

HOUSE BILL No. 2301

By Committee on Judiciary

2-7

1 AN ACT concerning legislative review of exceptions to disclosure of
2 public records; amending K.S.A. 2016 Supp. 45-229 and 75-7d08 and
3 repealing the existing sections; also repealing K.S.A. 2016 Supp. 45-
4 229c.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 45-229 is hereby amended to read as
8 follows: 45-229. (a) It is the intent of the legislature that exceptions to
9 disclosure under the open records act shall be created or maintained only
10 if:

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

13 (2) the public record is necessary for the effective and efficient
14 administration of a governmental program; or

15 (3) the public record affects confidential information.

16 The maintenance or creation of an exception to disclosure must be
17 compelled as measured by these criteria. Further, the legislature finds that
18 the public has a right to have access to public records unless the criteria in
19 this section for restricting such access to a public record are met and the
20 criteria are considered during legislative review in connection with the
21 particular exception to disclosure to be significant enough to override the
22 strong public policy of open government. To strengthen the policy of open
23 government, the legislature shall consider the criteria in this section before
24 enacting an exception to disclosure.

25 (b) Subject to the provisions of subsections (g) and (h), any new
26 exception to disclosure or substantial amendment of an existing exception
27 shall expire on July 1 of the fifth year after enactment of the new
28 exception or substantial amendment, unless the legislature acts to continue
29 the exception. A law that enacts a new exception or substantially amends
30 an existing exception shall state that the exception expires at the end of
31 five years and that the exception shall be reviewed by the legislature
32 before the scheduled date.

33 (c) For purposes of this section, an exception is substantially
34 amended if the amendment expands the scope of the exception to include
35 more records or information. An exception is not substantially amended if
36 the amendment narrows the scope of the exception.

1 (d) This section is not intended to repeal an exception that has been
2 amended following legislative review before the scheduled repeal of the
3 exception if the exception is not substantially amended as a result of the
4 review.

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

16 (f) "Exception" means any provision of law ~~which~~ *that* creates an
17 exception to disclosure or limits disclosure under the open records act
18 pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any
19 other provision of law.

20 (g) A provision of law ~~which~~ *that* creates or amends an exception to
21 disclosure under the open records law shall not be subject to review and
22 expiration under this act if such provision:

- 23 (1) Is required by federal law;
24 (2) applies solely to the legislature or to the state court system;
25 (3) has been reviewed and continued in existence twice by the
26 legislature; or
27 (4) has been reviewed and continued in existence by the legislature
28 during the 2013 legislative session and thereafter.

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

- 31 (A) What specific records are affected by the exception;
32 (B) whom does the exception uniquely affect, as opposed to the
33 general public;
34 (C) what is the identifiable public purpose or goal of the exception;
35 (D) whether the information contained in the records may be obtained
36 readily by alternative means and how it may be obtained;

37 (2) an exception may be created or maintained only if it serves an
38 identifiable public purpose and may be no broader than is necessary to
39 meet the public purpose it serves. An identifiable public purpose is served
40 if the legislature finds that the purpose is sufficiently compelling to
41 override the strong public policy of open government and cannot be
42 accomplished without the exception and if the exception:

- 43 (A) Allows the effective and efficient administration of a

1 governmental program, which administration would be significantly
2 impaired without the exception;

3 (B) protects information of a sensitive personal nature concerning
4 individuals, the release of which information would be defamatory to such
5 individuals or cause unwarranted damage to the good name or reputation
6 of such individuals or would jeopardize the safety of such individuals.
7 Only information that would identify the individuals may be excepted
8 under this paragraph; or

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

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

20 (i) (1) Exceptions contained in the following statutes as continued in
21 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas
22 and ~~which~~ *that* have been reviewed and continued in existence twice by
23 the legislature as provided in subsection (g) are hereby continued in
24 existence: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306,
25 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-
26 304, 17-1312e, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321,
27 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312,
28 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934,
29 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,
30 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b,
31 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635,
32 44-714, 44-817, 44-1005, 44-1019, 45-221(a)(1) through (43), 46-256, 46-
33 259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427,
34 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-
35 3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-
36 1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-
37 1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-
38 1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a,
39 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922,
40 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-
41 67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203,
42 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-
43 5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-

1 50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804,
2 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362,
3 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493,
4 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-
5 3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

6 (2) Exceptions contained in the following statutes as certified by the
7 revisor of statutes to the president of the senate and the speaker of the
8 house of representatives pursuant to subsection (e) and ~~which that~~ have
9 been reviewed during the 2015 legislative session and continued in
10 existence by the legislature as provided in subsection (g) are hereby
11 continued in existence: 17-2036, 40-5301, 45-221(a)(45), (46) and (49),
12 48-16a10, 58-4616, 60-3351, 72-972a, 74-50,217, ~~74-99d05~~ and 75-
13 53,105.

