

House Substitute for SENATE BILL No. 349

AN ACT concerning the open records act; relating to public records; continuing certain exceptions to the disclosure thereof; amending K.S.A. 41-511 and K.S.A. 2023 Supp. 45-229, 50-6,109a and 74-50,227 and repealing the existing sections.

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

Section 1. K.S.A. 41-511 is hereby amended to read as follows: 41-511. (a) Every express company or other common carrier that delivers any alcoholic liquors from outside the state for delivery in the state to consumers shall prepare and file monthly with the director of alcoholic beverage control a report of known alcoholic liquors shipped by such carrier. The report shall contain: (1) The name of the express company or other common carrier that delivers the alcoholic liquors; (2) the period of time covered by the report; (3) the name and business address of the consignor of such alcoholic liquors; (4) the weight of the package delivered to each consignee; (5) a unique tracking number; and (6) the date of delivery. Except as provided for in subsection (d), all reports submitted pursuant to this subsection shall be open records available for public inspection in accordance with the open records act.

(b) Upon request by the director, any additional records supporting the report shall be made available to the director by any express company or other common carrier. Any records containing information relating to such reports shall be kept and preserved for a period of two years unless the destruction of such records is authorized in writing by the director.

(c) Any express company or other common carrier that willfully fails, neglects or refuses to file any report pursuant to subsection (a) shall be subject to a civil penalty of not more than \$500.

(d) If any of the reports required by subsection (a) include any information relating to the name or address of a consignee of any alcoholic liquors, such information shall be redacted from the reports that are made available for public inspection. ~~The provisions of this subsection providing for the confidentiality of certain public records shall expire on July 1, 2024, unless the legislature reviews and reenacts such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, 2024.~~

(e) The provisions of this section shall be a part of and supplemental to the Kansas liquor control act.

Sec. 2. K.S.A. 2023 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: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7511, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, 45-221(a)(1) through (43), 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-2232, 72-3438, 72-6116, 72-6267, 72-9934, 73-1228, 74-2424, 74-2433f, 74-32,419, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11, 76-12c03, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

(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, 72-3415, 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, 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 2017 legislative session 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, 72-8268, 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.

(q) 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 2021 legislative session are hereby continued in existence: 22-2302(c)(4)(J) and (c)(6)(B), 22-2502(e)(4)(J) and (e)(6)(B) and 65-6111(d)(4).

(r) 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 2023 legislative session are hereby continued in existence: 2-3902 and 66-2020.

(s) 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 2024 legislative session are hereby continued in existence: 2-3906, 2-3907, 41-511, 50-6,109a and 74-50,227.

Sec. 3. K.S.A. 2023 Supp. 50-6,109a is hereby amended to read as follows: 50-6,109a. (a) The attorney general is hereby given jurisdiction and authority over all matters involving the implementation, administration and enforcement of the provisions of the scrap metal theft reduction act including to:

- (1) Employ or appoint agents as necessary to implement, administer and enforce the act;
- (2) contract;
- (3) expend funds;
- (4) license and discipline;
- (5) investigate;
- (6) issue subpoenas;
- (7) keep statistics; and
- (8) conduct education and outreach programs to promote compliance with the act.

(b) In accordance with the rules and regulations filing act, the attorney general is hereby authorized to adopt rules and regulations necessary to implement the provisions of the scrap metal theft reduction act.

(c) There is hereby established in the state treasury the scrap metal theft reduction fee fund to be administered by the attorney general. All moneys received by the attorney general from fees, charges or penalties collected under the provisions of the scrap metal theft reduction act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, who shall deposit the entire amount thereof in the state treasury to the credit of the scrap metal theft reduction fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee. All moneys credited to the scrap metal theft reduction fee fund shall be expended for the administration of the duties, functions and operating expenses incurred under the provisions of the scrap metal theft reduction act.

(d) There is hereby established in the state treasury the scrap metal data repository fund to be administered by the director of the Kansas bureau of investigation. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the Kansas bureau of investigation or the director's designee. All moneys credited to the scrap metal data repository fund shall be expended for the administration of the duties, functions and operating expenses incurred under the provisions of the scrap metal theft reduction act.

(e) The attorney general may transfer any moneys from the scrap metal theft reduction fee fund to the scrap metal data repository fund. The attorney general shall certify each such transfer to the director of accounts and reports and shall transmit a copy of each such certification to the director of the budget and the director of legislative research.

(f) On July 1, 2020, the Kansas bureau of investigation shall establish and maintain a database which shall be a central repository for the information required to be provided under K.S.A. 2023 Supp. 50-6,110, and amendments thereto. The database shall be maintained for

the purpose of providing information to law enforcement and for any other purpose deemed necessary by the attorney general to implement and enforce the provisions of the scrap metal theft reduction act.

