

## HOUSE BILL No. 2013

By Special Committee on Local Government

12-20

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9 AN ACT concerning exceptions to disclosure of records; amending  
10 K.S.A. 45-229 and repealing the existing section.

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

13 Section 1. K.S.A. 45-229 is hereby amended to read as follows: 45-  
14 229. (a) It is the intent of the legislature that exceptions to disclosure  
15 under the open records act shall be created or maintained only if:

16 (1) The public record is of a sensitive or personal nature concerning  
17 individuals;

18 (2) the public record is necessary for the effective and efficient ad-  
19 ministration of a governmental program; or

20 (3) the public record affects confidential information. The mainte-  
21 nance or creation of an exception to disclosure must be compelled as  
22 measured by these criteria. Further, the legislature finds that the public  
23 has a right to have access to public records unless the criteria in this  
24 section for restricting such access to a public record are met and the  
25 criteria are considered during legislative review in connection with the  
26 particular exception to disclosure to be significant enough to override the  
27 strong public policy of open government. To strengthen the policy of open  
28 government, the legislature shall consider the criteria in this section be-  
29 fore enacting an exception to disclosure.

30 (b) All exceptions to disclosure in existence on July 1, 2000, shall  
31 expire on July 1, 2005, and any new exception to disclosure or substantial  
32 amendment of an existing exception shall expire on July 1 of the fifth year  
33 after enactment of the new exception or substantial amendment, unless  
34 the legislature acts to ~~renew~~ *continue* the exception. A law that enacts a  
35 new exception or substantially amends an existing exception shall state  
36 that the exception expires at the end of five years and that the exception  
37 shall be reviewed by the legislature before the scheduled date.

38 (c) For purposes of this section, an exception is substantially amended  
39 if the amendment expands the scope of the exception to include more  
40 records or information. An exception is not substantially amended if the  
41 amendment narrows the scope of the exception.

42 (d) This section is not intended to repeal an exception that has been  
43 amended following legislative review before the scheduled repeal of the

1 exception if the exception is not substantially amended as a result of the  
2 review.

3 (e) In the year before the expiration of an exception, the revisor of  
4 statutes shall certify to the president of the senate and the speaker of the  
5 house of representatives, by ~~June 1~~ *July 15*, the language and statutory  
6 citation of each exception which will expire in the following year which  
7 meets the criteria of an exception as defined in this section. Any exception  
8 that is not identified and certified to the president of the senate and the  
9 speaker of the house of representatives is not subject to legislative review  
10 and shall not expire. If the revisor of statutes fails to certify an exception  
11 that the revisor subsequently determines should have been certified, the  
12 revisor shall include the exception in the following year's certification  
13 after that determination.

14 (f) "Exception" means any provision of law which creates an excep-  
15 tion to disclosure or limits disclosure under the open records act pursuant  
16 to K.S.A. 45-221, and amendments thereto, or pursuant to any other  
17 provision of law.

18 (g) A provision of law which creates or amends an exception to dis-  
19 closure under the open records law shall not be subject to review and  
20 expiration under this act if such provision:

21 (1) Is required by federal law;

22 (2) applies solely to the legislature or to the state court system.

23 (h) (1) The legislature shall review the exception before its scheduled  
24 expiration and consider as part of the review process the following:

25 (A) What specific records are affected by the exception;

26 (B) whom does the exception uniquely affect, as opposed to the gen-  
27 eral public;

28 (C) what is the identifiable public purpose or goal of the exception;

29 (D) whether the information contained in the records may be ob-  
30 tained readily by alternative means and how it may be obtained;

31 (2) An exception may be created or maintained only if it serves an  
32 identifiable public purpose and may be no broader than is necessary to  
33 meet the public purpose it serves. An identifiable public purpose is served  
34 if the legislature finds that the purpose is sufficiently compelling to over-  
35 ride the strong public policy of open government and cannot be accom-  
36 plished without the exception and if the exception:

37 (A) Allows the effective and efficient administration of a govern-  
38 mental program, which administration would be significantly impaired  
39 without the exception;

40 (B) protects information of a sensitive personal nature concerning  
41 individuals, the release of which information would be defamatory to such  
42 individuals or cause unwarranted damage to the good name or reputation  
43 of such individuals or would jeopardize the safety of such individuals.

1 Only information that would identify the individuals may be excepted  
2 under this paragraph; or

3 (C) protects information of a confidential nature concerning entities,  
4 including, but not limited to, a formula, pattern, device, combination of  
5 devices, or compilation of information which is used to protect or further  
6 a business advantage over those who do not know or use it, the disclosure  
7 of which information would injure the affected entity in the marketplace.

8 (3) Records made before the date of the expiration of an exception  
9 shall be subject to disclosure as otherwise provided by law. In deciding  
10 whether the records shall be made public, the legislature shall consider  
11 whether the damage or loss to persons or entities uniquely affected by  
12 the exception of the type specified in paragraph (2)(B) or (2)(C) of this  
13 subsection (h) would occur if the records were made public.

14 (h) *Exceptions contained in the following statutes as certified by the*  
15 *revisor of statutes to the president of the senate and the speaker of the*  
16 *house of representatives pursuant to subsection (e) of this section on June*  
17 *1, 2004, are hereby continued in existence and shall not expire under the*  
18 *provisions of this section: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217,*  
19 *10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516,*  
20 *16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7503, 17-7505, 17-*  
21 *7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909,*  
22 *22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251,*  
23 *38-1508, 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-*  
24 *709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-*  
25 *2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-*  
26 *3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-510j,*  
27 *44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, 45-221, 46-*  
28 *256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406,*  
29 *49-427, 55-1,102, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 58-4114, 59-*  
30 *2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3335, 60-3336, 65-102b,*  
31 *65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116,*  
32 *65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172,*  
33 *65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-*  
34 *1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-*  
35 *3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-*  
36 *4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05,*  
37 *65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a,*  
38 *66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-*  
39 *8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515,*  
40 *74-7308, 74-7338, 74-7405a, 74-8104, 74-8307, 74-8705, 74-8804, 74-*  
41 *9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-*  
42 *5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-*  
43 *12b11, 76-3305, 79-1119, 79-1437f, 79-15,118, 79-3234, 79-3395,*

- 1 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.
- 2 Sec. 2. K.S.A. 45-229 is hereby repealed.
- 3 Sec. 3. This act shall take effect and be in force from and after its
- 4 publication in the statute book.