

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT**

**DAVIS HAMMET,** )  
)  
)  
**Plaintiff,** )  
)  
)  
**v.** )  
)  
)  
**RONNIE METSKER,** )  
**in his official capacity as Elections** )  
**Commissioner in Johnson County, Kansas,** )  
**and** )  
)  
)  
**Defendant.** )

**Case No.** \_\_\_\_\_

**PETITION PURSUANT TO K.S.A. CHAPTER 60  
FOR DECLARATORY AND INJUNCTIVE RELIEF  
UNDER THE KANSAS OPEN RECORDS ACT**

Plaintiff Davis Hammet petitions this Court to enforce his right to access public records in the custody of Defendant Ronnie Metsker, Johnson County Election Commissioner, pursuant to the Kansas Open Records Act, K.S.A. §45-215, *et seq.* (“KORA” or “the Act”). Mr. Hammet requested a list of the names of Johnson County voters who cast a provisional ballot in the August 2018 primary election as well as the list of the names of Johnson County voters whose advance mail ballots were rejected because their signature did not match their voter record. In violation of the Act, Defendant refused to release any of the requested records, claiming that both lists of names were exempt from disclosure.

## JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to K.S.A. § 45-222(a).
2. Venue is proper in this judicial district pursuant to K.S.A. § 45-222(a) because the public records Mr. Hammet seeks are located in the Tenth Judicial District of Kansas.

## PARTIES

3. Plaintiff Davis Hammet is a Kansas resident and the President of Loud Light, a civic engagement nonprofit that focuses on expanding democracy and increasing voter turnout.
4. Defendant Ronnie Metsker is the Johnson County Elections Commissioner and the chief officer of the Johnson County Elections Office, a public agency within the meaning of K.S.A. §45-217. Metsker maintains the records at issue in this complaint and is sued in his official capacity.

## THE LEGISLATURE AMENDED K.S.A. § 25-2422 IN ORDER TO ALLOW PUBLIC INSPECTION OF VOTER LISTS PRIOR TO THE OFFICIAL CANVASS

5. In May 2018, the legislature passed SSB 336, an omnibus government transparency bill.<sup>1</sup> The bill, which went into effect on July 1, 2018, removed a subsection in K.S.A. §25-2422 that provided “the name of any voter who has cast a ballot shall not be disclosed from the time the ballot is cast until the final canvass of the election by the county board of canvassers.” A true and correct copy of the bill is attached as Exhibit A.
6. The amendment was proposed during the House Judiciary Committee hearing on March 20, 2018 by Representative Vic Miller who explained that the purpose of the change was to facilitate public access to voter lists between the election and the canvass.<sup>2</sup> Specifically,

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<sup>1</sup> S.B. 336, 87th Leg. §2 (Kan. 2018)(effective July 1, 2018).

<sup>2</sup> Hearing on SB 336 Before the H.Comm. on Judiciary, 87th Leg., 2018 Sess. (Kan. 2018) at 5:23:24, [http://sg001-harmony.sliq.net/00287/Harmony/en/PowerBrowser/PowerBrowserV2/20180320/8/2833#info\\_](http://sg001-harmony.sliq.net/00287/Harmony/en/PowerBrowser/PowerBrowserV2/20180320/8/2833#info_)

Representative Miller described how the amendment would help candidates identify ineligible voters and allow them to file election challenges.<sup>3</sup> When Committee Chairman Blaine Finch asked whether the amendment would permit voters' names to "be disclosed at any time between the vote and the canvass," Miller responded affirmatively.<sup>4</sup>

7. Ranking minority member Representative John Carmichael also voiced support for the amendment, explaining "this reopens [voters' names] so all of us know who participated in the election, that's what this amendment is about."<sup>5</sup>

8. Following Representative Carmichael's comments, the committee voted to recommend favorably SB 336 for passage as amended.<sup>6</sup>

9. On May 4, 2018, on the recommendation of the Judiciary Committee, the legislature passed SB 336. Governor Jeff Colyer signed the bill into law on May 10, 2018.

### **THE 2018 PRIMARY ELECTION**

10. On August 7, 2018, a record 118, 708 people voted in the 2018 primary election in Johnson County, Kansas.

11. Nearly 2,350 Johnson County voters cast provisional ballots, of which only 1,176 were fully counted.<sup>7</sup> Nearly 900 of the provisional ballots were denied in their entirety.<sup>8</sup>

12. Johnson County also rejected the ballots of 153 advance mail ballot voters because the signature on their envelope did not match their voter record.<sup>9</sup>

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<sup>3</sup>"Having represented a number of people on election contests, it made it very difficult to thoroughly review and represent someone who may have been shorted on an election. This just removes that, that closure that was enacted."  
*Id.* (statement of Rep. Vic. Miller)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5:26:01 (statement of Rep. Vic. Miller)

<sup>6</sup> *Id.* at 5:26:40 (statement of Rep. John Carmichael)

<sup>7</sup> See Exhibit B, Johnson County Board of Canvassers Summary of Challenged/Provisional Ballots (Aug. 13, 2018)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

## HAMMET'S KORA REQUEST AND DEFENDANT'S DENIAL

13. On August 22, 2018, Mr. Hammet requested access to the list of the names of voters who cast provisional ballots as well as the reason each voter was directed to vote provisionally.

14. Mr. Hammet's request, on its face, sought information that is recorded in the county's registration and poll books—including whether a voter cast a provisional ballot<sup>10</sup>—both of which are expressly open to public inspection under K.S.A. §25-2320.

