

STATE OF KANSAS

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**2012 SESSION LAWS  
OF KANSAS  
VOL. 1**

[Prepared in accordance with K.S.A. 45-310]

PASSED DURING THE 2012 REGULAR SESSION OF THE  
LEGISLATURE OF THE STATE OF KANSAS

Date of Publication of this Volume  
July 1, 2012



## AUTHENTICATION

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STATE OF KANSAS  
OFFICE OF SECRETARY OF STATE

I, Kris W. Kobach, Secretary of State of the state of Kansas, do hereby certify that the printed acts contained in this volume are true and correct copies of enrolled laws or resolutions which were passed during the 2012 regular session of the Legislature of the State of Kansas, begun on the 9th day of January, A.D. 2012, and concluded on the 1st day of June, A.D. 2012; and I further certify that all laws contained in this volume which took effect and went into force on and after publication in the *Kansas Register* were so published (on the date thereto annexed) as provided by law; and I further certify that all laws contained in this volume will take effect and be in force on and after the 1st day of July, A.D. 2012, except when otherwise provided.

Given under my hand and seal this 1st day of July, A.D. 2012.

KRIS W. KOBACH,  
*Secretary of State*

(SEAL)

## EXPLANATORY NOTES

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Material added to an existing section of the statute is printed in italic type. Material deleted from an existing section of the statute is printed in canceled type.

In bills which contain entirely new sections together with amendments to existing sections, the new sections are noted with the word "new" at the beginning of such sections.

An enrolled bill which is new in its entirety is noted with an asterisk (\*) by the bill number and is printed in its original form.

Approval and publication dates are included.

Chapter numbers are assigned chronologically, based on the date the bill is signed by the governor. The bill index, subject index and list of statutes repealed or amended will assist you in locating bills of interest.

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## NOTICE

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### ELECTIVE STATE OFFICERS

<i>Office</i>	<i>Name</i>	<i>Residence</i>	<i>Party</i>
Governor .....	<b>Sam Brownback</b> .....	Topeka .....	Rep.
Lieutenant Governor .....	<b>Jeff Colyer, M.D.</b> ....	Overland Park ....	Rep.
Secretary of State .....	<b>Kris W. Kobach</b> .....	Piper .....	Rep.
State Treasurer .....	<b>Ron Estes</b> .....	Wichita .....	Rep.
Attorney General .....	<b>Derek Schmidt</b> .....	Independence .....	Rep.
Commissioner of Insurance ....	<b>Sandy Praeger</b> .....	Lawrence .....	Rep.

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5	<b>Sally Cauble</b> , Liberal	10	<b>David Dennis</b> , Wichita

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<i>Name and residence</i>	<i>Party</i>	<i>Term</i>
<b>Pat Roberts</b> , Dodge City .....	Republican	Term expires Jan. 3, 2015
<b>Jerry Moran</b> , Hays .....	Republican	Term expires Jan. 3, 2017

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(Terms expire January 3, 2013)

<i>District</i>	<i>Name</i>	<i>Residence</i>	<i>Party</i>
First .....	<b>Tim Huelskamp</b> .....	Fowler .....	Rep.
Second .....	<b>Lynn Jenkins</b> .....	Topeka .....	Rep.
Third .....	<b>Kevin Yoder</b> .....	Overland Park .....	Rep.
Fourth .....	<b>Mike Pompeo</b> .....	Wichita .....	Rep.

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## STATE SENATE

<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
<b>Abrams, Steve E.</b> , 6964 252nd Rd., Arkansas City 67005 .....	Rep.	32
<b>Apple, Pat</b> , P.O. Box 626, Louisburg 66053 .....	Rep.	12
<b>Bruce, Terry</b> , P.O. Box 726, Hutchinson 67504 .....	Rep.	34
<b>Brungardt, Pete</b> , 847 Fairdale Rd., Apt. E, Salina 67401 .....	Rep.	24
<b>Donovan, Leslie D. Sr.</b> , 314 N. Rainbow Lake, Wichita 67235 .....	Rep.	27
<b>Emler, Jay Scott</b> , 1457 Shawnee Rd., Lindsborg 67456 .....	Rep.	35
<b>Faust-Goudeau, Oletha</b> , 4158 Regents Ln., Wichita 67208 .....	Dem.	29
<b>Francisco, Marci</b> , 1101 Ohio, Lawrence 66044 .....	Dem.	2
<b>Haley, David</b> , 936 Cleveland Ave., Kansas City 66101 .....	Dem.	4
<b>Hensley, Anthony</b> , 2226 S.E. Virginia Ave., Topeka 66605 .....	Dem.	19
<b>Holland, G. Thomas II</b> , 961 E. 1600 Rd., Baldwin City 66006 .....	Dem.	3
<b>Huntington, Terrie W.</b> , 6264 Glenfield Dr., Fairway 66205 .....	Rep.	7
<b>Kelly, Laura</b> , 234 S.W. Greenwood Ave., Topeka 66606 .....	Dem.	18
<b>Kelsey, Dick</b> , 24047 W. MacArthur, Goddard 67052 .....	Rep.	26
<b>King, Jeff</b> , 1212 N. 2nd St., Independence 67301 .....	Rep.	15
<b>Kultala, Kelly</b> , 12232 Hubbard Rd., Kansas City 66109 .....	Dem.	5
<b>Longbine, Jeff</b> , 2801 Lakeridge Rd., Emporia 66801 .....	Rep.	17
<b>Love, Garrett</b> , P.O. Box 1, Montezuma 67867 .....	Rep.	38
<b>Lynn, Julia</b> , 18837 W. 115th Terr., Olathe 66061 .....	Rep.	9
<b>Marshall, Bob</b> , 999 215th St., Fort Scott 66701 .....	Rep.	13
<b>Masterson, Ty</b> , 1539 Phyllis Ln., Andover 67002 .....	Rep.	16
<b>McGinn, Carolyn</b> , P.O. Box A, Sedgwick 67135 .....	Rep.	31
<b>Merrick, Ray</b> , 6874 W. 164th Terr., Stilwell 66085 .....	Rep.	37
<b>Morris, Stephen R.</b> , 600 Trindle St., Hugoton 67951 .....	Rep.	39
<b>Olson, Rob</b> , 19050 W. 161st St., Olathe 66062 .....	Rep.	23
<b>Ostmeyer, Ralph</b> , 602 S. Jefferson, Grinnell 67738 .....	Rep.	40
<b>Owens, Thomas C. (Tim)</b> , 7804 W. 100th St., Overland Park 66212 ....	Rep.	8
<b>Petersen, Mike</b> , 2608 Southeast Dr., Wichita 67216 .....	Rep.	28
<b>Pilcher-Cook, Mary</b> , 13910 W. 58th Pl., Shawnee 66216 .....	Rep.	10
<b>Pyle, Dennis D.</b> , 2979 Kingfisher Rd., Hiawatha 66434 .....	Rep.	1
<b>Reitz, Roger P.</b> , 1332 Sharingbrook Dr., Manhattan 66503 .....	Rep.	22
<b>Schmidt, Allen C.</b> , 1464B Hopewell Rd., Hays 67601 .....	Dem.	36
<b>Schmidt, Vicki</b> , 5906 S.W. 43rd Ct., Topeka 66610 .....	Rep.	20
<b>Schodorf, Jean Kurtis</b> , 3039 Benjamin Ct., Wichita 67204 .....	Rep.	25
<b>Steineger, Chris</b> , 51 S. 64th, Kansas City 66111 .....	Rep.	6
<b>Taddiken, Mark</b> , 2614 Hackberry Rd., Clifton 66937 .....	Rep.	21
<b>Teichman, Ruth</b> , 434 E. Old Hwy. 50, Stafford 67578 .....	Rep.	33
<b>Umbarger, Dwayne</b> , 1585 70th Rd., Thayer 66776 .....	Rep.	14
<b>Vratil, John L.</b> , 9534 Lee Blvd., Leawood 66206 .....	Rep.	11
<b>Wagle, Susan</b> , 4 N. Sagebrush, Wichita 67230 .....	Rep.	30

## HOUSE OF REPRESENTATIVES

<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
<b>Alford, J. Stephen</b> , 4179 E. Rd. 19, Ulysses 67880 .....	Rep.	124
<b>Arpke, Tom</b> , 512 W. Iron Ave., Salina 67401 .....	Rep.	69
<b>Aurand, Clay</b> , 810 Shady Ln., Belleville 66935 .....	Rep.	109
<b>Ballard, Barbara W.</b> , 1532 Alvamar Dr., Lawrence 66047 .....	Dem.	44
<b>*Bethell, Bob</b> , 104 E. Third, Alden 67512 .....	Rep.	113
<b>Billinger, Richard L. (Rick)</b> , 310 Acacia Dr., Goodland 67735 .....	Rep.	121
<b>Bollier, Barbara</b> , 6910 Overhill Rd., Mission Hills 66208 .....	Rep.	25
<b>Boman, Benny L.</b> , 1914 Euclid, Wichita 67213 .....	Rep.	95
<b>Bowers, Elaine S.</b> , 1326 N. 150th Rd., Concordia 66901 .....	Rep.	107
<b>Brookens, J. Robert (Bob)</b> , 201 Meadow Ln., Marion 66861 .....	Rep.	70
<b>Brown, Anthony R.</b> , 799 E. 2200 Rd., Eudora 66025 .....	Rep.	38
<b>Bruchman, Rob</b> , 5016 W. 108th Terr., #522, Overland Park 66211 .....	Rep.	20
<b>Brunk, Steven R.</b> , 8119 Champions Ct., Wichita 67226 .....	Rep.	85
<b>Burgess, Mike</b> , 6009 S.W. 23rd St., Topeka 66614 .....	Rep.	51
<b>Burroughs, Tom</b> , 3131 S. 73rd Terr., Kansas City 66106 .....	Dem.	33
<b>Calloway, Terry</b> , 301 Winwood Dr., Pittsburg 66762 .....	Rep.	3
<b>Carlin, Sydney</b> , 1650 Sunnyslope Ln., Manhattan 66502 .....	Dem.	66
<b>Carlson, Richard</b> , 26810 Jeffrey Rd., St. Marys 66536 .....	Rep.	61
<b>Cassidy, Ward</b> , 420 E. 2nd, St. Francis 67756 .....	Rep.	120
<b>Collins, Dan</b> , 1720 Y Rd., Plainville 67663 .....	Rep.	110
<b>Colloton, Pat</b> , 2513 W. 118th St., Leawood 66211 .....	Rep.	28
<b>Crum, J. David</b> , 2903 Lakeshore Dr., Augusta 67010 .....	Rep.	77
<b>Davis, Paul</b> , 1731 Indiana, Lawrence 66044 .....	Dem.	46
<b>DeGraaf, Pete</b> , 1545 E. 119th St., Mulvane 67110 .....	Rep.	81
<b>Denning, Jim</b> , 8416 W. 115th St., Overland Park 66210 .....	Rep.	19
<b>Dillmore, Nile</b> , 1102 Jefferson, Wichita 67203 .....	Dem.	92
<b>Donohoe, Owen</b> , 6265 Arapahoe St., Shawnee 66226 .....	Rep.	39
<b>Fawcett, James P.</b> , 711 Crestview Dr., Junction City 66441 .....	Rep.	65
<b>Feuerborn, Bill</b> , 1600 Park Rd., Garnett 66032 .....	Dem.	5
<b>Finney, Gail</b> , 1754 N. Madison Ave., Wichita 67214 .....	Dem.	84
<b>Flaharty, Geraldine</b> , 1816 E. Fernwood, Wichita 67216 .....	Dem.	98
<b>Frownfelter, Stan</b> , 4527 Gibbs Rd., Kansas City 66106 .....	Dem.	31
<b>Garber, Randy</b> , 2424 Timberlane Terr., Sabetha 66534 .....	Rep.	62
<b>Gatewood, Doug</b> , P.O. Box 306, Columbus 66725 .....	Dem.	1
<b>Gatewood, Sean</b> , 1628 N.W. 33rd Pl., Topeka 66618 .....	Dem.	57
<b>Goico, Mario</b> , 1254 N. Pine Grove Ct., Wichita 67212 .....	Rep.	100
<b>Gonzalez, Ramon C. Jr.</b> , P.O. Box 12, Perry 66073 .....	Rep.	47
<b>Goodman, Jana</b> , 410 S. Broadway, Leavenworth 66048 .....	Rep.	41
<b>Gordon, Lana</b> , 5820 S.W. 27th St., Topeka 66614 .....	Rep.	52
<b>Grange, John C.</b> , 2515 Kacy Ct., El Dorado 67042 .....	Rep.	75
<b>Grant, Robert (Bob)</b> , 202 S. Appleton Dr., Frontenac 66763 .....	Dem.	2
<b>Gregory, TerriLois</b> , 324 Dearborn St., Baldwin City 66006 .....	Rep.	10
<b>Grosserode, Amanda</b> , 12601 W. 99th St., Lenexa 66215 .....	Rep.	16

\*Lorene Bethell was sworn in June 1, 2012 to fill the vacancy created by the death of Bob Bethell.

