

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2390

As Amended by Senate Committee on
Transparency and Ethics

Brief*

HB 2390, as amended, would amend the Kansas Open Records Act (KORA) to make certain temporary exceptions in current law permanent. The bill would also amend a current exception to KORA requirements to include provisions related to cybersecurity.

Kansas Open Records Act Permanent Exceptions

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;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- KSA 17-1312e(a), concerning records of cemetery corporation examination by the Secretary of State;
- 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.

Background

HB 2390 would include the contents of HB 2292 as passed by the House. The backgrounds of both bills are described below.

HB 2390 (Kansas Open Records Act Permanent Exceptions)

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 (Kansas Open Records Act Amendments)

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.

Fiscal Information

HB 2390 (Kansas Open Records Act Permanent Exceptions)

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

HB 2292 (Kansas Open Records Act Amendments)

According to the fiscal note prepared by the Division of the Budget on the HB 2292, as introduced, the Office of the Attorney General 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.

Kansas Open Records Act; exceptions; review; permanency; cybersecurity