15. On August 22, 2018, several hours after Mr. Hammet submitted his request, Defendant sent an email, through counsel, denying him access to the list of names of provisional voters. Defendant based his denial on K.S.A. § 25-2422 (a) which, when read in isolation, purports to close the name of any voter who cast a regular or provisional ballot from public inspection. A true and correct copy of the denial is attached as Exhibit C.

16. On August 27, 2018, Mr. Hammet requested the list of the names of all advance mail ballot voters whose votes were rejected due to a mismatch of signatures on their envelope and voter record.

17. Defendant denied Mr. Hammet's request for the names of advance ballot voters the same day. In his denial, Defendant explained that advance mail ballots, if successfully challenged, became provisional ballots and were therefore closed from release under K.S.A. §25-2422. A true and correct copy of the Mr. Hammet's second denial is attached as Exhibit D.

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<sup>10</sup>Poll workers are required to record whether a voter casts a provisional ballot in the county's registration book or poll book, depending on which is used at a polling location pursuant to K.S.A. 25-2908(a). *See* K.S.A. 25-409(b) ("if a person is challenged pursuant to K.S.A. 25-414...the word provisional shall be written following the voter's name in the poll book").

**DEFENDANT’S INTERPRETATION OF K.S.A. § 25-2422 CONFLICTS WITH  
KANSAS AND FEDERAL LAWS THAT EXPRESSLY REQUIRE DISCLOSURE  
OF VOTER LISTS**

18. Defendant’s interpretation of K.S.A. §25-2422(a) would prohibit public access to the name of any voter who cast a regular or provisional ballot in an election and effectively forecloses public access to voter history information. Closing the list of names of provisional and regular ballot voters directly contradicts K.S.A. §25-2320(a) which requires a county election officer to make available for public inspection “the voter registration books, active voter lists and other lists of voters required to be kept.” These records, per K.S.A. § 25-409(b), include information about whether a voter participated in an election and what type of ballot they cast. Moreover, active voter lists inherently include data about whether a voter participated in recent elections.

19. Prohibiting the disclosure of the names of regular or provisional ballot voters also conflicts with federal law. The National Voter Registration Act (“NVRA”), 52 U.S.C. §20507(i), requires the state to maintain and make available for public inspection voter names and information concerning their voter participation history. Defendant’s interpretation of K.S.A. §25-2422(a) is thus in tension with the NVRA’s public access requirements.

20. Finally, Defendant’s interpretation of K.S.A. §25-2422(a) is inconsistent with its own practices. Defendant provides public access to voter history upon request<sup>11</sup> and the Kansas Secretary of State’s office discloses an individual voter’s history online, including whether a voter cast a provisional ballot.<sup>12</sup>

**CLAIMS FOR RELIEF**

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<sup>11</sup> *Information Requests*, Johnson County Election Office, <https://jocoelection.org/information-requests> (last visited Sept. 11, 2018).

<sup>12</sup> See Exhibit E, *Kansas Secretary of State Voter View*

**Count I - Violation of the Kansas Open Records Act  
(Denial of Request for Copies of Public Record)**

21. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

22. K.S.A. §45-216(a) states: “It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.”

23. K.S.A. 45-218(a) states, in part: “All public records shall be open for inspection by any person, except as otherwise provided by this act.”

24. KORA does not exempt the names of provisional ballot or rejected advance mail ballot voters from disclosure.

25. The language in K.S.A. §25-2422(a) that Defendant cited as a basis for denying Mr. Hammet’s request, when read together with other provisions of the statute, is ambiguous at best and does not create an exception to KORA.

26. Moreover, the legislative history of SB 336 demonstrates that the legislature intended to remove restrictions to accessing voter lists by amending K.S.A. §25-2422, not create additional barriers.

27. By denying Mr. Hammet’s requests for non-exempt records, Defendant has violated KORA.

**REQUEST FOR RELIEF**

WHEREFORE, Mr. Hammet prays this Court:

- A. Assume jurisdiction over this action;
- B. Order Defendant to provide Mr. Hammet with the public records he has requested;

- C. Enjoin Defendant from denying Mr. Hammet and other requesters from accessing information regarding whether a voter cast a regular or provisional ballot following future elections;
- D. Order such other relief as this Court deems just and proper.

DATED: September 17, 2018

Respectfully submitted,

/s/ Lauren Bonds  
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Zal Kotval Shroff KS Sup. Ct. No. 28013  
ACLU FOUNDATION OF KANSAS  
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# **EXHIBIT A**



House Substitute for SENATE BILL, No. 336

AN ACT concerning public records; relating to disclosure of records; legislative review of exceptions to disclosure of public records; disclosure of names of voters; agency records concerning a child fatality; disclosure of law enforcement recordings using a body camera or vehicle camera; disclosure of personal information; social security numbers; notice of unauthorized disclosure; amending K.S.A. 2017 Supp. 9-513c, 25-2422, 36-2212, 40-5007a, 40-5009a, 40-5012a, 45-229, 45-254 and 75-3520 and repealing the existing sections.

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

Section 1. K.S.A. 2017 Supp. 9-513c is hereby amended to read as follows: 9-513c. (a) Notwithstanding any other provision of law, all information or reports obtained and prepared by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (c) or (d).

(b) (1) All confidential information shall be the property of the state of Kansas and shall not be subject to disclosure except upon the written approval of the state bank commissioner.

(2) The provisions of this subsection shall expire on June 30, 2019, unless the legislature acts to reenact such provisions. The provisions of this paragraph shall be reviewed by the legislature prior to July 1, 2019.

(c) (1) The commissioner shall have the authority to share supervisory information, including reports of examinations, with other state or federal agencies having regulatory authority over the person's money transmission business and shall have the authority to conduct joint examinations with other regulatory agencies.