<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
<b>Hayzlett, Gary K.</b> , 108 N. Hill St., Lakin 67860 .....	Rep.	122
<b>Hedke, Dennis E.</b> , 1669 N. Sagebrush St., Wichita 67230 .....	Rep.	99
<b>Henderson, Broderick</b> , 2710 N. 8th St., Kansas City 66101 .....	Dem.	35
<b>Henry, Gerald T. (Jerry)</b> , 3515 Neosho Rd., Cummings 66016 .....	Dem.	63
<b>Hermanson, Phil</b> , 5338 S. Mosley, Wichita 67216 .....	Rep.	96
<b>Hildabrand, Brett</b> , 7352 Royalty Way, #108, Merriam 66203 .....	Rep.	23
<b>Hill, Don</b> , 1720 Luther, Emporia 66801 .....	Rep.	60
<b>Hineman, Don</b> , 116 S. Longhorn Rd., Dighton 67839 .....	Rep.	118
<b>Hoffman, Kyle D.</b> , 1318 Ave. T, Coldwater 67029 .....	Rep.	116
<b>Holmes, Carl Dean</b> , P.O. Box 2288, Liberal 67905 .....	Rep.	125
<b>Holmes, Mitch</b> , 211 S.E. 20th Ave., St. John 67576 .....	Rep.	114
<b>Howell, Jim</b> , 125 E. Buckthorn Rd., Derby 67037 .....	Rep.	82
<b>Huebert, Steve</b> , 619 N. Birch, Valley Center 67147 .....	Rep.	90
<b>Johnson, Steven</b> , 10197 S. Hopkins Rd., Assaria 67416 .....	Rep.	108
<b>Kelley, Kasha</b> , P.O. Box 1111, Arkansas City 67005 .....	Rep.	79
<b>Kelly, Jim</b> , 309 S. 5th, Independence 67301 .....	Rep.	12
<b>Kerschen, Dan</b> , 645 S. 263 W., Garden Plain 67050 .....	Rep.	93
<b>Kiegerl, S. Mike</b> , 2350 Golf Course Rd., Olathe 66061 .....	Rep.	43
<b>Kinzer, Lance</b> , 12549 S. Brougham, Olathe 66062 .....	Rep.	14
<b>Kleeb, Marvin</b> , 14206 Eby, Overland Park 66221 .....	Rep.	48
<b>Knox, Forrest</b> , 17120 Udall Rd., Altoona 66710 .....	Rep.	13
<b>Kuether, Annie</b> , 1346 S.W. Wayne Ave., Topeka 66604 .....	Dem.	55
<b>Landwehr, Brenda K.</b> , 2837 N. Edwards St., Wichita 67204 .....	Rep.	91
<b>Lane, Harold</b> , 2202 S.E. Monroe St., Topeka 66605 .....	Dem.	58
<b>LeDoux, Trent</b> , 719 W. 4th, Holton 66436 .....	Rep.	50
<b>Loganbill, Judith</b> , 215 S. Erie St., Wichita 67211 .....	Dem.	86
<b>Mah, Ann E.</b> , 3351 S.E. Meadowview Dr., Topeka 66605 .....	Dem.	53
<b>Mast, Peggy</b> , 765 Road 110, Emporia 66801 .....	Rep.	76
<b>McCray-Miller, Melody</b> , P.O. Box 4454, Wichita 67204 .....	Dem.	89
<b>McLeland, Joe</b> , 431 S. Westfield, Wichita 67209 .....	Rep.	94
<b>Meier, Melanie</b> , 31301 175th St., Leavenworth 66048 .....	Dem.	40
<b>Meigs, Kelly</b> , 7842 Rosehill Rd., Lenexa 66216 .....	Rep.	17
<b>Mesa, Reynaldo R.</b> , 1719 Crestway, Garden City 67846 .....	Rep.	123
<b>Montgomery, Robert (Bob)</b> , 1300 E. Sleepy Hollow Dr., Olathe 66062 ...	Rep.	26
<b>Moxley, Tom J.</b> , 1852 S. 200 Rd., Council Grove 66846 .....	Rep.	68
<b>O'Brien, Connie</b> , 22123 211th St., Tonganoxie 66086 .....	Rep.	42
<b>O'Hara, Charlotte</b> , 17805 Lackman Rd., Overland Park 66062 .....	Rep.	27
<b>O'Neal, Michael R. (Mike)</b> , 8 Windemere Ct., Hutchinson 67502 .....	Rep.	104
<b>Osterman, Leslie G.</b> , 1401 W. Dallas, Wichita 67217 .....	Rep.	97
<b>Otto, Bill</b> , 102 9th St., LeRoy 66857 .....	Rep.	9
<b>Patton, Joe</b> , 3546 S.W. Summerwood Ct., Topeka 66614 .....	Rep.	54
<b>Pauls, Janice L.</b> , 1634 N. Baker, Hutchinson 67501 .....	Dem.	102
<b>Peck, Virgil Jr.</b> , Box 277, Tyro 67364 .....	Rep.	11
<b>Peterson, Michael J.</b> , 450 N. 17th, Kansas City 66102 .....	Dem.	37
<b>Phelps, Eber</b> , 3103 Olympic Ln., Hays 67601 .....	Dem.	111
<b>Phillips, Tom</b> , 1530 Barrington Dr., Manhattan 66503 .....	Rep.	67
<b>Pottorff, Jo Ann</b> , 6321 E. 8th, Wichita 67208 .....	Rep.	83

<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
<b>Powell, Larry</b> , 2209 Grandview Drive East, Garden City 67846 .....	Rep.	117
<b>Prescott, William R. (Willie)</b> , 5928 W. 216th Terr., Osage City 66523 ..	Rep.	59
<b>Proehl, Richard J.</b> , 510 Pine Ridge Rd., Parsons 67357 .....	Rep.	7
<b>Rhoades, Marc</b> , 1006 Lazy Creek Dr., Newton 67114 .....	Rep.	72
<b>Roth, Charles B.</b> , 3 Crestview Dr., Salina 67401 .....	Rep.	71
<b>Rubin, John</b> , 13803 W. 53rd St., Shawnee 66216 .....	Rep.	18
<b>Ruiz, Louis E.</b> , 2914 W. 46th Ave., Kansas City 66103 .....	Dem.	32
<b>Ryckman, Ronald W.</b> , P.O. Box 192, Meade 67864 .....	Rep.	115
<b>Scapa, Joseph Brian</b> , 2209 S. White Cliff Ln., Wichita 67207 .....	Rep.	87
<b>Schroeder, Don</b> , 708 Charles St., Hesston 67062 .....	Rep.	74
<b>Schwab, Scott</b> , 14953 W. 140th Terr., Olathe 66062 .....	Rep.	49
<b>Schwartz, Sharon</b> , 2051 20th Rd., Washington 66968 .....	Rep.	106
<b>Seiwert, Joe</b> , 1111 E. Boundary Rd., Pretty Prairie 67570 .....	Rep.	101
<b>Shultz, Clark</b> , 707 Washington Circle, Lindsborg 67456 .....	Rep.	73
<b>Siegfreid, Arlen</b> , 1403 W. Prairie Terr., Olathe 66061 .....	Rep.	15
<b>Slattery, Mike</b> , 5015 Reeds Rd., Mission 66202 .....	Dem.	24
<b>Sloan, Tom</b> , 772 Hwy. 40, Lawrence 66049 .....	Rep.	45
<b>Smith, Greg</b> , 8605 Robinson, Overland Park 66212 .....	Rep.	22
<b>Spalding, Sheryl</b> , 12119 Bluejacket, Overland Park 66213 .....	Rep.	29
<b>Suellentrop, Gene</b> , 6813 W. Northwind Circle, Wichita 67205 .....	Rep.	105
<b>Swanson, Vern</b> , 1422 5th St., Clay Center 67432 .....	Rep.	64
<b>Tietze, Annie</b> , 329 S.W. Yorkshire Rd., Topeka 66606 .....	Dem.	56
<b>Trimmer, Ed</b> , 1402 E. 9th, Winfield 67156 .....	Dem.	78
<b>Tyson, Caryn</b> , 19984 County Road 1077, Parker 66072 .....	Rep.	4
<b>Vickrey, Jene</b> , 502 S. Countryside Dr., Louisburg 66053 .....	Rep.	6
<b>Victors, Ponka-We</b> , P.O. Box 48081, Wichita 67201 .....	Dem.	103
<b>Ward, Jim</b> , 3100 E. Clark, Wichita 67211 .....	Dem.	88
<b>Weber, Brian</b> , P.O. Box 804, Dodge City 67801 .....	Rep.	119
<b>Wetta, Vincent</b> , 1204 N. Poplar, Wellington 67152 .....	Dem.	80
<b>Williams, Jerry D.</b> , 21225 Kiowa Rd., Chanute 66720 .....	Dem.	8
<b>Winn, Valdenia C.</b> , 1044 Washington Blvd., Kansas City 66102 .....	Dem.	34
<b>Wolf, Kay</b> , 8339 Roe Ave., Prairie Village 66207 .....	Rep.	21
<b>Wolf, Willam M. (Bill)</b> , 1512 Broadway Ct., Great Bend 67530 .....	Rep.	112
<b>Wolfe Moore, Kathy</b> , 3209 N. 131st, Kansas City 66109 .....	Dem.	36
<b>Worley, Ron</b> , 8957 Woodstone, Lenexa 66219 .....	Rep.	30

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**Jene Vickrey** ..... Speaker Pro Tem  
**Arlen Siegfroid** ..... Majority Leader  
**Paul Davis** ..... Minority Leader  
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 House Majority Leader: **Arlen Siegfroid**, Olathe  
 Senate Minority Leader: **Anthony Hensley**, Topeka  
 House Minority Leader: **Paul Davis**, Lawrence

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**Rick Riggs**, Administrative Auditor

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# 2012 SESSION LAWS OF KANSAS

## CHAPTER 1

Substitute for HOUSE BILL No. 2178\*

AN ACT concerning licenses and permits; relating to nonresident military spouses.

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

Section 1. (a) Notwithstanding any other provision of law, any licensing body, as defined by K.S.A. 74-146, and amendments thereto, shall, upon application, issue a license to a nonresident military spouse, so that the nonresident military spouse may lawfully practice the person's occupation.

(b) A nonresident military spouse shall receive a license under subsection (a) of this section:

(1) Pursuant to applicable licensure by endorsement or reciprocity statutes of the licensing body of this state for the profession license; or

(2) if the professional practice act does not have licensure by endorsement or reciprocity statutes, then, at the time of application, the military spouse:

(A) Holds a current license in another state, district or territory of the United States with licensure requirements that the licensing body determines are equivalent to those established by the licensing body of this state;

(B) has not committed an act in any jurisdiction that would have constituted grounds for the limitation, suspension or revocation or that the applicant has never been censured or had other disciplinary action taken or had an application for licensure denied or refused to practice an occupation for which the military spouse seeks licensure;

(C) has not been disciplined by a licensing or credentialing entity in another jurisdiction and is not the subject of an unresolved complaint, review procedure or disciplinary proceeding conducted by a licensing or credentialing entity in another jurisdiction nor has surrendered their membership on any professional staff in any professional association or society or faculty for another state or licensing jurisdiction while under investigation or to avoid adverse action for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action in a Kansas practice act;

(D) pays any fees required by the licensing body of this state; and  
 (E) submits with the application a signed affidavit stating that the application information, including necessary prior employment history, is true and accurate. Upon receiving such affidavit, the licensing body shall issue the license to the military spouse on a probationary basis, but may revoke the license at any time if the information provided in the application is found to be false.

(c) Any person who has not been in the active practice of the occupation during the two years preceding the application for which the applicant seeks a license may be required to complete such additional testing, training, mentoring, monitoring or education as the Kansas licensing body may deem necessary to establish the applicant's present ability to practice with reasonable skill and safety.

(d) A nonresident military spouse licensed under this section shall be entitled to the same rights and subject to the same obligations as are provided by the licensing body for Kansas residents, except that revocation or suspension of a nonresident military spouse's license in the nonresident military spouse's state of residence or any jurisdiction in which the nonresident military spouse held licensure shall automatically cause the same revocation or suspension of such nonresident military spouse's license in Kansas. No hearing shall be granted to a nonresident licensee where the license is subject to such automatic revocation or suspension except for the purpose of establishing the fact of revocation or suspension of the nonresident military spouse's license by the nonresident military spouse's state of residence.

(e) For the purposes of this section, "military spouse" means the spouse of an individual who is currently in active service in any branch of the armed forces of the United States.

(f) This section shall not apply to the practice of law or the regulation of attorneys pursuant to K.S.A 7-703, and amendments thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved February 14, 2012.

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## CHAPTER 2

House Substitute for SENATE BILL No. 191\*

AN ACT concerning the Kansas department of agriculture; authorizing certain fees; creating the laboratory testing services fee fund.

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

Section 1. (a) The secretary of agriculture may fix, charge and collect

fees for providing laboratory testing of samples from other states upon request. The fees shall be fixed in order to recover all or part of the costs incurred to provide the services and any other necessary and incidental expenses incurred in conjunction with such laboratory testing.

(b) The secretary of agriculture shall remit all moneys received by or for the secretary from fees collected under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the laboratory testing services fee fund.

(c) The secretary of agriculture may adopt rules and regulations to establish fees and to implement and administer the provisions of this section for such laboratory testing.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved February 29, 2012.

Published in the *Kansas Register* March 8, 2012.

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### CHAPTER 3

HOUSE BILL No. 2428  
(Amended by Chapter 166)

AN ACT concerning health care providers; relating to the university of Kansas medical center; amending K.S.A. 2011 Supp. 65-4915 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 65-4915 is hereby amended to read as follows: 65-4915. (a) As used in this section:

(1) “Health care provider” means: (A) Those persons and entities defined as a health care provider under K.S.A. 40-3401, and amendments thereto; and (B) a dentist licensed by the Kansas dental board, a dental hygienist licensed by the Kansas dental board, a professional nurse licensed by the board of nursing, a practical nurse licensed by the board of nursing, a mental health technician licensed by the board of nursing, a physical therapist licensed by the state board of healing arts, a physical therapist assistant certified by the state board of healing arts, an occupational therapist licensed by the state board of healing arts, an occupational therapy assistant licensed by the state board of healing arts, a respiratory therapist licensed by the state board of healing arts, a physician assistant licensed by the state board of healing arts and attendants and ambulance services certified by the emergency medical services board.

(2) “Health care provider group” means:

(A) A state or local association of health care providers or one or more committees thereof;

(B) the board of governors created under K.S.A. 40-3403, and amendments thereto;

(C) an organization of health care providers formed pursuant to state or federal law and authorized to evaluate medical and health care services;

(D) a review committee operating pursuant to K.S.A. 65-2840c, and amendments thereto;

(E) an organized medical staff of a licensed medical care facility as defined by K.S.A. 65-425, and amendments thereto, an organized medical staff of a private psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto or an organized medical staff of a state psychiatric hospital or state institution for the mentally retarded, as follows: Larned state hospital, Osawatimie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center;

(F) a health care provider;

(G) a professional society of health care providers or one or more committees thereof;

(H) a Kansas corporation whose stockholders or members are health care providers or an association of health care providers, which corporation evaluates medical and health care services; ~~or~~

(I) an insurance company, health maintenance organization or administrator of a health benefits plan which engages in any of the functions defined as peer review under this section; *or*

(J) *the university of Kansas medical center.*

(3) "Peer review" means any of the following functions:

(A) Evaluate and improve the quality of health care services rendered by health care providers;

(B) determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care;

(C) determine that the cost of health care rendered was considered reasonable by the providers of professional health services in this area;

(D) evaluate the qualifications, competence and performance of the providers of health care or to act upon matters relating to the discipline of any individual provider of health care;

(E) reduce morbidity or mortality;

(F) establish and enforce guidelines designed to keep within reasonable bounds the cost of health care;

(G) conduct of research;

(H) determine if a hospital's facilities are being properly utilized;

(I) supervise, discipline, admit, determine privileges or control members of a hospital's medical staff;

(J) review the professional qualifications or activities of health care providers;

(K) evaluate the quantity, quality and timeliness of health care services rendered to patients in the facility;

(L) evaluate, review or improve methods, procedures or treatments being utilized by the medical care facility or by health care providers in a facility rendering health care.