14 (j) (1) Exceptions contained in the following statutes as continued in
15 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas
16 and ~~which that~~ have been reviewed and continued in existence twice by
17 the legislature as provided in subsection (g) are hereby continued in
18 existence: 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016,
19 65-6017 and 74-7508.

20 (2) Exceptions contained in the following statutes as certified by the
21 revisor of statutes to the president of the senate and the speaker of the
22 house of representatives pursuant to subsection (e) during 2015 and ~~which~~
23 ~~that~~ have been reviewed during the 2016 legislative session are hereby
24 continued in existence ~~until July 1, 2021, at which time such exceptions~~
25 ~~shall expire~~: 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 40-
26 955, 44-1132, 45-221(a)(10)(F) and (a)(50), 60-3333, 65-4a05, 65-445(g),
27 65-6154, 71-218, 75-457, 75-712c, 75-723 and 75-7c06.

28 (k) Exceptions contained in the following statutes as certified by the
29 revisor of statutes to the president of the senate and the speaker of the
30 house of representatives pursuant to subsection (e) and ~~which that~~ have
31 been reviewed during the 2014 legislative session and continued in
32 existence by the legislature as provided in subsection (g) are hereby
33 continued in existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-
34 1325, 12-17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-
35 5108, 41-2905, 41-2906, 44-706, 44-1518, 45-221(a)(44), (45), (46), (47)
36 and (48), 50-6a11, 56-1a610, 56a-1204, 65-1,243, 65-16,104, 65-3239, 74-
37 50,184, 74-8134, 74-99b06, 77-503a and 82a-2210.

38 (l) Exceptions contained in the following statutes as certified by the
39 revisor of statutes to the president of the senate and the speaker of the
40 house of representatives pursuant to subsection (e) during ~~2011 2016 and~~
41 ~~that have been reviewed during the 2017 legislative session~~ are hereby
42 continued in existence ~~until July 1, 2017, at which time such exceptions~~
43 ~~shall expire~~: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-

1 ~~8772 and 75-7427: 9-153c, 12-5711, 21-2511, 22-4909, 38-2313, 45-~~
 2 ~~221(a)(51) and (52), 65-516, 65-1505, 74-2012, 74-5607, 74-8745, 74-~~
 3 ~~8752, 74-8772, 75-7d01, 75-7d05, 75-5133, 75-7427 and 79-3234.~~

4 (m) Exceptions contained in the following statutes as certified by the
 5 revisor of statutes to the president of the senate and the speaker of the
 6 house of representatives pursuant to subsection (e) during 2012 and ~~which~~
 7 ~~that~~ have been reviewed during the 2013 legislative session and continued
 8 in existence by the legislature as provided in subsection (g) are hereby
 9 continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,
 10 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-
 11 712 and 75-5366.

12 Sec. 2. K.S.A. 2016 Supp. 75-7d08 is hereby amended to read as
 13 follows: 75-7d08. (a) Each certified batterer intervention program and
 14 each holder of a temporary permit issued pursuant to the batterer
 15 intervention program certification act shall keep and maintain for a period
 16 of two years; each book, document, paper, record or other information
 17 pertaining to services rendered as a certified batterer intervention program.

18 (b) Regardless of the form or media in which such books, documents,
 19 paper, record or other source of information is kept, each book, document,
 20 paper, record and other source of information concerning the compliance
 21 with the requirements established in the batterer intervention program
 22 certification act and the rules and regulations adopted thereunder by each
 23 certified batterer intervention program or holder of a temporary permit
 24 shall be inspected at least once every certification period by the attorney
 25 general. The attorney general may order other or additional inspections as
 26 deemed necessary by the attorney general. The attorney general shall at all
 27 times be given free access to all such books, documents, papers, records or
 28 other sources of information concerning the compliance with the
 29 requirements established in the batterer intervention program certification
 30 act and the rules and regulations adopted thereunder.

31 ~~(c)-(1)~~ Any information or copy thereof obtained by the attorney
 32 general pursuant to this section or pursuant to an investigation pursuant to
 33 the batterer intervention program certification act shall not be public and
 34 shall not be subject to disclosure pursuant to the Kansas open records act,
 35 and amendments thereto.

36 ~~(2) The provisions of subsection (c)(1) shall expire on July 1, 2017,~~
 37 ~~unless the legislature acts to reenact such provision. The provisions of~~
 38 ~~subsection (c)(1) shall be reviewed by the legislature prior to July 1, 2017.~~

39 Sec. 3. K.S.A. 2016 Supp. 45-229, 45-229c and 75-7d08 are hereby
 40 repealed.

41 Sec. 4. This act shall take effect and be in force from and after its
 42 publication in the statute book.