(2)-(A) The requirements under any federal or state law regarding the confidentiality of any information or material provided to the nationwide multi-state licensing system, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of confidentiality protections provided by federal and state laws.

~~(B) The provisions of this paragraph shall expire July 1, 2018, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2018.~~

(d) The commissioner may provide for the release of information to law enforcement agencies or prosecutorial agencies or offices who shall maintain the confidentiality of the information.

(e) The commissioner may accept a report of examination or investigation from another state or federal licensing agency, in which the accepted report is an official report of the commissioner. Acceptance of an examination or investigation report does not waive any fee required by this act.

(f) Nothing shall prohibit the commissioner from releasing to the public a list of persons licensed or their agents or from releasing aggregated financial data on such persons.

(g) The provisions of subsection (a) shall expire on July 1, 2021, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2021.

Sec. 2. K.S.A. 2017 Supp. 25-2422 is hereby amended to read as follows: 25-2422. (a) Unauthorized voting disclosure is, while being charged with any election duty, intentionally:

(1) Disclosing or exposing the contents of any ballot, whether cast in a regular or provisional manner, or the name of any voter who cast such ballot, except as ordered by a court of competent jurisdiction in an election contest pursuant to K.S.A. 25-1434 et seq., and amendments thereto; or

(2) including or attempting to induce any voter to show how the voter marks or has marked the voter's ballot.

~~(b) The name of any voter who has cast a ballot shall not be disclosed from the time the ballot is cast until the final canvass of the election by the county board of canvassers.~~

~~(c)~~(b) Nothing in this section shall prohibit the disclosure of the names of persons who have voted advance ballots.

~~(d)~~(c) Nothing in this section shall prohibit authorized poll agents

from observing elections as authorized by K.S.A. 25-3004, 25-3005 and 25-3005a, and amendments thereto.

~~(e)~~(d) Unauthorized voting disclosure is a severity level 10, nonperson felony.

Sec. 3. K.S.A. 2017 Supp. 38-2212 is hereby amended to read as follows: 38-2212. (a) *Principle of appropriate access.* Information contained in confidential agency records concerning a child alleged or adjudicated to be in need of care may be disclosed as provided in this section. Disclosure shall in all cases be guided by the principle of providing access only to persons or entities with a need for information that is directly related to achieving the purposes of this code.

(b) *Free exchange of information.* Pursuant to K.S.A. 2017 Supp. 38-2210, and amendments thereto, the secretary and juvenile intake and assessment agencies shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

(c) *Necessary access.* The following persons or entities shall have access to information from agency records. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged to be in need of care. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

(1) A child named in the report or records, a guardian ad litem appointed for the child and the child's attorney.

(2) A parent or other person responsible for the welfare of a child, or such person's legal representative.

(3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.

(4) A person licensed to practice the healing arts or mental health profession in order to diagnose, care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the child.

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of ~~social and rehabilitation services for children and families~~ to care for, treat or supervise a child in need of care.

(6) A coroner or medical examiner when such person is determining the cause of death of a child.

(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

(8) An attorney for a private party who files a petition pursuant to ~~subsection (b) of~~ K.S.A. 2017 Supp. 38-2233(b), and amendments thereto.

(9) A foster parent, prospective foster parent, permanent custodian, prospective permanent custodian, adoptive parent or prospective adoptive parent. In order to assist such persons in making an informed decision regarding acceptance of a particular child, to help the family anticipate problems which may occur during the child's placement, and to help the family meet the needs of the child in a constructive manner, the secretary shall seek and shall provide the following information to such persons as the information becomes available to the secretary:

(A) Strengths, needs and general behavior of the child;

(B) circumstances which necessitated placement;

(C) information about the child's family and the child's relationship to the family which may affect the placement;

(D) important life experiences and relationships which may affect the child's feelings, behavior, attitudes or adjustment;

(E) medical history of the child, including third-party coverage which may be available to the child; and

(F) education history, to include present grade placement, special strengths and weaknesses.

(10) The state protection and advocacy agency as provided by ~~subsection (a)(10) of~~ K.S.A. 65-5603(a)(10) or ~~subsection (a)(2)(A) and (B) of~~ K.S.A. 74-5515(a)(2)(A) and (B), and amendments thereto.

(11) Any educational institution to the extent necessary to enable the

educational institution to provide the safest possible environment for its pupils and employees.

(12) Any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils.

(13) Any other federal, state or local government executive branch entity or any agent of such entity, having a need for such information in order to carry out such entity's responsibilities under the law to protect children from abuse and neglect.

(d) *Specified access.* The following persons or entities shall have access to information contained in agency records as specified. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

(1) Information from confidential agency records of the department of ~~social and rehabilitation services for children and families~~, a law enforcement agency or any juvenile intake and assessment worker of a child alleged or adjudicated to be in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on corrections and juvenile justice, house committee on appropriations, senate committee on ways and means, legislative post audit committee and any joint committee with authority to consider children's and families' issues, when carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by  $\frac{2}{3}$  of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate. The secretary of ~~social and rehabilitation services for children and families~~ shall not summarize the outcome of department actions regarding a child alleged to be a child in need of care in information available to members of such committees.

(2) The secretary of ~~social and rehabilitation services for children and families~~ may summarize the outcome of department actions regarding a child alleged to be a child in need of care to a person having made such report.

(3) Information from confidential reports or records of a child alleged or adjudicated to be a child in need of care may be disclosed to the public when:

(A) The individuals involved or their representatives have given express written consent; or

(B) the investigation of the abuse or neglect of the child or the filing of a petition alleging a child to be in need of care has become public knowledge, provided, however, that the agency shall limit disclosure to confirmation of procedural details relating to the handling of the case by professionals.