(4) “Peer review officer or committee” means:

(A) An individual employed, designated or appointed by, or a committee of or employed, designated or appointed by, a health care provider group and authorized to perform peer review; or

(B) a health care provider monitoring the delivery of health care at correctional institutions under the jurisdiction of the secretary of corrections.

(b) Except as provided by K.S.A. 60-437, and amendments thereto and by subsections (c) and (d), the reports, statements, memoranda, proceedings, findings and other records submitted to or generated by peer review committees or officers shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. Information contained in such records shall not be discoverable or admissible at trial in the form of testimony by an individual who participated in the peer review process. The peer review officer or committee creating or initially receiving the record is the holder of the privilege established by this section. This privilege may be claimed by the legal entity creating the peer review committee or officer, or by the commissioner of insurance for any records or proceedings of the board of governors.

(c) Subsection (b) shall not apply to proceedings in which a health care provider contests the revocation, denial, restriction or termination of staff privileges or the license, registration, certification or other authorization to practice of the health care provider. A licensing agency in conducting a disciplinary proceeding in which admission of any peer review committee report, record or testimony is proposed shall hold the hearing in closed session when any such report, record or testimony is disclosed. Unless otherwise provided by law, a licensing agency conducting a disciplinary proceeding may close only that portion of the hearing in which disclosure of a report or record privileged under this section is proposed. In closing a portion of a hearing as provided by this section, the presiding officer may exclude any person from the hearing location except the licensee, the licensee’s attorney, the agency’s attorney, the witness, the court reporter and appropriate staff support for either counsel. The licensing agency shall make the portions of the agency record in which such report or record is disclosed subject to a protective order prohibiting further disclosure of such report or record. Such report or

record shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity. No person in attendance at a closed portion of a disciplinary proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a report or record privileged under this section which was disclosed in a closed portion of a hearing, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. A licensing agency conducting a disciplinary proceeding may review peer review committee records, testimony or reports but must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding in open meeting of the licensing agency. Offering such testimony or records in an open public hearing shall not be deemed a waiver of the peer review privilege relating to any peer review committee testimony, records or report.

(d) Nothing in this section shall limit the authority, which may otherwise be provided by law, of the commissioner of insurance, the state board of healing arts or other health care provider licensing or disciplinary boards of this state to require a peer review committee or officer to report to it any disciplinary action or recommendation of such committee or officer; to transfer to it records of such committee's or officer's proceedings or actions to restrict or revoke the license, registration, certification or other authorization to practice of a health care provider; or to terminate the liability of the fund for all claims against a specific health care provider for damages for death or personal injury pursuant to subsection (i) of K.S.A. 40-3403, and amendments thereto. Reports and records so furnished shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a disciplinary proceeding by the state board of healing arts or other health care provider licensing or disciplinary boards of this state.

(e) A peer review committee or officer may report to and discuss its activities, information and findings to other peer review committees or officers or to a board of directors or an administrative officer of a health care provider without waiver of the privilege provided by subsection (b) and the records of all such committees or officers relating to such report shall be privileged as provided by subsection (b).

(f) Nothing in this section shall be construed to prevent an insured from obtaining information pertaining to payment of benefits under a contract with an insurance company, a health maintenance organization or an administrator of a health benefits plan.

Sec. 2. K.S.A. 2011 Supp. 65-4915 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved February 29, 2012.

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CHAPTER 4  
HOUSE BILL No. 2490

AN ACT concerning doctor of nursing practice degrees at Washburn university;  
amending K.S.A. 72-6508 and repealing the existing section.

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

Section 1. K.S.A. 72-6508 is hereby amended to read as follows: 72-6508. The university shall be eligible to receive payments of state grants from the state general fund to continue and further its traditional program of operating a liberal arts college, a school of business, a school of law, a school of nursing and a school of applied studies. While receiving payments from the state general fund, the university shall be limited to associates, bachelors, masters, *doctor of nursing practice* and juris doctor degree work and shall not establish specialized schools such as journalism, medicine, pharmacy and engineering, or other new educational schools unless authorized by act of the legislature.

Sec. 2. K.S.A. 72-6508 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved February 29, 2012.

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CHAPTER 5  
House Substitute for SENATE BILL No. 118

AN ACT concerning the legislature; relating to legislative pages;  
amending K.S.A. 46-158 and repealing the existing section.

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

Section 1. K.S.A. 46-158 is hereby amended to read as follows: 46-158. Legislative pages shall ~~be paid three dollars (\$3) per day~~ receive remuneration having a value of not less than \$5 per day. The director of legislative administrative services shall implement the provisions of this section. Any amount of remuneration having a value of more than \$5 shall require approval by the legislative coordinating council.

Sec. 2. K.S.A. 46-158 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 2, 2012.

Published in the *Kansas Register* March 8, 2012.

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## CHAPTER 6

### HOUSE BILL No. 2451

AN ACT concerning water; relating to water right abandonment; amending K.S.A. 2011 Supp. 82a-718 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 82a-718 is hereby amended to read as follows: 82a-718. (a) All appropriations of water must be for some beneficial purpose. Every water right of every kind shall be deemed abandoned and shall terminate when without due and sufficient cause no lawful, beneficial use is henceforth made of water under such right for five successive years. Before any water right shall be declared abandoned and terminated the chief engineer shall conduct a hearing thereon. Notice shall be served on the user at least 30 days before the date of the hearing. The determination of the chief engineer pursuant to this section shall be subject to review in accordance with the provisions of K.S.A. 2011 Supp. 82a-1901, and amendments thereto.

The verified report of the chief engineer or such engineer's authorized representative shall be prima facie evidence of the abandonment and termination of any water right.

(b) *Except as provided in subsection (e)*, when no lawful, beneficial use of water under a water right has been reported for three successive years, the chief engineer shall notify the user, by certified mail, return receipt requested, that: (1) No lawful, beneficial use of the water has been reported for three successive years; (2) if no lawful, beneficial use is made of the water for five successive years, the right may be terminated; and (3) the right will not be terminated if the user shows that for one or more of the five consecutive years the beneficial use of the water was prevented or made unnecessary by circumstances that are due and sufficient cause for nonuse, which circumstances shall be included in the notice.

(c) The provisions of subsection (a) shall not apply to a water right that has not been declared abandoned and terminated before the effective date of this act if the five years of successive nonuse occurred exclusively and entirely before January 1, 1990. However, the provisions of subsec-

tion (a) shall apply if the period of five successive years of nonuse began before January 1, 1990, and continued after that date.

(d) Notwithstanding the provisions of subsection (a), an eligible water right enrolled in and continually in compliance with the water rights conservation program, pursuant to K.S.A. 2011 Supp. 82a-741, and amendments thereto, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.

(e) Notwithstanding the provisions of subsection (a), a groundwater right, which has as its local supply an aquifer area that has been closed to new appropriations by rule, regulation or order of the chief engineer ~~and where means of diversion are available to put water to a beneficial use within a reasonable time~~, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.

Sec. 2. K.S.A. 2011 Supp. 82a-718 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 5, 2012.

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CHAPTER 7  
SENATE BILL No. 272

AN ACT concerning water; relating to multi-year flex accounts;  
amending K.S.A. 2011 Supp. 82a-736 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 82a-736 is hereby amended to read as follows: 82a-736. *(a) It is hereby recognized that an opportunity exists to improve water management by enabling multi-year flexibility in the use of water authorized to be diverted under a groundwater water right, provided, that such flexibility neither impairs existing water rights, nor increases the total amount of water diverted, so that such flexibility has no long-term negative effect on the source of supply. It is therefore declared necessary and advisable to permit the establishment of multi-year flex accounts for groundwater water rights, together with commensurate protections for existing water rights and their source of supply.*

~~(a)~~(b) As used in this section:

(1) *“Base water right” means a water right under which an applicant applies to the chief engineer to establish a multi-year flex account and where all of the following conditions exist:*

- (A) *The authorized source of supply is groundwater; and*
- (B) *the water right has not been the subject of a change approval to*

implement the provisions of K.A.R. 5-5-9(a)(2), K.A.R. 5-5-11(b)(2) or K.A.R. 5-5-11(b)(3), in effect upon the effective date of this act.

(2) “Multi-year flex account” means a term permit which suspends a base water right during its term, except when the term permit may be no longer exercised because of an order of the chief engineer, and is subject to the terms and conditions as provided in subsection (e).

~~(1)~~(3) “Base average usage” means: (A) The average amount of water actually ~~used~~ diverted for a beneficial use under ~~a groundwater~~ the base water right during calendar years 2000 through 2009, excluding any amount ~~used~~ diverted in any such year ~~in excess of the amount that exceeded the maximum annual quantity of water~~ authorized by ~~such~~ the base water right; or (B) if the holder of ~~a groundwater~~ the base water right shows to the satisfaction of the chief engineer that ~~the holder has implemented significant~~ water conservation ~~measures~~ reduced water use under the base water right during calendar years 2000 through 2009, then the average amount of water actually ~~used~~ diverted for a beneficial use under ~~such~~ the base water right during the five calendar years immediately before the calendar year when ~~such measures were implemented~~ water conservation began, excluding any amount used in any such year ~~in excess of that exceeded the amount authorized by such~~ the base water right.

~~(2)~~(4) “Chief engineer” means the chief engineer of the division of water resources of the department of agriculture.

(5) “Flex account acreage” means the maximum number of acres lawfully irrigated during a calendar year when no term, condition or limitation of the base water right has been violated and either of the following conditions is met:

(A) The calendar year is 2000 through 2009; or

(B) if water conservation reduced water use under the base water right during calendar years 2000 through 2009, the calendar year is a year within the five calendar years immediately prior to the calendar year when water conservation began.

(6) “Net irrigation requirement” means the net irrigation requirement for 50% chance rainfall of the county that corresponds with the location of the authorized place of use of the base water right as provided in K.A.R. 5-5-12, on the effective date of this act.

~~(b)~~(c) (1) Any holder of a ~~groundwater~~ base water right ~~which~~ that has not been deposited or placed in a safe deposit account in a chartered water bank may establish a multi-year flex account where the holder may deposit, in advance, the authorized quantity of water from such water right for any five consecutive calendar years, subject to all of the following:

~~(1)~~(A) The water right must be vested or shall have been issued a certificate of appropriation;

~~(2)~~(B) the withdrawal of water pursuant to the water right shall be properly and adequately metered;

~~(3)(C)~~ the water right ~~shall not be~~ *is not* deemed abandoned and ~~shall be in good standing, based on past water usage and is in compliance with the terms of the holder's permit and conditions of its certificate of appropriation,~~ all applicable provisions of law and orders of the chief engineer; ~~and~~

~~(4)(D)~~ the amount of water ~~that shall be~~ deposited in the *multi-year flex* account shall not exceed ~~90% of the amount of the holder's base average usage times five~~ *the greatest of the following:*

(i) *500% of the base average usage;*

(ii) *500% of the product of the annual net irrigation requirement multiplied by the flex account acreage, multiplied by 110%, but not greater than five times the maximum annual quantity authorized by the base water right; or*

(iii) *if the authorized place of use is located wholly within the boundaries of a groundwater management district, an amount that shall not increase the long-term average use of the groundwater right as specified by rule or regulation promulgated pursuant to subsection (o) of K.S.A. 82a-1028, and amendments thereto; and*

(E) *notwithstanding any other provisions of this subsection, except when the base water right is suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012, the quantity of water deposited into a multi-year flex account shall be reduced by the quantity of water used in excess of the maximum annual quantity of the base water right during 2011 if the application for a multi-year flex account is filed with the chief engineer on or before July 15, 2012.*

(2) *The provisions of K.A.R. 5-5-11 are limited to changes in annual authorized quantity and shall not apply to this subsection.*

~~(c)(d)~~ The chief engineer shall implement a program providing for the issuance of term permits to holders of groundwater water rights who have established flex accounts in accordance with this section. Such term permits shall authorize the use of water in a flex account at any time during the five consecutive calendar years for which the application for the term permit *authorizing a multi-year flex account* is made, without annual limits on such use.

~~(d)(e)~~ Term permits provided for by this section shall be subject to the following:

(1) A separate term permit shall be required for each point of diversion *authorized by the base water right.*

(2) The quantity of water authorized for diversion shall be limited to the amount deposited pursuant to subsection ~~(b)(4)(c)(1)(D)~~.

(3) *The rate of diversion for each point of diversion authorized under the term permit shall not exceed the rate of diversion for each point of diversion authorized under the base water right.*

~~(3)(4)~~ The authorized place of use ~~for the term permit shall not be~~

~~greater than that authorized by the existing groundwater right shall be the place of use or a subdivision of the place of use for the base water right.~~

(5) *The point of diversion authorized by the term permit shall be specified by referencing one point of diversion authorized by the base water right at the time the multi-year flex account term permit application is filed with the chief engineer or at the time any approvals changing such referenced point of diversion of the base water right are approved during the multi-year flex account period. For a base water right with multiple points of diversion, each point of diversion authorized by a term permit shall receive a specific assignment of a maximum authorized quantity of water, assigned proportionately to the authorized annual quantities of the respective points of diversion under the base water right.*

~~(4)(6) The chief engineer may establish, by rules and regulations, criteria for such term permits when the water right authorizes multiple points of diversion or multiple water rights authorize a single point of diversion or overlapping places of use.~~

~~(5)(7) Except as explicitly provided for by this section, such term permits shall be subject to all provisions of the Kansas water appropriation act, and rules and regulations adopted under such act, and nothing in this section shall authorize impairment of any vested right or prior appropriation right by the exercise of such term permit.~~

~~(c) Unless a term permit is issued pursuant to an application filed before November 1 of the year prior to the first year for which the application is made, the quantity of water used under the water right during the year in which the application for the term permit is filed shall be deducted from the amount of water deposited into the account authorized by the term permit.~~  
(f) *An application for a multi-year flex account shall be filed with the chief engineer on or before October 1 of the first year of the multi-year flex account term for which the application is being made.*

~~(f)(g) All costs of administration of this section shall be paid from fees for term permits provided for by this section. Any appropriation or transfer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be repaid to the fund from which such appropriation or transfer is made. At the time of repayment, the secretary of agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.~~

(h) *The fee for a multi-year flex account term permit shall be the same as specified for other term permits in K.S.A. 82a-708c, and amendments thereto, except as follows:*

(1) *If the base water right is currently suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012, then a holder of such term permit shall be subject to a*

\$200 application fee for a multi-year flex account term permit if the application is filed on or before July 15, 2012; or

(2) if water use under the authority of the base water right exceeded the maximum annual quantity authorized by the base water right during 2011 and the holder of the base water right files an application for approval of a multi-year flex account term permit on or before July 15, 2012, then the application fee shall be \$600.