(g) The information maintained in such database by the Kansas bureau of investigation, or by any entity contracting with the Kansas bureau of investigation, submitted to, maintained or stored as part of the system may be provided to the attorney general and shall:

(1) Be confidential, shall only be used for investigatory, evidentiary or analysis purposes related to criminal violations of city, state or federal law and shall only be released to law enforcement in response to an official investigation or as permitted in subsection (f); and

(2) not be a public record and shall not be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto. ~~The provisions of this subsection shall expire on July 1, 2024, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto.~~

(h) On or before February 1, 2021, and annually on or before February 1 thereafter, the attorney general shall submit a report to the president of the senate, the speaker of the house of representatives and the standing committees on judiciary in the senate and the house of representatives on the implementation, administration and enforcement of the provisions of the scrap metal theft reduction act.

(i) Any entity contracting with the attorney general or the Kansas bureau of investigation to provide or maintain the database required by this section shall not require a scrap metal dealer to contract with such entity for the authority to release proprietary or confidential data, including, but not limited to, customer information. Such entity shall not charge any fee to the scrap metal dealer as a condition of providing information to the database as required by the scrap metal theft reduction act, including, but not limited to, a fee for electronic submission of information.

(j) A scrap metal dealer providing information to the database as required by the scrap metal theft reduction act shall not be subject to civil liability for any claim arising from the negligence or omission by the state of Kansas or any contracting entity in the collection, storing or release of information provided by such scrap metal dealer to the database.

Sec. 4. K.S.A. 2023 Supp. 74-50,227 is hereby amended to read as follows: 74-50,227. (a) The department of commerce shall collect incentive data from economic development incentive programs that provide more than \$50,000 of annual incentives from administering agencies as required by this section. Such data shall be collected from administering agencies and be stored in a database that is available to the public in a digital format. The database shall contain information from multiple years and must be searchable, printable and available to access over the internet on the department of commerce's website on a permanently accessible web page that may be accessed via a conspicuous link to that web page placed on the front page of the department's website. Information included in the database shall be updated by the department of commerce on an annual basis and such update shall be completed prior to the end of the following fiscal year in which such incentive was earned or distributed.

(b) The database required to be created by subsection (a) shall contain the following information or shall contain a link by which the user can access such information:

(1) User information for each economic development incentive program, including the:

(A) Names and addresses, including county, of recipients

receiving benefits from the program and, for sales tax and revenue bonds issued under the STAR bond financing act, K.S.A. 12-17,162 et seq., and amendments thereto, the names of principals and officers for each project developer;

(B) annual amount of incentives claimed, distributed to or received by each recipient and any remaining balance of the total amount of incentives claimed or awarded to the recipient;

(C) qualification criteria for the economic development incentive program, including, if available, qualification criteria specific to the recipient. Qualification criteria shall include, but not be limited to, any requirements regarding the number of jobs created or the amount of initial or annual capital improvement;

(D) required benchmarks for continued participation in the economic development incentive program and progress made toward the benchmarks; and

(E) years for which the recipient has received benefits under the economic development incentive program;

(2) descriptive information for each economic development program, which shall include:

(A) A description and history of the program, including its inception date;

(B) the purpose or goals of the program and the criteria for qualification;

(C) applications for the program, if any, and relevant resources or contacts;

(D) the program cost and return on investment, including assumptions used to calculate the return on investment;

(E) the program compliance rate;

(F) annual reports, if required by statute; and

(G) evaluations of the program, if any; and

(3) annual data, which shall be organized by recipient, county and program and shall include the:

(A) Total amount of annual incentives from a program claimed or received by a recipient;

(B) total amount of incentives received by recipients in each county; and

(C) total amount of incentives distributed by each program.

(c) Data collected pursuant to this section must be aggregated and provided by program, recipient and county.

(d) Except as otherwise provided in this subsection, and notwithstanding any information publication requirements listed in this section, no information shall be disclosed by the secretary of commerce under this section if such disclosure would:

(1) Violate any federal law;

(2) violate the confidentiality provisions of any agreement executed before July 1, 2019;

(3) in the discretion of the secretary of commerce, be detrimental to the development of a STAR bond project or jeopardize an economic development incentive program or project; or

(4) disclose the names or other personally identifying information of individuals who have made contributions or investments pursuant to the provisions of an economic development incentive program for the purpose of receiving a tax credit.

Information that is otherwise publicly available shall not be considered confidential and shall be subject to publication as provided in this section.

(e) (1) The secretary of commerce shall report in writing to the standing committee on commerce, labor and economic development of the house of representatives and the standing committee on commerce

of the senate any information not disclosed by the secretary pursuant to subsection (d)(3) and the reason the information was not disclosed. Any testimony or oral presentation before the committee or discussion by the committee with respect to the report shall be considered the discussion of data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships pursuant to the provisions of K.S.A. 75-4319(b)(4), and amendments thereto, for purposes of the Kansas open meetings act, and shall be closed to the public.

(2) The report of the secretary pursuant to subsection (e)(1) shall be confidential and shall not be subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, *except that two years after the report is submitted to a legislative committee, such report shall be a public record open for inspection under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.* ~~The provisions of this paragraph shall expire on July 1, 2024, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2024.~~

Sec. 5. K.S.A. 41-511 and K.S.A. 2023 Supp. 45-229, 50-6,109a and 74-50,227 are hereby repealed.

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

I hereby certify that the above BILL originated in the
SENATE, and passed that body

SENATE concurred in

HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.