(e) *Court order.* Notwithstanding the provisions of this section, a court of competent jurisdiction, after in camera inspection, may order disclosure of confidential agency records pursuant to a determination that the disclosure is in the best interests of the child who is the subject of the reports or that the records are necessary for the proceedings of the court and otherwise admissible as evidence. The court shall specify the terms of disclosure and impose appropriate limitations.

(f) (1) Notwithstanding any other provision of law to the contrary, except as provided in paragraph ~~(4)~~ (6), in the event that child abuse or neglect results in a child fatality or near fatality, reports or records of a child alleged or adjudicated to be in need of care received by the secretary, a law enforcement agency or any juvenile intake and assessment worker shall become a public record and subject to disclosure pursuant to K.S.A. 45-215, and amendments thereto.

(2) Within seven days of receipt of a request in accordance with the procedures adopted under K.S.A. 45-220, and amendments thereto, the secretary shall notify any affected individual that an open records request has been made concerning such records. The secretary or any affected individual may file a motion requesting the court to prevent disclosure of such record or report, or any select portion thereof. *Notice of the filing of such motion shall be provided to all parties requesting the records or reports, and such party or parties shall have a right to hearing, upon request, prior to the entry of any order on such motion.* If the affected

individual does not file such motion within seven days of notification, and the secretary has not filed a motion, the secretary shall release the reports or records. If such motion is filed, the court shall consider the effect such disclosure may have upon an ongoing criminal investigation, a pending prosecution, or the privacy of the child, if living, or the child's siblings, parents or guardians, and the public's interest in the disclosure of such records or reports. The court shall make written findings on the record justifying the closing of the records and shall provide a copy of the journal entry to the affected parties and the individual requesting disclosure pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(3) *Notwithstanding the provisions of paragraph (2), in the event that child abuse or neglect results in a child fatality, the secretary shall release the following information in response to an open records request made pursuant to the Kansas open records act, within seven business days of receipt of such request, as allowed by applicable law:*

(A) *Age and sex of the child;*

(B) *date of the fatality;*

(C) *a summary of any previous reports of abuse or neglect received by the secretary involving the child, along with the findings of such reports; and*

(D) *any department recommended services provided to the child.*

(4) *Notwithstanding the provisions of paragraph (2), in the event that a child fatality occurs while such child was in the custody of the secretary for children and families, the secretary shall release the following information in response to an open records request made pursuant to the Kansas open records act, within seven business days of receipt of such request, as allowed by applicable law:*

(A) *Age and sex of the child;*

(B) *date of the fatality; and*

(C) *a summary of the facts surrounding the death of the child.*

(5) For reports or records requested pursuant to this subsection, the time limitations specified in this subsection shall control to the extent of any inconsistency between this subsection and K.S.A. 45-218, and amendments thereto. As used in this section, "near fatality" means an act that, as certified by a person licensed to practice medicine and surgery, places the child in serious or critical condition.

(4)(6) Nothing in this subsection shall allow the disclosure of reports, records or documents concerning the child and such child's biological parents ~~which~~ that were created prior to such child's adoption. Nothing herein is intended to require that an otherwise privileged communication lose its privileged character.

Sec. 4. K.S.A. 2017 Supp. 40-5007a is hereby amended to read as follows: 40-5007a. (a) (1) The commissioner may conduct an examination under this act of a licensee as often as the commissioner in such commissioner's sole discretion deems appropriate.

(2) For purposes of completing an examination of a licensee under this act, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation, in the sole discretion of the commissioner, is necessary or material to the examination of the licensee.

(3) In lieu of an examination under this act of any foreign or alien licensee licensed in this state, the commissioner, at the commissioner's discretion, may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

(b) (1) Any person required to be licensed by this act shall for five years retain copies of all:

(A) Proposed, offered or executed contracts, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract, whichever is later;

(B) all checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and

(C) all other records and documents related to the requirements of this act.

(2) This section shall not relieve any person licensed under this act

of the obligation to produce these documents and provide copies thereof to the commissioner after the retention period has expired if the person has retained such documents.

(3) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(c) (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to the Kansas administrative procedure act.

(3) The commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(4) When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(5) Nothing contained in this act shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action ~~which~~ that the commissioner, in such commissioner's sole discretion, may deem appropriate.

(d) (1) Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) Not later than 60 days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) In the event the commissioner determines that regulatory action

is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

(e) (1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.

(2) Except as otherwise provided in this act, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this act, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(A) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this act, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(B) disclosed to the NAIC and its affiliates and subsidiaries under ~~paragraph (4) of subsection (e)(4)~~ by the commissioner.

For the purposes of ~~paragraph (2) of subsection (e)(2)~~, the term "act" includes the law of another state or jurisdiction that is substantially similar to this act.

(4) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to ~~paragraph (1) of subsection (e)(1)~~.

(5) In order to assist in the performance of the commissioner's duties, the commissioner may:

(A) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to ~~paragraph (1) of subsection (e)(1)~~, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;

(B) receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(C) enter into agreements governing sharing and use of information consistent with this subsection.

(6) No waiver of any applicable 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 as authorized in ~~paragraph (4) of subsection (e)(4)~~.

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(8) Nothing contained in this act shall prevent or be construed as

prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

~~(f) The provisions of this subsection shall expire July 1, 2013, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2013.~~

(f) (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this act. This section shall not be construed to automatically preclude an examiner from being:

- (A) A viator;
- (B) an insured in a viaticated insurance policy; or
- (C) a beneficiary in an insurance policy that is proposed to be viaticated.