(i) The chief engineer shall have full authority pursuant to K.S.A. 82a-706c, and amendments thereto, to require any additional measuring devices and any additional reporting of water use for term permits issued pursuant to this section. Failure to comply with any measuring or reporting requirement may result in a penalty, up to and including the revocation of the term permit and the suspension of the base water right for the duration of the term permit period.

~~(g)~~(j) The chief engineer shall submit a written report on the implementation of this section to the house standing committee on ~~environment~~ agriculture and natural resources and the senate standing committee on natural resources on or before February 1 of each year.

~~(h)~~(k) This section shall be part of and supplemental to the Kansas water appropriation act.

Sec. 2. K.S.A. 2011 Supp. 82a-736 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 5, 2012.

Published in the *Kansas Register* March 15, 2012.

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## CHAPTER 8

### HOUSE BILL No. 2525

AN ACT concerning the optometry law; amending K.S.A. 65-1509a, 65-1514, 65-1517 and 65-7003 and K.S.A. 2011 Supp. 65-1501, 65-1501a, 65-1505, 65-1509, 65-1518, 65-4101, 74-1503 and 74-1505 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 65-1501 is hereby amended to read as follows: 65-1501. (a) The practice of optometry means:

(1) The examination of the human eye and its adnexae and the employment of objective or subjective means or methods (including the administering, prescribing or dispensing, of topical pharmaceutical drugs) for the purpose of diagnosing the refractive, muscular, or pathological condition thereof;

(2) the prescribing, dispensing or adapting of lenses (including any

ophthalmic lenses which are classified as drugs by any law of the United States or of this state), prisms, low vision rehabilitation services, orthoptic exercises and visual training therapy for the relief of any insufficiencies or abnormal conditions of the human eye and its adnexae; and

(3) ~~except as otherwise limited by this section,~~ the prescribing, administering or dispensing of topical pharmaceutical drugs and oral drugs for the examination, diagnosis and treatment of *ocular conditions* and any insufficiencies or abnormal conditions of the human eye and its adnexae *including adult open angle glaucoma*.

(b) The practice of optometry shall not include: (1) The management and treatment of glaucoma, except as provided in subsection ~~(4)(a)~~; (2) the performance of surgery, including the use of lasers for surgical purposes, except that ~~therapeutic licensees may remove superficial non-perforating foreign bodies from the cornea and the conjunctiva;~~ (3) the use of topical pharmaceutical drugs by a person licensed to practice optometry unless such person successfully meets the requirements of a diagnostic licensee or a therapeutic licensee, and (4) the prescribing, administering and dispensing of oral drugs for ocular conditions by a person licensed to practice optometry unless such person successfully meets the requirements of a therapeutic licensee, except that such therapeutic licensee may prescribe or administer oral steroids or oral antiglaucoma drugs for ocular conditions following consultation with an ophthalmologist, which consultation shall be noted in writing in the patient's file. No optometrist may prescribe or administer oral drugs to persons less than six years of age or eyelids; remove eyelashes; scrape the cornea for diagnostic tests, smears or cultures; dilate, probe, irrigate or close by punctal plug the tear drainage structures of the eye; express conjunctival follicles or cysts; debridement of the corneal epithelium and co-management of post-operative care; or (3) the performance of procedures requiring anesthesia administered by injection or general anesthesia.

(c) A therapeutic licensee ~~certified to treat adult open-angle glaucoma as provided herein~~ shall be held to a standard of care in the use of such agents in diagnosis and treatment of *adult open - angle glaucoma* commensurate to that of a person licensed to practice medicine and surgery, who exercises that degree of skill and proficiency commonly exercised by an ordinary, skillful, careful and prudent person licensed to practice medicine and surgery.

(d) ~~An optometrist may prescribe, administer and dispense topical pharmaceutical drugs and oral drugs for the treatment of adult open-angle glaucoma only following glaucoma licensure as provided in subsection (l) of K.S.A. 65-1501a and amendments thereto. After the initial diagnosis of adult open-angle glaucoma, by an optometrist during the co-management period described in subsection (s) of K.S.A. 65-1501a and amendments thereto, the patient shall be notified that the diagnosis must be confirmed by an ophthalmologist and that any subsequent treatment~~

~~requires a written co-management plan with an ophthalmologist of the patient's choice.~~

~~(e) Under the direction and supervision of a therapeutic licensee, a licensed professional nurse, licensed practical nurse, licensed physical therapist and licensed occupational therapist may assist in the provision of low vision rehabilitation services in addition to such other services which such licensed professional nurse, licensed practical nurse, licensed physical therapist and licensed occupational therapist is authorized by law to provide under subsection (d) of K.S.A. 65-1113, subsection (h) of K.S.A. 65-1124, subsection (b) of K.S.A. 65-2901 and subsection (b) of K.S.A. 65-5402, and amendments thereto.~~

Sec. 2. K.S.A. 2011 Supp. 65-1501a is hereby amended to read as follows: 65-1501a. For the purposes of this act the following terms shall have the meanings respectively ascribed to them unless the context requires otherwise:

(a) "Board" means the board of examiners in optometry established under K.S.A. 74-1501 and amendments thereto.

(b) "License" means a license to practice optometry granted under the optometry law.

(c) "Licensee" means a person licensed under the optometry law to practice optometry.

(d) "Adapt" means the determination, selection, fitting or use of lenses, prisms, orthoptic exercises or visual training therapy for the aid of any insufficiencies or abnormal conditions of the eyes after or by examination or testing.

(e) "Lenses" means any type of ophthalmic lenses, which are lenses prescribed or used for the aid of any insufficiencies or abnormal conditions of the eyes.

(f) "Prescription" means a verbal ~~or~~, written *or electronic* order *transmitted directly or by electronic means* from a licensee giving or containing the name and address of the prescriber, the license registration number of the licensee, the name and address of the patient, the specifications and directions for lenses, prisms, orthoptic exercises, low vision rehabilitation services or visual training therapy to be used for the aid of any insufficiencies or abnormal conditions of the eyes, including instructions necessary for the fabrication or use thereof and the date of issue.

(g) "Prescription for topical pharmaceutical drugs or oral drugs" means a verbal ~~or~~, written *or electronic* order *transmitted directly or by electronic means* from a licensee ~~expressly certified to prescribe drugs under the optometry law and~~ giving or containing the name and address of the prescriber, the license registration number of the licensee, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, the number of refills permitted, the date of issue and expiration date.

(h) “Topical pharmaceutical drugs” means drugs administered topically and not by other means ~~for the examination, diagnosis and treatment of the human eye and its adnexae.~~

(i) “Dispense” means to deliver prescription-only medication or ophthalmic lenses to the ultimate user pursuant to the lawful prescription of a licensee and dispensing of prescription-only medication by a licensee shall be limited to a twenty-four hour supply or minimal quantity necessary until a prescription can be filled by a licensed pharmacist, except that the twenty-four hour supply or minimal quantity shall not apply to lenses described in subsection (a)(2) of K.S.A. 65-1501, and amendments thereto.

~~(j) “Diagnostic licensee” means a person licensed under the optometry law and certified by the board to administer or dispense topical pharmaceutical drugs for diagnostic purposes.~~

~~(k) “Therapeutic licensee” means a person licensed under the optometry law and certified by the board to prescribe, administer or dispense topical pharmaceutical drugs for therapeutic purposes and oral drugs, following completion of a fifteen-hour course approved by the board pertaining to the use of oral drugs in ocular therapeutics, except that a person applying for therapeutic licensure who has graduated after January 1, 1990, from a school or college of optometry approved by the board shall not be required to take such course.~~

~~(l) “Glaucoma licensee” means a person described in subsections (j) and (k) of this section who is also licensed under the optometry law to manage and treat adult open-angle glaucoma by nonsurgical means, including the prescribing, administering and dispensing of topical pharmaceutical drugs and oral drugs.~~

~~(m) “False advertisement” means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.~~

~~(n)(k) “Advertisement” means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services or ophthalmic goods.~~

~~(o)(l) “Health care provider” shall have the meaning ascribed to that term in subsection (f) of K.S.A. 40-3401, and amendments thereto.~~

~~(p)(m) “Medical facility” shall have the meaning ascribed to that term in subsection (c) of K.S.A. 65-411, and amendments thereto.~~

~~(q)(n) “Medical care facility” shall have the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto.~~

~~(r) “Co-management” means confirmation by an ophthalmologist of~~

a licensee's diagnosis of adult open-angle glaucoma together with a written treatment plan which includes (1) all tests and examinations supporting the diagnosis, (2) a schedule of tests and examinations necessary to treat the patient's condition, (3) a medication plan, (4) a target intraocular pressure, (5) periodic review of the patient's progress and (6) criteria for referral of the patient to an ophthalmologist for additional treatment or surgical intervention, except that any co-management plan may be modified only with the consent of both the ophthalmologist and the optometrist and the modification noted in writing on the patient's record:—(s) “Co-management period” means that period of time during which an optometrist co-manages patients either suspected of having or diagnosed as having adult open-angle glaucoma with an ophthalmologist.

~~(t)~~(o) “Ophthalmologist” means a person licensed to practice medicine and surgery by the state board of healing arts who specializes in the diagnosis and medical and surgical treatment of diseases and defects of the human eye and related structures.

~~(u)~~(p) “Low vision rehabilitation services” means the evaluation, diagnosis, management and care of the low vision patient including low vision rehabilitation therapy, education and interdisciplinary consultation under the direction and supervision of an ophthalmologist or optometrist.

~~(v)~~(q) “Oral drugs” means oral antibacterial drugs, oral antiviral drugs, oral antihistamines, oral analgesic drugs, oral steroids, oral antiglaucoma drugs and other oral drugs with clinically accepted ocular uses.

Sec. 3. K.S.A. 2011 Supp. 65-1505 is hereby amended to read as follows: 65-1505. (a) Persons entitled to practice optometry in Kansas shall be those persons licensed in accordance with the provisions of the optometry law. A person shall be qualified to be licensed and to receive a license as an optometrist: (1) Who is of good moral character; and in determining the moral character of any such person, the board may take into consideration any felony conviction of such person, but such conviction shall not automatically operate as a bar to licensure; (2) who has graduated from a school or college of optometry approved by the board; and (3) who successfully meets and completes the requirements set by the board and passes an examination given by the board. ~~All licenses issued on and after the effective date of this act, to persons not licensed in this state or in another state prior to July 1, 1996, shall be diagnostic, therapeutic and glaucoma licenses.~~

~~(b) All applicants for licensure or reciprocal licensure, except as provided in subsection (a) and (f), in addition to successfully completing all other requirements for licensure, shall take and successfully pass an examination required by the board before being certified by the board as a diagnostic and therapeutic licensee.~~

~~(c) All persons before taking the examination required by the board to be certified as a diagnostic and therapeutic licensee shall submit evi-~~

dence satisfactory to the board of having successfully completed a course approved by the board in didactic education and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexa, totaling at least 100 hours.

~~—(d)—All applicants for glaucoma licensure, in addition to successfully completing all other requirements for licensure, shall submit evidence satisfactory to the board of: (1) professional liability insurance in an amount acceptable to the board; (2) completion of a course of instruction approved by the board after consultation with the interprofessional advisory committee which includes at least 24 hours of training in the treatment and co-management of adult open-angle glaucoma and (3) co-management for a period of at least 24 months and not less than 20 diagnoses of suspected or confirmed glaucoma, except that the board may eliminate or shorten the co-management period, and eliminate or reduce the number of diagnoses of suspected or confirmed glaucoma for applicants for glaucoma licensure who graduate from approved optometric schools or colleges after July 1, 1998.~~

~~(e)~~(c) Any person applying for examination by the board shall fill out and swear to an application furnished by the board, accompanied by a fee fixed by the board by rules and regulations in an amount of not to exceed \$450, and file the same with the secretary of the board at least 30 days prior to the holding of the examination. At such examinations the board shall examine each applicant in subjects taught in schools or colleges of optometry approved by the board, as may be required by the board. If such person complies with the other qualifications for licensing and passes such examination, such person shall receive from the board, upon the payment of a fee fixed by the board by rules and regulations in an amount of not to exceed \$150, a license entitling such person to practice optometry. In the event of the failure on the part of the applicant to pass the first examination, such person may, with the consent of the board, within 18 months, by filing an application accompanied by a fee fixed by the board by rules and regulations in an amount of not to exceed \$150, take a second examination; for the third and each subsequent examination a fee fixed by the board by rules and regulations in an amount of not to exceed \$150. Any examination fee and license fee fixed by the board under this subsection which is in effect on the day preceding the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.

~~(f)~~(d) ~~Subject to the requirements of subsection (h),~~ Any applicant for reciprocal licensure may in the board's discretion be licensed and issued a license without examination ~~in the category of licensure under the optometry law for which application is made~~ if the applicant has been in the active practice of optometry in another state for at least the three-year period immediately preceding the application for reciprocal licensure and the applicant:

(1) Presents a certified copy of a certificate of registration or license which has been issued to the applicant by another state where the requirements for licensure are deemed by the board to be equivalent to the requirements for licensure ~~in the category of licensure under this act for which application is made~~, if such state accords a like privilege to holders of a license issued by the board;

(2) submits a sworn statement of the licensing authority of such other state that the applicant's license has never been limited, suspended or revoked and that the applicant has never been censured or had other disciplinary action taken; ~~and~~

(3) successfully passes an examination of Kansas law administered by the board and such clinical practice examination as the board deems necessary; *and*

Subject to the requirements of subsection (h), if such applicant was first licensed in another state prior to July 1, 1987, the applicant shall be required to satisfy only the requirements of the category of licensure under the optometry law for which application is made and which existed in this state at the time of the applicant's licensure in such other state; or, if such requirements did not exist in this state at the time of the applicant's licensure in such other state, the applicant shall be required to satisfy only the requirements of the category of licensure under the optometry law for which application is made which originally were required for that category of licensure. If such applicant was first licensed in another state on or after July 1, 1987, the applicant shall apply to initially be issued a diagnostic and therapeutic license and shall be required to satisfy all the requirements of that category of licensure under this act. The fee for licensing such applicants shall be fixed by the board by rules and regulations in an amount of not to exceed \$450. The reciprocal license fee fixed by the board under this subsection which is in effect on the day preceding the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.

