

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2390**

As Agreed to April 8, 2021

Brief*

HB 2390 would review, amend, and add exceptions to the Kansas Open Records Act (KORA) and would create and amend law regarding the filing of fraudulent liens.

Kansas Open Records Act Exception Review

HB 2390 would continue in existence the following exceptions to KORA:

- KSA 9-513c(a), concerning money transmitter license or examination reports obtained and prepared by the State Bank Commissioner;
- KSA 9-2209(a)(19), concerning mortgage company examination action plan agreements by the State Bank Commissioner;
- KSA 12-5374(e), concerning information provided to local collection point administrators or the 911 Coordinating Council;
- KSA 16-335(a), concerning cemetery merchandise trust funds investigation by the Secretary of State;
- KSA 17-1312e(a), concerning records of cemetery corporation examination by the Secretary of State;

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- KSA 22-2302(c)(4)(J), concerning affidavits supporting search warrants with information constituting a “clearly unwarranted invasion of personal privacy”;
- KSA 22-2302(c)(6)(B), concerning court records containing sealed affidavits supporting search warrants;
- KSA 22-2502(e)(4)(J), concerning affidavits supporting electronic search warrants with information constituting a “clearly unwarranted invasion of personal privacy”;
- KSA 22-2502(e)(6)(B), concerning court records containing sealed affidavits supporting electronic search warrants;
- KSA 25-2309(r), concerning documents submitted as evidence of citizenship for voter registration purposes;
- KSA 40-2,118(d)(2), concerning insurer antifraud plans submitted to the Commissioner of Insurance;
- KSA 40-4913(e), concerning documents provided to the Commissioner of Insurance regarding an insurer terminating an insurance agent;
- KSA 45-254(a), concerning law enforcement body or vehicle camera footage;
- KSA 65-6111(d)(4), concerning patient records contained in investigation files of the Emergency Medical Services Board;
- KSA 75-5664(f), concerning records and findings from review of incidents of trauma injury or care by the Advisory Committee on Trauma; and

- KSA 75-5665(b), concerning reports following review of incidents of trauma injury or care by a regional trauma council.

The bill would make technical amendments to ensure consistency in statutory phrasing and references and to remove outdated language regarding the establishment of the Advisory Committee on Trauma.

Kansas Open Records Act Amendments

The bill would amend an exception in KORA related to records of emergency or security information or procedures of a public agency.

The bill would extend this exception to not require a public agency to disclose records of or procedures related to cybersecurity plans, assessments, and vulnerabilities if disclosure would jeopardize public safety.

The bill would define “cybersecurity assessment,” “cybersecurity plan,” and “cybersecurity vulnerability” and make technical amendments to ensure consistency in statutory phrasing.

The bill also would amend a Kansas Open Records Act provision requiring public agencies to restrict certain persons’ identifying information from public access on a public website that is searchable by a keyword search and identifies the home address or home ownership of such persons, upon request by such persons. Specifically, the bill would add local correctional officers, local detention officers, presiding officers who conduct hearings pursuant to the Kansas Administrative Procedure Act, members of the State Board of Tax Appeals, administrative law judges who conduct hearings pursuant to the Workers’ Compensation Act, administrative law judges employed by the Office of Administrative Hearings, and members of the Workers’ Compensation Appeals Board to

the list of persons whose identifying information may be so restricted.

The bill also would amend this statute to make technical changes to consolidate similar provisions and ensure consistency in statutory references and phrasing.

Filing of Fraudulent Liens

The bill would add a provision to the Kansas Criminal Code that would prohibit the filing of certain liens or claims against real or personal property and provide for criminal penalties, as follows.