(2) Notwithstanding the requirements of this clause, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this act.

(g) Unless provided otherwise, all fees and procedures for examinations under this act shall be in accordance with K.S.A. 40-223, and amendments thereto.

(h) (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this act.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph (1).

(3) A person identified in paragraph (1) or (2) shall be entitled to an award of attorney fees and costs if such person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(i) The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

Sec. 5. K.S.A. 2017 Supp. 40-5009a is hereby amended to read as follows: 40-5009a. (a) (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(A) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(B) a document in which the insured consents to the release of such insured's medical records to a viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

(2) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy

that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by paragraph (3).

(3) The viatical settlement provider shall deliver a copy of the medical release required under ~~clause (B) of paragraph (1)(B)~~, a copy of the viator's application for the viatical settlement contract, the notice required under paragraph (2) and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The form for verification shall be developed by the commissioner.

(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(5) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that such viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that such viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the requirements of this section.

~~(b)-(1)~~ All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

~~(2) The provisions of this subsection shall expire July 1, 2013, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2013.~~

(c) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least 15 calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans and loan interest that have been paid by the viatical settlement provider or purchaser.

(d) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(e) Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to ~~clause (6) of subsection (a) of K.S.A. 2017 Supp. 40-5008(a)(6)~~, and amendments thereto, renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be



made by the viatical settlement provider or viatical settlement broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

Sec. 6. K.S.A. 2017 Supp. 40-5012a is hereby amended to read as follows: 40-5012a. (a) No person shall:

- (1) Commit a fraudulent viatical settlement act.
- (2) Knowingly or intentionally interfere with the enforcement of any provision of this act or any investigation of suspected or actual violations of this act.
- (3) Knowingly or intentionally permit any person, employed by a person in the business of viatical settlements, convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements. No person in the business of viatical settlements shall knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.
- (4) Issue, solicit, market or otherwise promote the purchase of an insurance policy for the sole purpose of or with the primary emphasis on settling the policy.
- (5) Employ any device, scheme or artifice in violation of K.S.A. 40-450, and amendments thereto, in the solicitation, application or issuance of a life insurance policy.
- (6) Receive, when providing premium financing, any proceeds, fees or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay the principal, interest and costs or expenses incurred by the lender or borrower related to policy premiums paid under the premium financing agreement, except for the event of a default unless either the default on such loan or the transfer of the policy in connection with such default occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act.

(b) (1) Viatical settlements, contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(2) The lack of a statement as required in paragraph (1) shall not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(c) (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(d) (1) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

- (A) The commissioner or the commissioner's employees, agents or representatives;
- (B) federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;
- (C) any person involved in the prevention and detection of fraudulent

viatical settlement acts or that person's agents, employees or representatives;

(D) the NAIC, national association of securities dealers, the North American securities administrators association, or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or

(E) the life insurer that issued the life insurance policy covering the life of the insured.

(2) Paragraph (1) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) A person identified in paragraph (1) shall be entitled to an award of attorney fees and costs if such person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (1).

(e) (1) The documents and evidence provided pursuant to subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(2) Paragraph (1) of this subsection shall not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(A) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(B) to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC;

(C) at the discretion of the commissioner or pursuant to a court order, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act; or

(D) at the discretion of the commissioner or pursuant to a court order, to a person that is aggrieved by a fraudulent viatical settlement act.

(3) Release of documents and evidence under subparagraphs (A) and (B) of paragraph (2) paragraphs (2)(A) and (B) of this subsection does not abrogate or modify the privilege granted in paragraph (1).

~~(4) The provisions of this subsection shall expire July 1, 2013, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2013.~~

(f) This act shall not:

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(2) preempt, supersede or limit any provision of any state securities law or any rule, order or notice issued thereunder;

(3) prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

(4) limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(g) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(1) Fraud investigators, who may be viatical settlement providers or viatical settlement broker employees or independent contractors; and

(2) an antifraud plan, ~~which that~~ shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) a description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;

(C) a description of the plan for antifraud education and training of underwriters and other personnel; and

(D) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications; and

(3) antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

Sec. 7. K.S.A. 2017 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 which 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, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which 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 which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which 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, 35-2212, 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, 79-1.119, 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: 12-581.1, 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.*

Sec. 8. K.S.A. 2017 Supp. 45-254 is hereby amended to read as follows: 45-254. (a) Every audio or video recording made and retained by law enforcement using a body camera or a vehicle camera shall be considered a criminal investigation record as defined in K.S.A. 45-217, and amendments thereto. The provisions of this subsection shall expire on July 1, 2021, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021.

(b) In addition to any disclosure authorized pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto, a person described in subsection (c) may request *make a request in accordance*

with procedures adopted under K.S.A. 45-220, and amendments thereto, to listen to an audio recording or to view a video recording made by a body camera or a vehicle camera. The law enforcement agency shall allow the person to listen to the requested audio recording or to view the requested video recording *within 20 days after making the request*, and may charge a reasonable fee for such services provided by the law enforcement agency.

(c) Any of the following may make a request under subsection (b):

(1) A person who is a subject of the recording;

(2) ~~a~~ any parent or legal guardian of a person under 18 years of age who is a subject of the recording;

(3) ~~an attorney for a person described in subsection (c)(1) or (c)(2);~~  
and

~~(4) an heir at law, an executor or an administrator of a decedent, when the a decedent is a subject of the recording; and~~

(4) ~~an attorney for a person described in this subsection.~~

(d) As used in this section:

(1) "Body camera" means a device that is worn by a law enforcement officer that electronically records audio or video of such officer's activities.