(4) *pays the reciprocal license fixed by the board by rules and regulations in an amount of not to exceed \$450. The reciprocal license fee fixed by the board under this subsection which is in effect on the day preceding the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.*

~~(g)~~(e) The board shall adopt rules and regulations establishing the criteria which a school or college of optometry shall satisfy in meeting the requirement of approval by the board established under subsection (a). The board may send a questionnaire developed by the board to any school or college of optometry for which the board does not have sufficient information to determine whether the school or college meets the requirements for approval and rules and regulations adopted under this act. The questionnaire providing the necessary information shall be com-

pleted and returned to the board in order for the school or college to be considered for approval. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about schools or colleges. In entering such contracts the authority to approve schools or colleges shall remain solely with the board.

~~(h) To be entitled to practice optometry in Kansas after May 31, 2008, an optometrist must have met the requirements of and become a therapeutic licensee. To be entitled to practice optometry in Kansas after May 31, 2010, an optometrist must have met: (1) The requirements of and become a therapeutic licensee and (2) the requirements of and become a glaucoma licensee.~~

(f) (1) *The board may require an applicant for licensure or a licensee in connection with an investigation of the licensee to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the licensee or applicant for licensure and to determine whether the licensee or applicant for licensure has a record of criminal arrests and convictions in this state or other jurisdictions. The board is authorized to submit the fingerprints to the Kansas bureau of investigation, the federal bureau of investigation or any other law enforcement or criminal justice agency for a state and national criminal history record check. The board may use the information obtained through the criminal history record check for the purposes of verifying the identification of the licensee or applicant for licensure and in the official character and fitness determination of the licensee or applicant for licensure to practice optometry in this state.*

(2) *Local and state law enforcement officers and agencies shall assist the board in taking and processing fingerprints of licensees and applicants for licensure and shall release to the board all records of adult convictions, arrests and nonconvictions in this state and all records of adult convictions, arrests and nonconvictions of any other state or country. The board may enter into agreements with the Kansas bureau of investigation, the federal bureau of investigation or any other law enforcement or criminal justice agency as necessary to carry out the duties of the board under this act.*

(3) *The fingerprints and all information obtained from the criminal history record check shall be confidential and shall not be disclosed except to members of the board and agents and employees of the board as necessary to verify the identification of any licensee or applicant for licensure and in the official character and fitness determination of the licensee or applicant for licensure to practice optometry in this state. Any other disclosure of such confidential information shall constitute a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act.*

(4) (A) *The board shall fix a fee for fingerprinting applicants or li-*

*censees in an amount necessary to reimburse the board for the cost of the fingerprinting. Fees collected under this subsection shall be deposited in the criminal history and fingerprinting fund.*

*(B) There is hereby created in the state treasury the criminal history and fingerprinting fund. All moneys credited to the fund shall be used to pay all costs and fees associated with processing of fingerprints and criminal history checks for the board of examiners in optometry. The fund shall be administered by the board. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.*

Sec. 4. K.S.A. 2011 Supp. 65-1509 is hereby amended to read as follows: 65-1509. (a) Before engaging in the practice of optometry in this state, it shall be the duty of each licensed optometrist to notify the board in writing of the address of the office or offices where such licensee is to engage or intends to engage in the practice of optometry and of any changes in the licensee's location of practice. Any notice required to be given by the board to any licensed optometrist may be given by mailing to such address through the United States mail, postpaid, or by electronic means to such electronic mail or facsimile address provided by the licensed optometrist to the board for such purpose.

(b) Any license to practice optometry issued by the board shall expire on May 31 of the year specified by the board for the expiration of the license and shall be renewed on a biennial basis in accordance with this section. The request for renewal shall be on a form provided by the board and shall be accompanied by the prescribed fee, which shall be paid no later than the expiration date of the license.

(c) ~~Commencing with the renewal of licenses that expire on May 31, 2004,~~ Each license shall be renewed on a biennial basis. To provide for a system of biennial renewal of licenses, the board may provide by rules and regulations that licenses issued or renewed may expire less than two years from the date of issuance or renewal and for the proration of fees accordingly. On or before May 1 each year, the board shall determine the amount that may be necessary for the next ensuing fiscal year to carry out and enforce the provisions of the optometry law, and shall fix by rules and regulations the renewal fee and the fees provided for in K.S.A. 65-1505, and amendments thereto, in such amounts as may be necessary for that purpose. The biennial renewal fee shall not exceed \$800. Upon fixing such fees, the board shall immediately notify all licensees of the amount of such fees for the ensuing biennial renewal period. In every renewal year hereafter, every licensed optometrist shall pay to the board of examiners a fee for a renewal of such license for each biennial renewal period. The license renewal fee fixed by the board under this subsection which is in effect on the day preceding the effective date of this act shall

continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.

(d) The payment of the renewal fee by the person who is a holder of a license as an optometrist but who has not complied with the continuing education requirements fixed by the board, if no grounds exist for denying the renewal of the license other than that the person has not complied with the continuing education requirements fixed by the board, shall entitle the person to inactive status licensure by the board. No person holding an inactive status license from the board shall engage in the practice of optometry in this state. A person holding an inactive status license from the board shall be entitled to cancellation of the inactive status license and to renewal of licensure as an optometrist upon furnishing satisfactory evidence to the board that such person has obtained the equivalent of all missed continuing education requirements to date, and payment of an additional fee fixed by the board through rule and regulation in an amount not to exceed \$450.

(e) At least 30 days before the expiration of the licensee's license, the board shall notify each licensee of the expiration ~~by mail addressed to the licensee's last known address~~ *provided in subsection (a) of this section*. If the licensee fails to pay the ~~annual~~ *biennial* fee or show proof of compliance with the continuing education requirements by the date of the expiration of the license, the *board shall provide such* licensee ~~shall be mailed as provided in subsection (a) of this section~~ a second notice that the licensee's license has expired, that the board shall suspend action for 30 days following the date of expiration, that upon receipt of the ~~annual~~ *biennial* fee together with an additional fee not to exceed \$500, within the thirty-day period, no order of cancellation will be entered and that, if both fees are not received within the thirty-day period, the license shall be canceled.

(f) ~~To have a license to practice optometry in Kansas renewed after May 31, 2008, an optometrist must have met the requirements of and become a therapeutic licensee. To have a license to practice optometry in Kansas renewed after May 31, 2010, an optometrist must have met: (1) The requirements of and become a therapeutic licensee and (2) the requirements of and become a glaucoma licensee.~~

~~(g)~~ Any licensee who allows the licensee's license to lapse or be canceled by failing to renew as herein provided, may be reinstated by the board upon payment of the renewal fees then due and upon proof of compliance with the continuing education requirements established by the board. As an additional requirement of reinstatement, in cases in which the board deems it appropriate, the licensee may be required to successfully pass the examination given by the board to applicants for licensure or such other competency examination as the board may choose.

Sec. 5. K.S.A. 65-1509a is hereby amended to read as follows: 65-

1509a. In addition to the payment of the license renewal fee, each licensee, ~~other than one who has graduated from an optometry school within 12 months of the date of the application for renewal,~~ applying for license renewal shall furnish to the secretary of the board satisfactory evidence of successfully completing a minimum of 24 hours of continuing education ~~programs~~ *annually*, five hours of which shall relate to ocular pharmacology, therapeutics or related topics of study, approved by the board in the year just preceding such application for the renewal of the license. The board, in its discretion, may increase the required hours of continuing education by rules and regulations adopted by the board. On or before April 1 of each year, the secretary of the board shall send a written notice of continuing education requirements to this effect to every person holding a valid license to practice optometry within the state *as provided in subsection (a) of K.S.A. 65-1509, and amendments thereto.* ~~Such notice shall be directed to the last known address of such licensee.~~

Sec. 6. K.S.A. 65-1514 is hereby amended to read as follows: 65-1514. The provisions of K.S.A. 65-1501a, ~~65-1504a~~, 65-1504b, 65-1509a and 65-1516 to ~~65-1525~~ 65-1526, inclusive, and amendments thereto, are a part of and supplemental to the optometry law.

Sec. 7. K.S.A. 65-1517 is hereby amended to read as follows: 65-1517. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original or renewal license.

(b) The licensee has committed an act of unprofessional conduct or professional incompetence.

(c) The licensee has been convicted of a felony, whether or not related to the practice of optometry.

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee has willfully or repeatedly violated the optometry law, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto.

(f) The licensee has ~~unlawfully performed practice acts of optometry for which the licensee is not licensed to practice~~ *violated an order of the board.*

(g) The licensee has failed to pay ~~annual~~ renewal fees specified in this act.

(h) The licensee has failed to comply with the annual continuing education requirements as required by this act and the board.

(i) The licensee has engaged in the practice of optometry under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal

entity duly authorized to provide such professional services in the state of Kansas.

(j) The licensee has the inability to perform optometry practice acts ~~for which the licensee is licensed~~ with reasonable skill and safety to patients by reason of illness, alcoholism, excessive use of drugs, controlled substances, chemical or any other type of material or as a result of any mental or physical condition. In determining whether or not such inability exists, the board, upon probable cause, shall have authority to compel a licensee to submit to mental or physical examination by such persons as the board may designate. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination. A person affected by this subsection shall be offered, at reasonable intervals an opportunity to demonstrate that such person can resume the competent practice of optometry with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice optometry and who shall accept the privilege to practice optometry in this state by so practicing or by the making and filing of an annual renewal to practice optometry in this state shall be deemed to have consented to submit to a mental and physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the testimony or examination report of the person conducting such examination at any proceeding or hearing before the board on the grounds that such testimony or examination report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination shall not be used in any other administrative or judicial proceeding.

(k) The licensee has had a license to practice optometry revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(l) The licensee has violated any lawful rules and regulations promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(m) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(n) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(o) The licensee has violated a federal law or regulation relating to controlled substances.

(p) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(q) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(r) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(s) The licensee has surrendered a license or authorization to practice optometry in another state or jurisdiction or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice optometry in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a, and amendments thereto, or pay the annual premium as required by K.S.A. 40-3404, and amendments thereto.

(x) The licensee has knowingly submitted any misleading, deceptive, false or fraudulent representation on a claim form bill or statement.

(y) The licensee has failed to provide to a patient the patient's written prescription for lenses for eyeglasses subsequent to the completion of the eye examination in accordance with applicable state or federal law.

Sec. 8. K.S.A. 2011 Supp. 65-1518 is hereby amended to read as follows: 65-1518. (a) All administrative proceedings provided for by article 15 of chapter 65 of the Kansas Statutes Annotated and affecting any li-

censee licensed under that article shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Judicial review and civil enforcement of any agency action under article 15 of chapter 65 of the Kansas Statutes Annotated shall be in accordance with the Kansas judicial review act.

(c) If any order of the board in any administrative proceedings provided for by article 15 of chapter 65 of the Kansas Statutes Annotated is adverse to the licensee the costs shall be charged to the licensee as in ordinary civil actions in the district court. Witness fees and costs may be taxed in accordance with the statutes governing taxation of witness fees and costs in the district court. *Witness fees and costs incurred by the board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the board may determine upon consideration of all relevant circumstances, including the nature of the proceeding and the level of participation by the parties. If the board is the unsuccessful party, the costs shall be paid from the optometry fee fund. For purposes of this subsection, costs incurred shall mean the presiding officer fees and expenses, costs of making any transcripts, witness fees and expenses, mileage, travel allowances and subsistence expenses of board employees and fees and expenses of agents of the board who provide services pursuant to K.S.A. 74-1504, and amendments thereto. Costs incurred shall not include presiding officer fees and expenses or costs of making and preparing the record unless the board has designated or retained the services of independent contractors to perform such functions. The board shall make any assessment of costs incurred as part of the final order rendered in the proceeding. Such order shall include findings and conclusions in support of the assessment of costs.*

Sec. 9. K.S.A. 2011 Supp. 74-1505 is hereby amended to read as follows: 74-1505. (a) ~~No later than 30 days following the effective date of this act,~~ The board shall appoint a seven-member committee to be known as the interprofessional advisory committee which, ~~subject to approval of the board,~~ shall have general responsibility for the establishment, review and monitoring of the procedures for co-management by optometrists and ophthalmologists of adult open-angle glaucoma ~~requested by the board,~~ shall make recommendations on clinical or practice related issues, including procedure coding matters and appropriate treatments for ocular diseases and conditions.

(b) The interprofessional advisory committee shall consist of one member of the board appointed by the board who shall serve as a non-voting chair, together with three optometrists licensed to practice optometry in this state chosen by the board from those nominated by the Kansas optometric association and three ophthalmologists licensed to practice in this state chosen by the board from those nominated by the Kansas med-

ical society and the Kansas association of osteopathic medicine. The Kansas optometric association and Kansas medical society shall submit six nominees to the board. The Kansas association of osteopathic medicine shall submit two nominees to the board. Persons appointed to the committee shall serve terms of three years and without compensation. All expenses of the committee shall be paid by the board.

