To an addressee or intended recipient of the electronic
communication or an agent of the addressee or intended recipient;
(2) as otherwise authorized by a search warrant;
(3) with the lawful consent of the originator, addressee or intended
recipient of the electronic communication, or the subscriber in the case of
a remote computing service;
(4) to a person employed or authorized or whose facilities are used to
forward the electronic communication to its destination or maintain such
electronic storage; or
(5) as may be necessarily incidental to the rendering of the service or
other services provided by the person or entity, or to the protection of the
rights or property of the provider of that service.
(d) The provisions of this section shall apply to any individual located
in this state or accessing an electronic communications service or remote
computing service from within the state regardless of the route or physical
location of any such electronic communications or remote computing
service.
(e) As used in this section:
(1) "Electronic communication" means a transfer of signs, signals,
writing, images, sounds, data or intelligence of any nature transmitted in
whole or in part by wire, radio, electromagnetic, photo-electronic or photo-
optical system. The term does not include communications made orally,
through a tone-only paging device or from a tracking device.
(2) "Electronic communications service" means a service that
provides to users of the service the ability to send or receive wire or
electronic communications.
(3) "Electronic communications system" means a wire, radio,
electromagnetic, photo-optical or photo-electronic facility for the
transmission of wire or electronic communications, and any computer
facility or related electronic equipment for the electronic storage of those
communications.
(4) "Electronic storage" means any storage of electronic customer
data in a computer, computer network or computer system, regardless of
whether the data is subject to recall, further manipulation, deletion or
transmission, and includes any storage of a wire or electronic
communication by an electronic communications service.
(5) "Remote computing service" means the provision to the public of
electronic storage or processing services of electronic communications or
electronic customer data by means of an electronic communications
service.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.