(2) "Heir at law" means: (A) An executor or an administrator of the decedent; (B) the spouse of the decedent, if living; (C) if there is no living spouse of the decedent, an adult child of the decedent, if living; or (D) if there is no living spouse or adult child of the decedent, a parent of the decedent, if living.

(3) "Vehicle camera" means a device that is attached to a law enforcement vehicle that electronically records audio or video of law enforcement officers' activities.

Sec. 9. K.S.A. 2017 Supp. 75-3520 is hereby amended to read as follows: 75-3520. (a) (1) Unless required by federal law, no document available for public inspection or copying shall contain an individual's social security number if such document contains such individual's personal information. "Personal information" shall include, but not be limited to, name, address, phone number or e-mail address.

(2) The provisions of ~~paragraph~~ paragraphs (1) and (3) of this subsection shall not apply to documents recorded in the official records of any recorder of deeds of the county or to any documents filed in the official records of the court and shall be included, but not limited to, such documents of any records that when filed constitutes:

~~(1)(A)~~ A consensual or nonconsensual lien;

~~(2)(B)~~ an eviction record;

~~(3)(C)~~ a judgment;

~~(4)(D)~~ a conviction or arrest;

~~(5)(E)~~ a bankruptcy;

~~(6)(F)~~ a secretary of state filing; or

~~(7)(G)~~ a professional license.

(3) Any document or record that contains all or any portion of an individual's social security number shall have all portions of all social security numbers redacted before the document or record is made available for public inspection or copying.

(4) (A) An agency shall give notice as defined in K.S.A. 2017 Supp. 50-7a01, and amendments thereto, to any individual whose personal information was disclosed in violation of this subsection when it becomes aware of the unauthorized disclosure. Notice shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and any measures necessary to determine the scope of unauthorized disclosures.

(B) The agency shall offer to such individuals credit monitoring services at no cost for a period of one year. The agency shall provide all information necessary for such individual to enroll in such services and shall include information on how such individual can place a security freeze on such individual's consumer report.

(b) (1) No person, including an individual, firm, corporation, association, partnership, joint venture or other business entity, or any employee or agent thereof, shall solicit, require or use for commercial purposes an individual's social security number unless such number is necessary for such person's normal course of business and there is a specific use for such number for which no other identifying number may be used.

(2) Paragraph (1) of this subsection does not apply to documents or records that are recorded or required to be open to the public pursuant to state or federal law, or by court rule or order, and this paragraph does not limit access to these documents or records.

(3) Paragraph (1) of this subsection does not apply to the collection, use or release of social security numbers for the following purposes:

(A) Mailing of documents that include social security numbers sent as part of an application or enrollment process or to establish, amend or terminate an account, contract or policy or to confirm the accuracy of the social security number;

(B) internal verification or administrative purposes;

(C) investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the fair credit reporting act, 15 U.S.C. § 1681 et seq., undertake a permissible purpose enumerated under the Gramm-Leach Bliley Act, 15 U.S.C. § 6802 (e), or locate an individual who is missing, a lost relative, or due a benefit, such as pension, insurance or unclaimed property benefit; or

(D) otherwise required by state or federal law or regulation.

(e) An individual who is aggrieved by a violation of this section may recover a civil penalty of not more than \$1,000 for each violation.

Sec. 10. K.S.A. 2017 Supp. 9-513c, 25-2422, 38-2212, 40-5007a, 40-5009a, 40-5012a, 45-229, 45-254 and 75-3520 are hereby repealed.

Sec. 11. 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 SENATE, and passed that body

\_\_\_\_\_  
SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_  
  
\_\_\_\_\_  
*Governor.*

# **EXHIBIT B**



**Johnson County Board of Canvassers**  
**August 13, 2018**

**Agenda**

- I. Introductions**
- II. Overview of Results**
- III. Summary of Challenged/Provisional Ballots**
- IV. Adjournment**

**Primary Election – August 7, 2018**

**Summary of Challenged/Provisional Ballots**

**Recommended to Count**

100	Voter signed advance ballot envelope, did not complete address line	AG Opinion 10/16/12 2012-26
177	Registered voter requested advance ballot, did not return ballot. Voted provisional at polls, completed voter registration application	25-2908(f)
446	Voter moved or changed name; voter completed required registration application	25-2316c
264	Should be perfect	25-3002(b)(1)
32	Voter failed to submit voter ID; provided photo ID prior to Canvass	25-1122(e)(2) 25-1123(c) 25-2908(d)
15	Replacement Ballot issued	25-1122f
6	#2 assisting box checked; #2 person assisting line, helper signs own name; #1 voter line signed by voter	25-1124
5	#2 assisting box checked; #2 person assisting line, helper signs own name; #1 voter line, not signed	25-1124
1	#3 person signing line, helper signs own name; #1 voter line signed by voter	25-1121(c)
1	#3 person signing line, helper signs own name; #1 voter line, helper signs own name	25-1121(c)
19	#3 person signing line, helper signs own name; #1 voter line, helper signs voter name	25-1121(c)
106	#3 person signing line, helper signs own name; #1 voter line not signed	25-1121(c)
2	#3 person signing line, voter signs own name; #1 voter line, helper signs voter name	25-1121(c)
1	#2 assisting box checked; #2 assisting line, voter signs own name; #1 voter line, helper signs own name	25-1124
1	#2 assisting box checked; #2 person assisting line, helper signs own name; #1 voter line, helper signs own name	25-1124