~~(c) The committee shall submit recommendations to the board on the following:~~

~~—(1) An ongoing quality assessment program including the monitoring and review of co-management of patients pursuant to subsection (d) of K.S.A. 65-1505 and amendments thereto;~~

~~—(2) requirements for the education and clinical training necessary for glaucoma licensure, which shall be submitted to the board within 90 days following appointment;~~

~~—(3) criteria for evaluating the training or experience acquired in other states by applicants for glaucoma licensure;~~

~~—(4) requirements for annual reporting during a glaucoma licensee's co-management period to the committee and the board which shall be submitted to the board within 90 days following appointment;~~

~~—(5) the classes and mix of patients either suspected of having or diagnosed as having adult open-angle glaucoma who may be included in the number of co-management cases required by subsection (d) of K.S.A. 65-1505 and amendments thereto, which shall be submitted to the board within 90 days following appointment; and~~

~~—(6) requirements for annual continuing education by glaucoma licensees.~~

~~(d) After considering the recommendations of the committee pursuant to subparagraph (c), the board shall proceed to adopt procedures to confirm that each applicant has completed the requirements for glaucoma licensure.~~

~~(e) The interprofessional advisory committee shall also review the educational and clinical prerequisites of optometrists to use oral pharmaceutical drugs and identify those classes of oral pharmaceutical drugs which are effective treatments for ocular diseases and conditions.~~

~~(f) The interprofessional advisory committee shall review the advisability of expanding the scope of practice of optometrists to prescribe certain oral drugs for ocular conditions for children under six years of age.~~

~~(g) The interprofessional advisory committee shall review new classes of drugs with ocular uses and advise the Kansas state board of examiners in optometry about such drugs.~~

~~(h) This section shall be part of and supplemental to the optometry law.~~

Sec. 10. K.S.A. 2011 Supp. 65-4101 is hereby amended to read as

follows: 65-4101. As used in this act: (a) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (1) A practitioner or pursuant to the lawful direction of a practitioner; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common carrier, public warehouseman or employee of the carrier or warehouseman.

(c) “Board” means the state board of pharmacy.

(d) “Bureau” means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(e) “Controlled substance” means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(f) “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(h) “Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery, or pursuant to the prescription of a mid-level practitioner.

(i) “Dispenser” means a practitioner or pharmacist who dispenses.

(j) “Distribute” means to deliver other than by administering or dispensing a controlled substance.

(k) “Distributor” means a person who distributes.

(l) “Drug” means: (1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts or accessories.

(m) “Immediate precursor” means a substance which the board has

found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual’s own lawful use or the preparation, compounding, packaging or labeling of a controlled substance: (1) By a practitioner or the practitioner’s agent pursuant to a lawful order of a practitioner as an incident to the practitioner’s administering or dispensing of a controlled substance in the course of the practitioner’s professional practice; or

(2) by a practitioner or by the practitioner’s authorized agent under such practitioner’s supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(o) “Marijuana” means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

(p) “Narcotic drug” means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis: (1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these sub-

stances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) “Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(r) “Opium poppy” means the plant of the species *Papaver somniferum l.* except its seeds.

(s) “Person” means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(t) “Poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.

(u) “Pharmacist” means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(v) “Practitioner” means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist ~~licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee~~, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

(w) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) “Ultimate user” means a person who lawfully possesses a controlled substance for such person’s own use or for the use of a member of such person’s household or for administering to an animal owned by such person or by a member of such person’s household.

(y) “Isomer” means all enantiomers and diastereomers.

(z) “Medical care facility” shall have the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto.

(aa) “Cultivate” means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(bb) (1) “Controlled substance analog” means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled

substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) “Controlled substance analog” does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application;

or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. § 355) to the extent conduct with respect to the substance is permitted by the exemption.

(cc) “Mid-level practitioner” means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed under the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

Sec. 11. K.S.A. 65-7003 is hereby amended to read as follows: 65-7003. As used in K.S.A. 65-7001 through 65-7015, and amendments thereto:

(a) “Act” means the Kansas chemical control act;

(b) “administer” means the application of a regulated chemical whether by injection, inhalation, ingestion or any other means, directly into the body of a patient or research subject, such administration to be conducted by: (1) A practitioner, or in the practitioner’s presence, by such practitioner’s authorized agent; or

(2) the patient or research subject at the direction and in the presence of the practitioner;

(c) “agent or representative” means a person who is authorized to receive, possess, manufacture or distribute or in any other manner control or has access to a regulated chemical on behalf of another person;

(d) “bureau” means the Kansas bureau of investigation;

(e) “department” means the Kansas department of health and environment;

(f) “director” means the director of the Kansas bureau of investigation;

(g) “dispense” means to deliver a regulated chemical to an ultimate

user, patient or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the regulated chemical for that delivery;

(h) “distribute” means to deliver other than by administering or dispensing a regulated chemical;

(i) “manufacture” means to produce, prepare, propagate, compound, convert or process a regulated chemical directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, and includes packaging or repackaging of the substance or labeling or relabeling of its container. The term excludes the preparation, compounding, packaging, repackaging, labeling or relabeling of a regulated chemical:

(1) By a practitioner as an incident to the practitioner’s administering or dispensing of a regulated chemical in the course of the practitioner’s professional practice; or

(2) by a practitioner, or by the practitioner’s authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to research, teaching or chemical analysis and not for sale;

(j) “person” means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity;

(k) “practitioner” means a person licensed to practice medicine and surgery, pharmacist, dentist, podiatrist, veterinarian, optometrist ~~licensed under the optometry laws as a therapeutic licensee or diagnostic and therapeutic licensee~~, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance;

(l) “regulated chemical” means a chemical that is used directly or indirectly to manufacture a controlled substance or other regulated chemical, or is used as a controlled substance analog, in violation of the state controlled substances act or this act. The fact that a chemical may be used for a purpose other than the manufacturing of a controlled substance or regulated chemical does not exempt it from the provisions of this act. Regulated chemical includes:

- (1) Acetic anhydride (CAS No. 108-24-7);
- (2) benzaldehyde (CAS No. 100-52-7);
- (3) benzyl chloride (CAS No. 100-44-7);
- (4) benzyl cyanide (CAS No. 140-29-4);
- (5) diethylamine and its salts (CAS No. 109-89-7);
- (6) ephedrine, its salts, optical isomers and salts of optical isomers (CAS No. 299-42-3), except products containing ephedra or ma huang, which do not contain any chemically synthesized ephedrine alkaloids, and are lawfully marketed as dietary supplements under federal law;
- (7) hydriodic acid (CAS No. 10034-85-2);

- (8) iodine (CAS No. 7553-56-2);
  - (9) lithium (CAS No. 7439-93-2);
  - (10) methylamine and its salts (CAS No. 74-89-5);
  - (11) nitroethane (CAS No. 79-24-3);
  - (12) chloroephedrine, its salts, optical isomers, and salts of optical isomers (CAS No. 30572-91-9);
  - (13) phenylacetic acid, its esters and salts (CAS No. 103-82-2);
  - (14) phenylpropanolamine, its salts, optical isomers, and salts of optical isomers (CAS No. 14838-15-4);
  - (15) piperidine and its salts (CAS No. 110-89-4);
  - (16) pseudoephedrine, its salts, optical isomers, and salts of optical isomers (CAS No. 90-82-4);
  - (17) red phosphorous (CAS No. 7723-14-0);
  - (18) sodium (CAS No. 7440-23-5); and
  - (19) thionylchloride (CAS No. 7719-09-7);
  - (20) gamma butyrolactone (GBL), including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone; CAS No. 96-48-0; and
  - (21) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol; CAS No. 110-63-4;
- (m) “regulated chemical distributor” means any person subject to the provisions of the Kansas chemical control act who manufactures or distributes a regulated chemical;
- (n) “regulated chemical retailer” means any person who sells regulated chemicals directly to the public;
- (o) “regulated chemical transaction” means the manufacture of a regulated chemical or the distribution, sale, exchange or other transfer of a regulated chemical within or into the state or from this state into another state; and
- (p) “secretary” means the secretary of health and environment.

Sec. 12. K.S.A. 2011 Supp. 74-1503 is hereby amended to read as follows: 74-1503. (a) At the regular meeting of the board in April of every year it shall elect from its own membership a president, a vice-president and a secretary-treasurer. Members of the board of examiners in optometry attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. The board may appoint a secretary-treasurer who shall be in the unclassified service of the Kansas civil service act. The secretary-treasurer shall receive an annual salary which shall be fixed by the board and approved by the state finance council.

(b) The board shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the optometry fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person or persons designated by the president.

(c) *There is hereby created in the state treasury the optometry litigation fund. All moneys credited to the fund shall be used to pay all costs and fees associated with litigation expenses of the board of examiners in optometry. The unencumbered balance in such fund shall not exceed \$400,000. The fund shall be administered by the board. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.*

Sec. 13. K.S.A. 65-1509a, 65-1514, 65-1517 and 65-7003 and K.S.A. 2011 Supp. 65-1501, 65-1501a, 65-1505, 65-1509, 65-1518, 65-4101, 74-1503 and 74-1505 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 5, 2012.

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## CHAPTER 9

### HOUSE BILL No. 2273

AN ACT designating part of K-99 as the Frankfort Boys World War II Memorial highway; amending K.S.A. 2011 Supp. 68-1057 and repealing the existing section.

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

New Section 1. The portion of highway K-99 from the south city limits of Frankfort, north on K-99 highway to the junction with United States highway 36 is hereby designated as the Frankfort Boys World War II Memorial highway. The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the highway is the Frankfort Boys World War II Memorial highway, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and an additional 50% of the cost to defray

future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 2. K.S.A. 2011 Supp. 68-1057 is hereby amended to read as follows: 68-1057. From the ~~junction of United States highway 36 with K-99 south city limits of Frankfort~~, south on K-99 highway to the junction of K-99 and interstate highway 70, is hereby designated as “The Road to Oz.” The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the highway is “The Road to Oz,” except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 3. K.S.A. 2011 Supp. 68-1057 is hereby repealed.

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

Approved March 9, 2012.

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## CHAPTER 10

### SENATE BILL No. 289

AN ACT concerning the veterinary practice act; relating to records inspection fee; powers of the board of veterinary examiners; grounds to suspend or revoke a license; amending K.S.A. 47-821 and K.S.A. 2011 Supp. 47-822, 47-830 and 47-842 and repealing the existing sections.

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

Section 1. K.S.A. 47-821 is hereby amended to read as follows: 47-821. (a) In general, but not by way of limitation, the board shall have power to:

(1) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in this state in accordance with K.S.A. 47-824 and 47-826, and amendments thereto.

(2) Inspect and register any veterinary premises pursuant to K.S.A. 47-840, and amendments thereto, and take any disciplinary action against the holder of a registration of a premises issued pursuant to K.S.A. 47-840, and amendments thereto.

(3) *Inspect and audit the records and compliance with the standards of practice of any veterinarian and take any disciplinary action against the licensed veterinarian consistent with the provisions of this act and the rules and regulations adopted thereunder.*

~~(3)~~(4) Issue, renew, deny, limit, condition, fine, reprimand, restrict, suspend or revoke licenses to practice veterinary medicine in this state or otherwise discipline licensed veterinarians consistent with the provisions of this act and the rules and regulations adopted thereunder.

~~(4)~~(5) Conduct an investigation upon an allegation by any person that any licensee or other veterinarian has violated any provision of the Kansas veterinary practice act or any rules and regulations adopted pursuant to such act. The board may appoint individuals and committees to assist in any investigation.

~~(5)~~(6) Establish and publish annually a schedule of fees authorized pursuant to and in accordance with the provisions of K.S.A. 47-822, and amendments thereto.

~~(6)~~(7) Employ full-time or part-time an executive director and such professional, clerical and special personnel as shall be necessary to carry out the provisions of this act. The board shall fix the compensation of such personnel who shall be in the unclassified service under the Kansas civil service act. Under the supervision of the board, the executive director shall perform such duties as may be required by law or authorized by the board.

~~(7)~~(8) Purchase or rent necessary office space, equipment and supplies.

~~(8)~~(9) Appoint from its own membership one or more members to act as representatives of the board at any meeting within or without the state where such representation is deemed desirable.

~~(9)~~(10) Initiate the bringing of proceedings in the courts for the enforcement of this act.

~~(10)~~(11) Adopt, amend or repeal rules and regulations for licensed veterinarians regarding the limits of activity for assistants and registered veterinary technicians who perform prescribed veterinary procedures under the direct or indirect supervision and responsibility of a licensed veterinarian.

~~(11)~~(12) Adopt, amend or repeal such rules and regulations, not inconsistent with law, as may be necessary to carry out the purposes of this act and enforce the provisions thereof.

~~(12)~~(13) Have a common seal.

~~(13)~~(14) Adopt, amend or repeal rules and regulations to fix minimum standards for continuing veterinary medical education, which standards shall be a condition precedent to the renewal of a license under this act.

~~(14) Register~~(15) *Examine and determine the qualifications and fitness of applicants for registration and register* veterinary technicians.

(16) *Issue, renew, deny, limit, condition, fine, reprimand, restrict, suspend or revoke veterinary technician registrations in this state consistent with the provisions of this act and the rules and regulations adopted thereunder.*

~~(15)~~(17) Establish any committee necessary to implement any provision of this act including, but not limited to, a continuing education committee and a peer review committee. Such committees may be formed in conjunction with professional veterinary associations in the state. Members of such committees appointed by the board shall receive the same privileges and immunities and be charged with the same responsibilities of activity and confidentiality as board members.

~~(16)~~(18) Refer complaints to a duly formed peer review committee of a duly appointed professional association.

~~(17)~~(19) Establish, by rules and regulations, minimum standards for the practice of veterinary medicine.

~~(18)~~(20) Contract with a person or entity to perform the inspections or reinspections as required by K.S.A. 47-840, *and amendments thereto*.

~~(19)~~(21) (A) For the purpose of investigations and proceedings conducted by the board, the board may issue subpoenas compelling:

(i) The attendance and testimony of veterinarians *or veterinary technicians*; or

(ii) the production for examination or copying of documents or any other physical evidence if such evidence relates to veterinary competence, unprofessional conduct, the mental or physical ability of a licensee *or registrant* to safely practice veterinary medicine or the condition of a veterinary premises. Within five days after the service of the subpoena on any veterinarian requiring the production of any evidence in the veterinarian's possession or under the veterinarian's control, such veterinarian may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced.

(B) The district court, upon application by the board or by the veterinarian *or veterinary technician* subpoenaed, shall have jurisdiction to issue an order:

~~(A)~~(i) Requiring such veterinarian *or veterinary technician* to appear before the board or the board's duly authorized agent to produce evidence relating to the matter under investigation; or

~~(B)~~(ii) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(b) The powers of the board are granted to enable the board to effectively supervise the practice of veterinary medicine and are to be construed liberally in order to accomplish such objective.

Sec. 2. K.S.A. 2011 Supp. 47-822 is hereby amended to read as follows: 47-822. (a) The fee for an application for a license to practice veterinary medicine in this state, as required by K.S.A. 47-824, and amendments thereto, shall be not less than \$50 nor more than \$250.