The bill would provide it is a severity level 8 nonperson felony for any person to present for filing in any public record:

- Any lien or claim against any real or personal property when such person knows or reasonably should know that such lien or claim is false or contains any materially false, fictitious, or fraudulent statement or representation;
- Any document that purports to assert a lien against real or personal property of any person or entity that is not expressly provided for in Kansas or federal law, does not depend on the consent of the owner of the real or personal property affected, and is not an equitable or constructive lien imposed by a court with proper jurisdiction;
- Any financing statement pursuant to article 9 of the Uniform Commercial Code, when such person knows or reasonably should know that the financing statement is not based on a *bona fide* security agreement or was not authorized or authenticated by the alleged debtor identified in the financing statement or the debtor's authorized representative; or

- Any document filed in an attempt to harass an entity, individual, or public official, or obstruct a governmental operation or judicial proceeding, when such person knows or reasonably should know that the document contains false information.

Under the new crime, it also would be unlawful for any person to violate a court order issued pursuant to the statute governing an expedited process to review and determine the validity of liens and claims against real or personal property. In that statute, the bill would add to this process a requirement that, if the court orders the lien or claim to be set aside, the court's findings of fact and conclusions of law must include:

- An order prohibiting the person who filed such lien or claim from filing any future lien or claim with any filing officer without approval of the court that enters the order; and
- A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties.

The bill also would require any order finding that a lien or claim is fraudulent to include a provision stating a violation of the order may result in civil and criminal penalties, and remove a provision providing for a specific penalty of imprisonment of up to 120 days, a fine not to exceed \$1,000, or both.

The bill would make technical amendments to this statute to ensure consistency in statutory references and phrasing.

Conference Committee Action

The Conference Committee agreed to the Senate version of HB 2390, regarding KORA exception review and

exceptions for cybersecurity assessments, plans, and vulnerabilities. The Conference Committee also agreed to add the contents of:

- HB 2096, regarding restriction of home address identifying information of certain public employees, modified to remove employees of the Kansas Department of Corrections (KDOC) and the Judicial Branch and municipal court employees from those public employees who would be added by the bill; and
- SB 58, as passed by the Senate, regarding the filing of fraudulent liens.

Background

As passed by the Senate, HB 2390 included the contents of HB 2292 as passed by the House. The backgrounds of both bills are described below.

HB 2390 (KORA Exception Review)

A sunset provision for all exceptions to KORA was added in 2000, requiring a review of existing exceptions within five years and of any new exception or substantial amendment to an exception by July 1 of the fifth year after enactment. Absent such review, the exceptions would expire. The law also required any exceptions continued after legislative review to be reviewed again five years later; however, 2013 HB 2012 modified the requirement so that exceptions would no longer be subject to review and expiration if the Legislature reviews and continues the exception during the 2013 Session or thereafter.

The bill was introduced by the House Committee on Judiciary at the request of Representative Patton.

House Committee on Judiciary

In the House Committee hearing, a representative of the League of Kansas Municipalities provided **proponent** testimony, stating support for the continuation of provisions regarding affidavits or sworn testimony supporting probable cause requirements for warrants or summons and audio or video recordings made and retained by law enforcement using a body or vehicle camera. A representative of the Kansas Board of Emergency Medical Services (Board) also provided proponent testimony, stating support for provisions regarding patient records the Board receives through an investigative subpoena and limited release of information from a closed session by the Advisory Committee on Trauma and its regional councils.

No other testimony was provided.

On February 23, 2021 the House Committee recommended the bill be placed on the Consent Calendar.

Senate Committee on Transparency and Ethics

In the Senate Committee hearing, a representative of the League of Kansas Municipalities provided **proponent** testimony, stating certain exceptions to KORA related to law enforcement officers' body cameras and search warrants were necessary and should be kept in place.

A representative of the Board provided written-only proponent testimony.

The Senate Committee amended the bill to insert provisions of HB 2292, regarding KORA amendments.

HB 2292 (Cybersecurity Assessments, Plans, and Vulnerabilities)

HB 2292 was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of the Secretary of State.

House Committee on Judiciary. In the House Committee hearing on February 17, 2021, representatives of the Office of Secretary of State, WaterOne, and the League of Kansas Municipalities testified as **proponents** of the bill. A representative of the Kansas Press Association provided written-only proponent testimony. Proponents generally stated the bill would strengthen protections for public entities in an era of increasing cyberthreats.

No other testimony was provided.

On February 23, 2021, the House Committee recommended the bill be placed on the Consent Calendar.