**Total Ballots Recommended To Count: 1176**

**JOHNSON COUNTY BOARD OF CANVASSERS**  
Recommendation submitted: August 13, 2018

Total Provisionals  
1176  
275  
898  
-----  
1473

913-715-6800 office  
800-766-3777 TDD  
913-791-1753 fax

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**Primary Election – August 7, 2018**

**Count Partial**

213	Wrong polling place	25-3002(b)(3)
48	Correct polling place – wrong ballot	25-3002(b)(3)
12	Registered voter moved within the county but refused to fill out a new voter registration card before voting	25-409(a) 25-3002(b)(3)
1	Incorrect party affiliation	25-3304(b)
1	Party affiliation not declared	25-3301(c)

**Total Count Partial Ballots to review: 275**

**JOHNSON COUNTY BOARD OF CANVASSERS**  
**Recommendation submitted: August 13, 2018**

**Primary Election – August 7, 2018**

**Summary of Challenged/Provisional Ballots**

**Not Valid and Should Not Be Counted**

219	Not registered	25-2302
153	Signature on voter's envelope is not a match to voter record	25-1124
51	Voter did not complete statutory information on envelope	25-1120 25-409
2	Registered voter changed name and did not complete a new voter registration application	25-2316c(a) 25-409
59	Voter did not provide photo ID	25-1122(d)(2) 25-2908(d) 25-3002(b)(8)
34	Voter did not sign ballot envelope	25-1136(b)
8	Voted on Election Day and then voted on paper	25-2908(c)(5)
5	Voted in advance & then provisional at the polls	25-2908(f)
6	Business/Mailing/Invalid Address	25-1120 25-1124(a)
6	Should have been provisional	25-2316c
1	Envelope contained more than one ballot	25-1124(a)
14	Ballot arrived without official ballot envelope	25-1124(a)
7	Voter does not live in district	25-2302 25-2416(a)(1)
1	Voter cast a ballot, then died, and the election board made it a provisional ballot	25-1136(c)
3	#2 delivery box checked; #1 helper signs voter name	25-1124(c) & (d)
4	#2 delivery box checked; #1 voter line blank	25-1124(c) & (d)
1	Voter was not 18 years old	25-2306
272	Incorrect party affiliation change	25-3304(b)
35	Party affiliation not declared	25-3301(c)
13	Postmarked after Election Day	25-1132(b)
4	No postmark/illegible postmark	25-1132(b)

**Total Ballots Recommended Not To Count: 898**

**JOHNSON COUNTY BOARD OF CANVASSERS**  
Recommendation submitted: August 13, 2018

# **EXHIBIT C**

On Wed, Aug 22, 2018 at 3:09 PM Dunham, Cynthia, LGL <Cynthia.Dunham@jocogov.org> wrote:

Your request to the Johnson County Election Office for a list of voters who voted provisional ballots in the 2018 primary election and the "reason for provisional ballot rejection" has been forwarded to me for a response. Please be advised that your request is denied pursuant to K.S.A. 2017 Supp. 25-2422, as amended by 2018 Sessions Laws Ch. 87 §2, which prohibits the disclosure of whether a ballot was voted provisionally.

Thank you.

**Cynthia Dunham**

**Deputy Director of Legal**

Johnson County Legal Department

111 S. Cherry Street, Suite 3200 Olathe, Kansas 66061

Direct (913) 715-1852 | Fax (913) 715-1873 | Office (913) 715-1900

E-mail: [cynthia.dunham@jocogov.org](mailto:cynthia.dunham@jocogov.org) Kansas Relay Operator (800)766-3777

[www.jocogov.org](http://www.jocogov.org) | [@jocogov](https://twitter.com/jocogov) | [F/jocogov](https://www.facebook.com/jocogov)

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# **EXHIBIT D**

Thank you.

**Cynthia Dunham**

**Deputy Director of Legal**

Johnson County Legal Department

111 S. Cherry Street, Suite 3200 Olathe, Kansas 66061

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**From:** Davis Hammet [<mailto:davishammet@gmail.com>]  
**Sent:** Monday, August 27, 2018 11:04 AM  
**To:** Dunham, Cynthia, LGL <[Cynthia.Dunham@jocogov.org](mailto:Cynthia.Dunham@jocogov.org)>  
**Subject:** Re: Records request

\*\*\*This message came from outside of Johnson County Government - please use caution when opening attachments or links.\*\*\*

Cynthia,

Considering K.S.A. 2017 Supp. 25-2422, as amended by 2018 Sessions Laws Ch. 87 §2, states "(b) Nothing in this section shall prohibit the disclosure of the names of persons who have voted advance ballots." May I request the list of advance voters who had their ballots challenged including the reason for rejection.

Thanks,

Davis Hammet  
(850) 585-7903

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09/17/18 08:27am MM*



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**From:** Davis Hammet [mailto:davishammet@gmail.com]  
**Sent:** Monday, August 27, 2018 6:02 PM  
**To:** Dunham, Cynthia, LGL <Cynthia.Dunham@jocogov.org>  
**Subject:** Re: Records request

Cynthia,

I don't understand why my open records request is being denied as the cited statute explicitly exempts advance ballots (K.S.A. 2017 Supp. 25-2422, as amended by 2018 Sessions Laws Ch. 87 §2 (b) states "Nothing in this section shall prohibit the disclosure of the names of persons who have voted advance ballots.") I'm not requesting provisional ballot information. I'm requesting information related to the status of advanced ballots.

I'd like to reiterate my open records request.