(b) The annual fee for renewal of license required under K.S.A. 47-829, and amendments thereto, shall be not less than \$20 nor more than \$100.

(c) The fee for each examination for licensure as required by K.S.A. 47-825, and amendments thereto, shall not be less than \$50 nor more than \$500.

(d) The fee for an application for registration of a registered veterinary technician as provided in K.S.A. 47-821, and amendments thereto, shall be not less than \$20 nor more than \$50.

(e) The annual fee for renewal of registration of a registered veterinary technician as provided in K.S.A. 47-821, and amendments thereto, shall be not less than \$5 nor more than \$25.

(f) The fee for an application for registration of a premises required under K.S.A. 47-840, and amendments thereto, shall be not less than \$50 nor more than \$150.

(g) The fee for renewal of registration of a premises required under K.S.A. 47-840, and amendments thereto, shall be not less than \$10 nor more than \$50.

(h) A late fee of no more than \$50 may be assessed to a person requesting registration of a premises.

(i) The fee for inspection or reinspection of a premises required to be registered under K.S.A. 47-840, and amendments thereto, shall be not less than \$50 nor more than \$150.

(j) *The fee for inspection and audit of the records and compliance with the standards of practice of any veterinarian shall be not less than \$50 nor more than \$150.*

(k) The board shall determine annually the amount necessary to carry out and enforce the provisions of this act and shall fix by rules and regulations the fees established in this section within the limitations provided in this section.

Sec. 3. K.S.A. 2011 Supp. 47-830 is hereby amended to read as follows: 47-830. The board, in accordance with the provisions of the Kansas administrative procedure act, may refuse to issue a license, revoke, suspend, limit, condition, reprimand or restrict a license to practice veterinary medicine for any of the following reasons:

(a) The employment of fraud, misrepresentation or deception in obtaining a license;

(b) an adjudication of incapacity by a court of competent jurisdiction;

(c) for having professional connection with or lending one's name to

any illegal practitioner of veterinary medicine and the various branches thereof;

- (d) false or misleading advertising;
- (e) conviction of a felony *or entering into a plea agreement or a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a felony*;
- (f) failure to provide a written response within the time prescribed by the board to a written request made by the board pursuant to an investigation by or on behalf of the board;
- (g) employing, contracting with or utilizing in any manner any person in the unlawful practice of veterinary medicine;
- (h) fraud or dishonest conduct in applying, treating or reporting diagnostic biological tests of public health significance or in issuing health certificates;
- (i) failure of the veterinarian who is responsible for the operation and management of a veterinary premises to keep the veterinary premises in compliance with minimum standards established by rules and regulations as to sanitary conditions and physical plant;
- (j) failure to report as required by law, or making false report of any contagious or infectious disease;
- (k) dishonesty or negligence in the inspection of foodstuffs;
- (l) cruelty or inhumane treatment to animals;
- (m) disciplinary or administrative action taken by any federal, state or local regulatory agency or any foreign country on grounds other than nonpayment of registration fees;
- (n) disclosure of any information in violation of K.S.A. 47-839, and amendments thereto;
- (o) unprofessional conduct as defined in rules and regulations adopted by the board includes, but is not limited to, the following:
  - (1) Conviction of a charge of violating any federal ~~statutes~~ *statute* or any statute of this state, regarding *controlled* substances as defined in K.S.A. 65-4101, and amendments thereto;
  - (2) using unless lawfully prescribed, prescribing or administering to oneself or another person any of the controlled substances as defined in K.S.A. 65-4101, and amendments thereto, or using, prescribing or administering any of the controlled substances as defined in K.S.A. 65-4101 and amendments thereto or alcoholic beverages or any other drugs, chemicals or substances to the extent, or in such a manner as to be dangerous or injurious to a person licensed under the Kansas veterinary practice act, to oneself or to any other person or to the public, or to the extent that such use impairs the ability of such person so licensed to conduct with safety the practice authorized by the license;
  - (3) the conviction of more than one misdemeanor or any felony involving the use, consumption or self-administration of any of the substances referred to in this section or any combination thereof;

(4) violation of or attempting to violate, directly or indirectly, any provision of the Kansas veterinary practice act or any rules and regulations adopted pursuant to such act; and

(5) violation of an order of the board;

(p) conviction of a crime substantially related to qualifications, functions or duties of veterinary medicine, surgery or dentistry;

(q) fraud, deception, negligence or incompetence in the practice of veterinary medicine;

(r) the use, prescription, administration, dispensation or sale of any veterinary prescription drug or the prescription of an extra-label use of any over-the-counter drug in the absence of a valid veterinary-client-patient relationship;

(s) failing to furnish details or copies of a patient's medical records or failing to provide reasonable access to or a copy of a patient's radiographs to another treating veterinarian, hospital or clinic, upon the written request of and authorization from an owner or owner's agent, or failing to provide the owner or owner's agent with a summary of the medical record within a reasonable period of time and upon proper request by the owner or owner's agent, or failing to comply with any other law relating to medical records; or

(t) determination that the veterinarian is impaired, as defined in K.S.A. 47-846, and amendments thereto, by a representative of the impaired veterinarian committee, or as determined by the board after a hearing.

Sec. 4. K.S.A. 2011 Supp. 47-842 is hereby amended to read as follows: 47-842. In addition to the board's authority to refuse licensure or impose discipline pursuant to K.S.A. 47-830, and amendments thereto, the board shall have the authority to assess a fine not in excess of \$5,000 against a licensee for ~~any~~ *each* of the causes specified in K.S.A. 47-830, and amendments thereto. Such fine may be assessed in lieu of or in addition to such discipline. The proceedings under this act shall be conducted in accordance with the Kansas administrative procedure act, and the board shall have all the powers granted therein. All fines collected pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. Actual costs related to investigation, adjudication and enforcement shall be deducted and credited to the veterinary examiners fee fund.

Sec. 5. K.S.A. 47-821 and K.S.A. 2011 Supp. 47-822, 47-830 and 47-842 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 9, 2012.

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## CHAPTER 11

HOUSE BILL No. 2460  
(Amended by Chapter 171)

AN ACT concerning retirement and benefits; relating to the Kansas public employees retirement system and systems thereunder; employer affiliation, participation by certain employees and contribution rate; *applicability of certain federal internal revenue code provisions*; amending K.S.A. 74-4910 and K.S.A. 2011 Supp. 74-4920 and 74-49,123 and repealing the existing sections.

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

Section 1. K.S.A. 74-4910 is hereby amended to read as follows: 74-4910. (1) An eligible employer may join the system on January 1 of any year. Application for affiliation shall be in the form of a resolution approved by the governing or legislative body of the eligible employer or by any other body or officer authorized by law or recognized by the board to approve the action. *Such application may be for participation with regard to: (a) All employees who are employed by the participating employer on or after the employer's entry date; (b) all employees employed by the participating employer immediately prior to and on the employer's entry date; or (c) all individuals which are referred to in subsections (1)(a) and (1)(b). The application shall include a statement of the group or groups to be covered. Any such application, upon approval by the board of trustees, shall be irrevocable, except that extension of coverage to any of the employee groups referred to in subsections (1)(a) or (1)(b) not covered in the employer's initial application may be obtained by supplemental application to the board, in such form as may be provided by the board, with such coverage to be effective on January 1 of any succeeding year.* No city or township shall become a participating employer except by the adoption of a resolution therefor, which shall be published once in the official city or township newspaper or, if there is none, in a newspaper of general circulation in the city or county. No such resolution shall take effect until 60 days after its final publication. If within 60 days of its final publication a petition signed by electors equal in number to not less than 10% of the electors who voted at the last preceding regular election in the township, in the case of townships, the last regular city election in the city, in the case of cities is filed in the office of the clerk of such city, or township demanding that such resolution be submitted to a vote of the electors, the resolution shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon. A 2/

3 vote of the members-elect of the governing body shall be necessary for the affiliation of any eligible employer other than a city or township. An application for affiliation with the system shall be filed with the board not later than 30 days prior to the date participation is to begin, except as such time limit may be extended by the board. Upon the filing of a certified copy of such resolutions with the board an election pursuant to this section shall be irrevocable, and the employer shall become a participating employer on January 1 of the year immediately following the filing of such election with the board.

(2) The state of Kansas in its capacity as an eligible employer, shall become, by operation of law, a participating employer on the first entry date. The Kansas turnpike authority shall not become a participating employer nor shall its officers or employees be covered by the retirement system until such time as its governing body by a  $\frac{2}{3}$  vote of the members of such governing body adopts a resolution for affiliation and files the same in the same manner and on the same conditions as in the case of an eligible employer other than a city or township.

(3) If a participating employer is paying or has paid the salary or other compensation of the judge, clerk or any other employee, whether elective or appointive, such judge, clerk or other employee of such court or courts, whether elective or appointive, shall be deemed an employee of the participating employer. Such employee shall be governed by the provisions governing other eligible employees of such participating employer. Any participating employer which has not heretofore included such employees as eligible employees under the retirement system shall on the first day of the month coinciding with or following the effective date of this act include such employees if otherwise eligible as eligible employees under the retirement system. Such employees, whether elective or appointive, if employed on the employer's entry date may elect to pay ~~forthwith~~ the employee contributions from the employer's entry date and thereby be governed by the provisions governing other employees employed by the participating employer on entry date except that no such employee shall be considered to be *a new employees employee* on the first day of the month coinciding with or following the effective date of this act and commence making employee contributions in compliance with other provisions governing the retirement system and the participating employer shall make the employer contributions in accordance with the alternative elected by the employee and other provisions governing the retirement system.

(4) Any employer whose employees are covered by social security and who otherwise do not meet the provisions of subsection (13) of K.S.A. 74-4902, and amendments thereto, may elect to affiliate under this section upon meeting the definition of a governmental entity or instrumentality as determined by the system. If, subsequent to such determination, the United States internal revenue service determines that such employer

does not meet the definition of a governmental entity or instrumentality, such affiliation shall be null and void and all employee accrued rights associated with such affiliation shall be null and void and the system shall refund such amounts presently credited to each employee's account and an equivalent amount to the employer for each employee. The provisions of this subsection shall apply to current and future participating employers.

(5) For affiliations on and after January 1, 1999, any eligible employer, prior to the filing of an application for affiliation under this system, shall request the board of trustees to submit a proposal for such affiliation including an estimate of the employer's contribution rate necessary to comply with the actuarial standard of this system. Such eligible employer shall furnish all necessary data from which such proposal is prepared, and shall pay all costs involved.

Sec. 2. K.S.A. 2011 Supp. 74-4920 is hereby amended to read as follows: 74-4920. (1) (a) Upon the basis of each annual actuarial valuation and appraisal as provided for in subsection (3)(a) of K.S.A. 74-4908, and amendments thereto, the board shall certify, on or before July 15 of each year, to the division of the budget in the case of the state and to the agent for each other participating employer an actuarially determined estimate of the rate of contribution which will be required, together with all accumulated contributions and other assets of the system, to be paid by each such participating employer to pay all liabilities which shall exist or accrue under the system, including amortization of the actuarial accrued liability as determined by the board. The board shall determine the actuarial cost method to be used in annual actuarial valuations, to determine the employer contribution rates that shall be certified by the board. Such certified rate of contribution, amortization methods and periods and actuarial cost method shall be based on the standards set forth in subsection (3)(a) of K.S.A. 74-4908, and amendments thereto, and shall not be based on any other purpose outside of the needs of the system.

(b) (i) For employers affiliating on and after January 1, 1999, upon the basis of an annual actuarial valuation and appraisal of the system conducted in the manner provided for in K.S.A. 74-4908, and amendments thereto, the board shall certify, on or before July 15 of each year to each such employer an actuarially determined estimate of the rate of contribution which shall be required to be paid by each such employer to pay all of the liabilities which shall accrue under the system from and after the entry date as determined by the board, upon recommendation of the actuary. Such rate shall be termed the employer's participating service contribution and shall be uniform for all participating employers. Such additional liability shall be amortized as determined by the board. For all participating employers described in this section, the board shall determine the actuarial cost method to be used in annual actuarial valu-

ations to determine the employer contribution rates that shall be certified by the board.

(ii) The board shall determine for each such employer separately an amount sufficient to amortize all liabilities for prior service costs which shall have accrued at the time of entry into the system. On the basis of such determination the board shall annually certify to each such employer separately an actuarially determined estimate of the rate of contribution which shall be required to be paid by that employer to pay all of the liabilities for such prior service costs. Such rate shall be termed the employer's prior service contribution.

(2) The division of the budget and the governor shall include in the budget and in the budget request for appropriations for personal services the sum required to satisfy the state's obligation under this act as certified by the board and shall present the same to the legislature for allowance and appropriation.

(3) Each other participating employer shall appropriate and pay to the system a sum sufficient to satisfy the obligation under this act as certified by the board.

(4) Each participating employer is hereby authorized to pay the employer's contribution from the same fund that the compensation for which such contribution is made is paid from or from any other funds available to it for such purpose. Each political subdivision, other than an instrumentality of the state, which is by law authorized to levy taxes for other purposes, may levy annually at the time of its levy of taxes, a tax which may be in addition to all other taxes authorized by law for the purpose of making its contributions under this act and, in the case of cities and counties, to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, which tax, together with any other fund available, shall be sufficient to enable it to make such contribution. In lieu of levying the tax authorized in this subsection, any taxing subdivision may pay such costs from any employee benefits contribution fund established pursuant to K.S.A. 12-16,102, and amendments thereto. Each participating employer which is not by law authorized to levy taxes as described above, but which prepares a budget for its expenses for the ensuing year and presents the same to a governing body which is authorized by law to levy taxes as described above, may include in its budget an amount sufficient to make its contributions under this act which may be in addition to all other taxes authorized by law. Such governing body to which the budget is submitted for approval, may levy a tax sufficient to allow the participating employer to make its contributions under this act, which tax, together with any other fund available, shall be sufficient to enable the participating employer to make the contributions required by this act.

(5) (a) The rate of contribution certified to a participating employer as provided in this section shall apply during the fiscal year of the partic-

ipating employer which begins in the second calendar year following the year of the actuarial valuation.

(b) (i) Except as specifically provided in this section, for fiscal years commencing in calendar year 1996 and in each subsequent calendar year, the rate of contribution certified to the state of Kansas shall in no event exceed the state's contribution rate for the immediately preceding fiscal year by more than 0.2% of the amount of compensation upon which members contribute during the period.