Senate Committee on Transparency and Ethics. In the Senate Committee hearing, representatives of the Office of the Secretary of State and the League of Kansas Municipalities provided **proponent** testimony, stating certain information related to cybersecurity and potential cybersecurity vulnerabilities should not be made public.

No other testimony was provided.

HB 2096 (Restriction of Home Address Identifying Information of Certain Public Employees)

The bill was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of the Kansas Sheriffs Association. As introduced and passed by the House, the public employees added by the bill also would have included employees of KDOC and the Judicial Branch and municipal court employees.

House Committee on Judiciary

In the House Committee hearing on January 27, 2021, representatives of the Kansas Bar Association (KBA), KDOC, Kansas Sheriffs Association, and the League of Kansas Municipalities, testified as **proponents** of the bill, stating it would increase the safety of persons in the positions added by the bill. Representatives of the Kansas State Board of Indigents' Defense Services and the Office of Judicial Administration (OJA) provided written-only proponent testimony. No other testimony was provided.

Senate Committee on Transparency and Ethics

In the Senate Committee hearing on March 24, 2021, representatives of KBA, KDOC, the Kansas Sheriffs Association, and OJA testified as **proponents** of the bill. A representative of the Kansas District Judges' Association provided written-only **proponent** testimony. No other testimony was provided.

SB 58 (Filing of Fraudulent Liens)

The bill was introduced in the Senate Committee on Judiciary at the request of the Office of the Attorney General (OAG).

Senate Committee on Judiciary

In the Senate Committee hearing on February 3, 2021, representatives of the OAG, Kansas District Judges' Association, League of Kansas Municipalities, and the Office of the Secretary of State, and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association testified as **proponents** on the bill. The proponents generally stated this bill is needed to address fraudulent lien filings made with the

intent to harass public officials and employees. No other testimony was provided.

House Committee on Judiciary

In the House Committee hearing on March 15, 2021, the conferees appearing in the Senate Committee again testified as **proponents** on the bill. No other testimony was provided.

On March 18, 2021, the House Committee amended the bill to make it effective upon publication in the *Kansas Register*. [Note: This amendment was not retained by the Conference Committee.]

Fiscal Information

HB 2390 (KORA Exception Review)

According to the fiscal note prepared by the Division of the Budget on HB 2390, as introduced, enactment of the bill would have no fiscal effect.

HB 2292 (Cybersecurity Assessments, Plans, and Vulnerabilities)

According to the fiscal note prepared by the Division of the Budget on HB 2292, as introduced, the OAG states enactment of the bill would not have a fiscal effect on the agency. The Kansas Association of Counties states enactment of the bill would have a negligible effect on county governments, and the League of Kansas Municipalities states enactment of the bill would have no fiscal effect on cities.

HB 2096 (Restriction of Home Address Identifying Information of Certain Public Employees)

According to the fiscal note prepared by the Division of the Budget on HB 2096, the Judicial Branch, Office of Administrative Hearings, KDOC, and OAG indicate enactment of the bill would have no fiscal effect on their operations. The League of Kansas Municipalities and Kansas Association of Counties indicate enactment of the bill could require additional staff time to carry out the bill's provisions.

SB 58 (Filing of Fraudulent Liens)

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, OJA indicates enactment of SB 58 could have a fiscal effect on the Judicial Branch because it would create a new crime, which could result in more time spent by court employees and judges processing and deciding these cases. Enactment of the bill could also increase the amount of supervision of offenders required by court service officers. OJA also estimates enactment of the bill could result in the collection of docket fees and supervision fees assessed in those cases filed under the bill's provisions.

The Kansas Sentencing Commission (Commission) indicates enactment of the bill could have an effect on prison admissions and beds; however, the Commission estimates the effect would be negligible.

Any fiscal effect associated with enactment of SB 58 is not reflected in *The FY 2022 Governor's Budget Report*.

Kansas Open Records Act; exceptions; review; permanency; cybersecurity; public employees; home address or ownership; personal property; real property; fraudulent liens; criminal penalties

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