- Davis Hammet

On Mon, Aug 27, 2018 at 5:16 PM Dunham, Cynthia, LGL <Cynthia.Dunham@jocogov.org> wrote:

Mr. Hammet:

Your request seeks the names of certain advance ballot voters whose ballots were "challenged including the reason for rejection." Based on this description, your request seeks the names of certain voters who voted provisionally. Please be advised that your request is denied pursuant to K.S.A. 2017 Supp. 25-2422, as amended by 2018 Sessions Laws Ch. 87 §2, which prohibits the disclosure of whether a ballot was voted provisionally.

Please be advised lists of voters who received advance ballots and returned advance ballots are available. The charge for these lists is \$100 total. If you would like to request the lists, please contact Kathy Spann at the Johnson County Election Office next week. Her contact information is: [Kathy.spann@jocogov.org](mailto:Kathy.spann@jocogov.org) 913.715.6841.

*Clerk of the District Court, Johnson County Kansas*  
09/17/18 08:27am MM

**From:** davishammet@gmail.com [mailto:davishammet@gmail.com]  
**Sent:** Tuesday, August 28, 2018 10:26 AM  
**To:** Dunham, Cynthia, LGL <Cynthia.Dunham@jocogov.org>  
**Subject:** Re: Records request

Mrs. Dunham,

Challenged and provisional ballots are not the same thing. Statute clearly distinguishes between the two. I'm requesting information related to normal advanced ballots that were mailed, returned, and then rejected. Not provisional ballots that were mailed and returned.

I again reiterate my open records pursuant K.S.A. §45-215, et seq.

Thanks,

Davis Hammet

On Aug 28, 2018, at 9:12 AM, Dunham, Cynthia, LGL <Cynthia.Dunham@jocogov.org> wrote:

As stated in my email below, two different advance voter lists are available from the Johnson County Election Office. Your request seeks advance voters whose ballots were "challenged" and not counted. If a ballot is challenged and not counted, then it would have to be a ballot that was voted provisionally. Pursuant to the cited statute, the names of voters who voted provisionally are not subject to disclosure. Please contact the Election Office for further information regarding the available advance voter lists.

Thank you.

**Cynthia Dunham**

**Deputy Director of Legal**

Johnson County Legal Department

111 S. Cherry Street, Suite 3200 Olathe, Kansas 66061

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<image003.jpg>

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Mrs. Dunham,

Are you saying that Kansas statute requires a normal advanced mail ballot to become provisional in every way if it is challenged?

I can't find such a statute and continue to reiterate my KORA request.

Thanks,  
Davis Hammet

On Tue, Aug 28, 2018 at 2:12 PM Dunham, Cynthia, LGL <Cynthia.Dunham@jocogov.org> wrote:

Mr. Hammet:

If an advance ballot is challenged, it either (1) becomes a provisional ballot or (2) is counted. Once the determination is made to count the challenged advance ballot, it cannot be retrieved and there is no way to identify those ballots. Then, you are left with those challenged advance ballots that become provisional. Your request is seeking the "rejected" advance ballots, which would mean that you are seeking the challenged advance ballots that became provisional and, ultimately, were not counted. The cited statute prohibits disclosure of the names of such voters.

Thank you.

**Cynthia Dunham**

**Deputy Director of Legal**

Johnson County Legal Department

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## Records request

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Dunham, Cynthia, LGL <Cynthia.Dunham@jocogov.org>  
To: Davis Hammet <davishammet@gmail.com>

Wed, Aug 29, 2018 at 2:54 PM

Mr. Hammet:

No, I am not saying that. A "normal" advanced mail ballot can only be challenged if a legal basis exists for the challenge. Once challenged, it is either counted or becomes provisional.

Thank you.

Cynthia Dunham

Deputy Director of Legal

Johnson County Legal Department

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Direct (913) 715-1852 | Fax (913) 715-1873 | Office (913) 715-1900

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**From:** Davis Hammet [<mailto:davishammet@gmail.com>]  
**Sent:** Tuesday, August 28, 2018 4:03 PM  
**To:** Dunham, Cynthia, LGL <Cynthia.Dunham@jocogov.org>  
**Subject:** Re: Records request

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# **EXHIBIT E**



HOME

REGISTRATION  
INFORMATION

POLLING  
PLACE

Select Language ▾

## Registrant Search Information

### Registrant Detail

Name: [REDACTED]  
 Address: [REDACTED]  
 Party: [REDACTED]  
 Precinct Code: 056  
 Precinct Name: 56  
 Polling Place: 11/06/2018 - 2018 General Election  
 [REDACTED]

### Sample Ballots

11/07/2017 - 2017 City/School General  
[56.3 YELLOW](#)

### Districts

DISTRICT NAME	DISTRICT TYPE
U.S. Representative 2	U.S. Representative
Kansas Senate 19	KS Senate
Kansas Representative 45	KS Representative
State Board of Education 4	State Board of Education
Judicial District 7	Judicial District
Kanwaka Township	Township
Commission District 3	County Commission
School District 497	School District
Governor/Lt. Governor	Statewide
Secretary of State	Statewide
Attorney General	Statewide
Commissioner of Insurance	Statewide
State Treasurer	Statewide
Clerk	Countywide
Treasurer	Countywide
Register of Deeds	Countywide
Attorney	Countywide
Sheriff	Countywide
U.S. Senate	US Senate
President / Vice President	President / Vice President

### Election Voting History

ELECTION DATE	ELECTION NAME	TYPE	HOW VOTED
2018-08-07	2018 Primary Election	Primary	Provisional
2017-11-07	2017 City/School General	City General	Polling Place
2017-05-02	USD497 Mail Ballot	Mail Ballot	Advance

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2016-11-08	2016 General Election	General	Polling Place
2014-11-04	2014 General Election	General	Polling Place

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[Registration Information](#) [Polling Place](#)

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