

Senate Substitute for HOUSE BILL No. 2137

AN ACT concerning open records; relating to the open records act, exceptions to the disclosure of public records; legislative review of expiring sections, continuing such exceptions; eliminating a photograph record requirement in the scrap metal theft reduction act; amending K.S.A. 2018 Supp. 50-6,110, as amended by section 6 of chapter 66 of the 2019 Session Laws of Kansas, and K.S.A. 2019 Supp. 9-1810, 40-223j, 45-229 and 50-6a11 and repealing the existing sections.

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

Section 1. K.S.A. 2019 Supp. 9-1810 is hereby amended to read as follows: 9-1810. (a) The commissioner may enter into any informal agreement with any bank or trust company for a plan of action to address possible safety or soundness concerns, violations of law or any weakness displayed by the bank or trust company if the commissioner determines that the bank or trust company displays:

(1) Possible safety and soundness concerns or is violating, has violated or is about to violate any law, rule and regulation or order of the commissioner or the state banking board resulting in a less than satisfactory condition, but not to a degree requiring formal administrative action; or

(2) any weakness that if not properly addressed and corrected would reasonably be expected to result in future safety and soundness concerns, violations of applicable laws, rules and regulations and further deterioration in the condition of the bank or trust company.

(b) The adoption of an informal agreement authorized by this section shall not be subject to the provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A. 77-601 et seq., and amendments thereto. Any informal agreement authorized by this section shall not be considered an order or other agency action and shall be considered confidential examination material pursuant to K.S.A. 9-1712, and amendments thereto. ~~The provisions of this subsection shall expire on July 1, 2020, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.~~

Sec. 2. K.S.A. 2019 Supp. 40-223j is hereby amended to read as follows: 40-223j. (a) The statement of actuarial opinion shall be provided with the annual statement in accordance with the appropriate NAIC property and casualty annual statement instructions and shall be treated as a public document.

(b) (1) Any document, material or other information, in the control or possession of the department that is furnished to the commissioner pursuant to this act or obtained by the commissioner in an investigation pursuant to this section shall be kept confidential by the commissioner. Such information shall not be made public or subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this act or any other provision of the insurance laws of this state.

(2) (A) This subsection shall not be construed to limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and that the actuarial board for counseling and discipline establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents.

(B) This subsection shall not be construed to limit the commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be required to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (1).

(4) The commissioner may share or exchange any documents, materials or other information, including confidential and privileged documents referred to in paragraph (1), received in the performance of the commissioner's duties under this act, with:

- (A) The NAIC and its affiliates and subsidiaries;
- (B) the actuarial board for counseling and discipline or any other entity which regulates actuaries;
- (C) other state, federal or international regulatory agencies; and
- (D) other state, federal or international law enforcement authorities.

(5) (A) The sharing or exchanging of documents, materials or other information under this subsection shall be conditioned upon the recipient's authority and agreement to maintain the confidential and privileged status, if any, of the documents, materials or other information being shared or exchanged.

(B) No waiver of an existing privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing such documents, materials or information as authorized by this subsection.

(6) The commissioner of insurance is hereby authorized to adopt such rules and regulations establishing protocols governing the exchange of information as may be necessary to implement and carry out the provisions of this act.

~~(c) The provisions of subsection (b)(2) shall expire on July 1, 2020, unless the legislature acts to reenact such provision. The provisions of subsection (b)(2) shall be reviewed by the legislature prior to July 1, 2020.~~

~~(d) For the purposes of this section:~~

~~(1) "Commissioner" shall mean means the commissioner of insurance.~~

~~(2) "NAIC" shall mean means the national association of insurance commissioners.~~

Sec. 3. K.S.A. 2019 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, 11-306, 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, 17-7514, 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, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 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, 76-3305, 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, 72-972a, 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, 56-1a610, 56a-1204, 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, 72-60c01, 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.

Sec. 4. K.S.A. 2018 Supp. 50-6,110, as amended by section 6 of chapter 66 of the 2019 Session Laws of Kansas, is hereby amended to read as follows: 50-6,110. (a) It shall be unlawful for any person to sell any item or items of regulated scrap metal to a scrap metal dealer, or employee or agent of a dealer, in this state unless such person meets the requirements of this subsection.

(1) Such person shall present to such scrap metal dealer, or employee or agent of such dealer, at or before the time of sale, the following: The seller's name, address, sex, date of birth and the seller's driver's license, military identification card, passport or personal identification license. An official governmental document for a country other than the United States may be used to meet this requirement.

(2) Such person shall complete and sign the statement provided for in subsection (b)(10).

(b) Every scrap metal dealer shall keep a register in which the dealer, or employee or agent of the dealer, shall, at the time of purchase or receipt of any item for which such information is required to be presented, cross-reference to previously received information, or accurately and legibly record at the time of sale the following information:

(1) The time, date and place of transaction;

(2) the seller's name, address, sex, date of birth and:

(A) The identifying number from the seller's driver's license, military identification card, passport or personal identification license; or

(B) the identifying number from the seller's official governmental document for a country other than the United States;

(3) a copy of the identification card or document containing such identifying number, unless the dealer has a copy of the card or document in the dealer's register from a prior transaction;

(4) the license number, color and style or make of any motor vehicle in which the junk vehicle or other regulated scrap metal property is delivered in a purchase transaction;

(5) a general description, made in accordance with the custom of the trade, of the predominant types of junk vehicle or other regulated

scrap metal property purchased in the transaction;

(6) the weight, quantity or volume, made in accordance with the custom of the trade, of the regulated scrap metal property purchased;

(7) if a junk vehicle or vehicle part is being bought or sold, a description of the junk vehicle or vehicle part, including the make, model, color, vehicle identification number and serial number, if applicable;

(8) the price paid for, traded for or dealt for in a transaction for the junk vehicle or other regulated scrap metal property;

(9) the full name of the individual acting on behalf of the regulated scrap metal dealer in making the purchase; and

(10) a signed statement from the seller indicating from where the property was obtained and that: (A) Each item is the seller's own personal property, is free of encumbrances and is not stolen; or (B) the seller is acting for the owner and has permission to sell each item. If the seller is not the owner, such statement shall include the name and address of the owner of the property.

(c) Every scrap metal dealer shall take one photograph of the item or lot of items being sold ~~and one photograph of the vehicle in which the junk vehicle or other regulated scrap metal property is delivered~~ at the time of purchase or receipt of any item for which such information is required to be presented. Such photographs shall be kept with the record of the transaction and the scrap metal dealer's register of information required by subsection (b).

(d) The scrap metal dealer's register of information required by subsection (b), including copies of identification cards and signed statements by sellers, and photographs required by subsection (c) may be kept in electronic format.

(e) Every scrap metal dealer shall forward information required by the Kansas bureau of investigation for each transaction to the database described in K.S.A. 2018 Supp. 50-6,109a, and amendments thereto, in the manner prescribed by the bureau within 72 hours after the transaction occurs. The Kansas bureau of investigation shall promulgate rules and regulations providing which information and photographs required to be collected by scrap metal dealers by subsections (b) and (c) shall be entered into the database and prescribing the manner for submitting such information and photographs to the bureau.

(f) Notwithstanding any other provision to the contrary, this section shall not apply to transactions in which the seller is a:

(1) Registered scrap metal dealer;

(2) vehicle dealer licensed under chapter 8 of the Kansas Statutes Annotated, and amendments thereto; or

(3) scrap metal dealer or vehicle dealer registered or licensed in another state.

(g) (1) Except as provided in subsection (g)(2), this section shall not apply to transactions in which the seller is known to the purchasing scrap metal dealer to be a licensed business that operates out of a fixed business location and that can reasonably be expected to generate regulated scrap metal.

(2) The attorney general may determine, by rules and regulations, which of the requirements of this section shall apply to transactions described in subsection (g)(1).

Sec. 5. K.S.A. 2019 Supp. 50-6a11 is hereby amended to read as follows: 50-6a11. (a) The director is authorized to disclose to the attorney general any information received under this act, as requested by the attorney general for purposes of determining compliance with or enforcing the provisions of this act. The director and attorney general shall share with each other information received under this act and the director and the attorney general may share such information with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states, for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states. The director and attorney general

may share the information specified under this subsection with any of the following:

(1) Federal, state or local agencies for the purposes of enforcement of corresponding laws of other states.

(2) A court, arbitrator, data clearinghouse or similar entity for the purpose of assessing compliance with or making calculations required by the master settlement agreement or agreements regarding disputes under the master settlement agreement, and with counsel for the parties or expert witnesses in any such proceeding, if the information otherwise remains confidential.

(b) Except as otherwise provided, any information provided to the attorney general or director for purposes of enforcement of this act may be shared between the attorney general and the director and shall not be disclosed publicly by the attorney general or the director except when necessary to facilitate compliance with and enforcement of this act.

(c) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, the attorney general or the director may provide the name of any stamping agent who reports selling the tobacco product manufacturer's products.

(d) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the attorney general or director pursuant to K.S.A. 2019 Supp. 50-6a10, and amendments thereto, provided that such information provided by the stamping agent to a tobacco product manufacturer shall be limited to the brand families of that manufacturer as listed in the directory established in K.S.A. 50-6a04(b), and amendments thereto.

(e) Unless disclosure is authorized under this section, all information obtained by the director and disclosed to the attorney general or shared with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states, shall be confidential. The penalties provided under K.S.A. 75-5133, and amendments thereto, shall not apply when information is lawfully disclosed pursuant to this section.

(f) Any tobacco sales data provided to the director, attorney general or data clearinghouse for the purpose of assessing compliance with or making calculations required by the master settlement agreement or related agreements, shall be confidential. ~~The provisions of this subsection shall expire on July 1, 2020, unless the legislature reviews this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.~~

Sec. 6. K.S.A. 2018 Supp. 50-6,110, as amended by section 6 of chapter 66 of the 2019 Session Laws of Kansas, and K.S.A. 2019 Supp. 9-1810, 40-223j, 45-229 and 50-6a11 are hereby repealed.

Sec. 7. 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 House,
and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.