(ii) Except as specifically provided in this subsection, for the fiscal years commencing in the following calendar years, the rate of contribution certified to the state of Kansas and to the participating employers under K.S.A. 74-4931, and amendments thereto, shall in no event exceed the state's contribution rate for the immediately preceding fiscal year by more than the following amounts expressed as a percentage of compensation upon which members contribute during the period: (A) For the fiscal year commencing in calendar year 2005, an amount not to exceed more than 0.4% of the amount of the immediately preceding fiscal year; (B) for the fiscal year commencing in calendar year 2006, an amount not to exceed more than 0.5% of the amount of the immediately preceding fiscal year; and (C) for the fiscal year commencing in calendar year 2007 and in each subsequent calendar year, an amount not to exceed more than 0.6% of the amount of the immediately preceding fiscal year.

(iii) Except as specifically provided in this section, for fiscal years commencing in calendar year 1997 and in each subsequent calendar year, the rate of contribution certified to participating employers other than the state of Kansas shall in no event exceed such participating employer's contribution rate for the immediately preceding fiscal year by more than 0.15% of the amount of compensation upon which members contribute during the period.

(iv) Except as specifically provided in this subsection, for the fiscal years commencing in the following calendar years, the rate of contribution certified to participating employers other than the state of Kansas shall in no event exceed the contribution rate for such employers for the immediately preceding fiscal year by more than the following amounts expressed as a percentage of compensation upon which members contribute during the period: (A) For the fiscal year commencing in calendar year 2006, an amount not to exceed more than 0.4% of the amount of the immediately preceding fiscal year; (B) for the fiscal year commencing in calendar year 2007, an amount not to exceed more than 0.5% of the amount of the immediately preceding fiscal year; and (C) for the fiscal year commencing in calendar year 2008 and in each subsequent calendar year, an amount not to exceed more than 0.6% of the amount of the immediately preceding fiscal year.

(v) As part of the annual actuarial valuation, there shall be a separate employer rate of contribution calculated for the state of Kansas, a separate

employer rate of contribution calculated for participating employers under K.S.A. 74-4931, and amendments thereto, a combined employer rate of contribution calculated for the state of Kansas and participating employers under K.S.A. 74-4931, and amendments thereto, and a separate employer rate of contribution calculated for all other participating employers.

(vi) There shall be a combined employer rate of contribution certified to the state of Kansas and participating employers under K.S.A. 74-4931, and amendments thereto. There shall be a separate employer rate of contribution certified to all other participating employers.

(vii) If the combined employer rate of contribution calculated for the state of Kansas and participating employers under K.S.A. 74-4931, and amendments thereto, is greater than the separate employer rate of contribution for the state of Kansas, the difference in the two rates applied to the actual payroll of the state of Kansas for the applicable fiscal year shall be calculated. This amount shall be certified by the board for deposit as additional employer contributions to the retirement benefit accumulation reserve for the participating employers under K.S.A. 74-4931, and amendments thereto.

(6) The actuarial cost of any legislation enacted in the 1994 session of the Kansas legislature will be included in the June 30, 1994, actuarial valuation in determining contribution rates for participating employers.

(7) The actuarial cost of the provisions of K.S.A. 74-4950i, *and amendments thereto*, will be included in the June 30, 1998, actuarial valuation in determining contribution rates for participating employers. The actuarial accrued liability incurred for the provisions of K.S.A. 74-4950i, *and amendments thereto*, shall be amortized over 15 years.

(8) Except as otherwise provided by law, the actuarial cost of any legislation enacted by the Kansas legislature, except the actuarial cost of K.S.A. 74-49,114a, and amendments thereto, shall be in addition to the employer contribution rates certified for the employer contribution rate in the fiscal year immediately following such enactment.

(9) Notwithstanding the provisions of subsection (8), the actuarial cost of the provisions of K.S.A. 74-49,109 *et seq.*, and amendments thereto, shall be first reflected in employer contribution rates effective with the first day of the first payroll period for the fiscal year 2005. The actuarial accrued liability incurred for the provisions of K.S.A. 74-49,109 *et seq.*, and amendments thereto, shall be amortized over 10 years.

(10) The cost of the postretirement benefit payment provided pursuant to the provisions of K.S.A. 2011 Supp. 74-49,114b, and amendments thereto, for retirants other than local retirants as described in subsection (11) or insured disability benefit recipients shall be paid in the fiscal year commencing on July 1, 2007.

(11) The actuarial accrued liability incurred for the provisions of K.S.A. 2011 Supp. 74-49,114b, and amendments thereto, for the KPERS

local group and retirants who were employees of local employers which affiliated with the Kansas police and firemen's retirement system shall be amortized over 10 years.

(12) The cost of the postretirement benefit payment provided pursuant to the provisions of K.S.A. 2011 Supp. 74-49,114c, and amendments thereto, for retirants other than local retirants as described in subsection (13) or insured disability benefit recipients shall be paid in the fiscal year commencing on July 1, 2008.

(13) The actuarial accrued liability incurred for the provisions of K.S.A. 2011 Supp. 74-49,114c, and amendments thereto, for the KPERS local group and retirants who were employees of local employers which affiliated with the Kansas police and firemen's retirement system shall be amortized over 10 years.

(14) The board with the advice of the actuary may fix the contribution rates for participating employers joining the system after one year from the first entry date or for employers who exercise the option contained in K.S.A. 74-4912, and amendments thereto, at rates different from the rate fixed for employers joining within one year of the first entry date.

~~(15) For employers affiliating on and after January 1, 1999, the rates of contribution certified to the participating employer as provided in this section shall apply during the fiscal year immediately following such certification, but the rate of contribution during the first year following the employer's entry date shall be equal to 7% of the amount of compensation on which members contribute during the year. Any amount of such first year's contribution which may be in excess of the necessary current service contribution shall be credited by the board to the respective employer's prior service liability.~~

~~(16)~~(15) Employer contributions shall in no way be limited by any other act which now or in the future establishes or limits the compensation of any member.

~~(17)~~(16) Notwithstanding any provision of law to the contrary, each participating employer shall remit quarterly, or as the board may otherwise provide, all employee deductions and required employer contributions to the executive director for credit to the Kansas public employees retirement fund within three days after the end of the period covered by the remittance by electronic funds transfer. Remittances of such deductions and contributions received after such date are delinquent. Delinquent payments due under this subsection shall be subject to interest at the rate established for interest on judgments under subsection (a) of K.S.A. 16-204, and amendments thereto. At the request of the board, delinquent payments which are due or interest owed on such payments, or both, may be deducted from any other moneys payable to such employer by any department or agency of the state.

Sec. 3. K.S.A. 2011 Supp. 74-49,123 is hereby amended to read as

follows: 74-49,123. (a) This section applies to the Kansas public employees retirement system and to all other public retirement plans administered by the board of trustees.

(b) As used in this section:

(1) “Federal internal revenue code” means the federal internal revenue code of 1954 or 1986, as amended and as applicable to a governmental plan as in effect on July 1, 2008; and

(2) “retirement plan” includes the Kansas public employees retirement system and all other Kansas public retirement plans and benefit structures, which are administered by the board.

(c) In addition to the federal internal revenue code provisions otherwise noted in each retirement plan’s law, and in order to satisfy the applicable requirements under the federal internal revenue code, the retirement plans shall be subject to the following provisions, notwithstanding any other provision of the retirement plan’s law:

(1) The board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan’s law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, death or for any other reason may not be applied to increase the benefits any member would otherwise receive under the retirement plan’s law. However, forfeitures may be used to reduce an employer’s contribution.

(3) All benefits paid from the retirement plan shall be distributed in accordance with a *good faith interpretation* of the requirements of section 401(a)(9) of the federal internal revenue code and the regulations under that section. Notwithstanding any other provision of these rules and regulations, effective on and after January 1, 2003, the retirement plan is subject to the following provisions:

(A) Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which such member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which such member terminates employment, whichever is later, the board will begin distributing the benefit as required by this section.

(B) The member’s entire interest must be distributed over the member’s life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the federal internal rev-

enue code, including the incidental death benefit requirement in section 401(a)(9)(G) of the federal internal revenue code, and the regulations implementing that section.

(C) The life expectancy of a member, the member's spouse or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

(D) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death and no longer than the remaining period over which distributions commenced.

(E) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(i) In accordance with federal regulations, distributed over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year of the member's death; or

(ii) distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(F) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the federal internal revenue code.

(G) The death and disability benefits provided by a retirement plan are limited by the incidental benefit rule set forth in section 401(a)(9)(G) of the federal internal revenue code and treasury regulation 1.401-1(b)(1)(i).

(4) Distributions from the retirement plans may be made only upon retirement, separation from service, disability or death.

(5) The board or its designee may not:

(A) Determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries, in a manner that discriminates in favor of members who are considered officers, supervisors or highly compensated, as prohibited under section 401(a)(4) of the federal internal revenue code.

(6) Subject to the provisions of this subsection, benefits paid from, and employee contributions made to, the retirement plans shall not exceed the maximum benefits and the maximum annual additions, respectively, permissible under section 415 of the federal internal revenue code.

(A) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in section 415(b) of the federal internal revenue code, subject to the applicable adjustments in that section. Beginning January 1, 1995, a participant may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A)

of the federal internal revenue code, subject to the applicable adjustments in section 415 of the federal internal revenue code.

(B) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the retirement plans if the amount of the contribution would exceed the limits under section 415(c) or 415(n) of the federal internal revenue code subject to the following:

(i) Where the retirement plan's law requires a lump-sum payment, for the purchase of service credit, the board may establish a periodic payment plan in order to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code.

(ii) If the board's option under subdivision (i) will not avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code, the board shall reduce or deny the contribution.

(C) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if an active member makes one or more contributions to purchase permissive service credit under a retirement plan, then the requirements of this section shall be treated as met only if:

(i) The requirements of section 415(b) of the federal internal revenue code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of such section; or

(ii) the requirements of section 415(c) of the federal internal revenue code are met, determined by treating all such contributions as annual additions for purposes of such section. For purposes of applying subparagraph (i) a retirement plan shall not fail to meet the reduced limit under section 415(b)(2)(C) of the federal internal revenue code solely by reason of this paragraph (C), and for purposes of applying subparagraph (ii), a retirement plan shall not fail to meet the percentage limitation under section 415(c)(1)(B) of the federal internal revenue code solely by reason of this paragraph.

(iii) For purposes of this paragraph, the term "permissive service credit" means service credit:

(a) Specifically recognized by a retirement plan's law for purposes of calculating a member's benefit under that retirement plan;

(b) which such member has not received under a retirement plan; and

(c) which such member may receive under a retirement plan's law only by making a voluntary additional contribution, in an amount determined under the retirement plan's law and procedures established by the board, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

(iv) A retirement plan shall fail to meet the requirements of this par-

agraph if the retirement plan's law specifically provides for a purchase of nonqualified service purchase, and if:

(a) More than five years of nonqualified service credit are taken into account for purposes of this paragraph; or

(b) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under a retirement plan. For purposes of this paragraph, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means the same as provided in section 415(n)(3)(C) of the federal internal revenue code.

(v) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the federal internal revenue code applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) The limitations of subparagraph (iv) shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) the distribution rules applicable under federal law to a retirement plan shall apply to such amounts and any benefits attributable to such amounts.

(vi) For an eligible member, the limitation of section 415(c)(1) of the federal internal revenue code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the statute as in effect on August 5, 1997. For purposes of this subparagraph, an eligible member is an individual who first became a member in the retirement plan before January 1, 1998.

(D) Subject to approval by the internal revenue service, the board shall maintain a qualified governmental excess benefit arrangement under section 415(m) of the federal internal revenue code. The board shall establish the necessary and appropriate procedures for the administration of such benefit arrangement under the federal internal revenue code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be paid from this benefit arrangement. The amount of any contribution that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be credited to this benefit arrangement. The qualified excess benefit arrangement shall be a separate portion of the retirement plan. The qualified excess benefit arrangement is subject to the following requirements:

(i) The benefit arrangement shall be maintained solely for the purpose of providing to participants in the retirement plans that part of the participant's annual benefit otherwise payable under the terms of the act that exceeds the limitations on benefits imposed by section 415 of the federal internal revenue code; and

(ii) participants do not have an election, directly or indirectly, to defer compensation to the excess benefit arrangement.

(E) For purposes of applying these limits only and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by treasury regulation section 1.415(c)-2. Specifically, compensation shall be defined as wages within the meaning of section 3401(a) of the federal internal revenue code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3) and 6052 of the federal internal revenue code. Compensation shall be determined without regard to any rules under section 3401(a) of the federal internal revenue code that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the exception for agricultural labor in section 3401(a)(2) of the federal internal revenue code.

(i) However, for limitation years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the federal internal revenue code. For limitation years beginning after December 30, 2000, compensation shall also include any elective amounts that are not includable in the gross income of the employee by reason of section 132(f)(4) of the federal internal revenue code.

(ii) The definition of compensation shall exclude employee contributions picked up under section 414(h)(2) of the federal internal revenue code.

(iii) For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of ~~2~~ *two and a half* months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

(a) The payment is regular compensation for services during the employee's regular working hours or compensation for services outside the employee's regular working hours, such as overtime or shift differential, commissions, bonuses or other similar payments, and absent a severance from employment, the payments would have been paid to the employee while the employee continues in employment with the employer; ~~or~~

(b) the payment is for unused accrued *bona fide* sick, vacation or other leave that the employee would have been able to use if employment had continued; ~~or~~

(c) *for limitation years beginning on and after January 1, 2012, the payment is made pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the member at the same time if the member had continued employment with the em-*

ployer and only to the extent that the payment is includible in the member's gross income.

(iv) Any payments not described in paragraph (iii) are not considered compensation if paid after severance from employment, even if they are paid within two and a half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service, within the meaning of section 414(u)(1) of the federal internal revenue code, to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(v) An employee who is in qualified military service, within the meaning of section 414(u)(1) of the federal internal revenue code, shall be treated as receiving compensation from the employer during such period of qualified military service equal to: (a) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or (b) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve-month period immediately preceding the qualified military service, or if shorter, the period of employment immediately preceding the qualified military service.

~~(iv)~~(vi) Back pay, within the meaning of treasury regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(7) On and after January 1, 2009, for purposes of applying the limits under section 415(b) of the federal internal revenue code, the following shall apply:

(A) A member's applicable limit shall be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

(B) to the extent the member's annual benefit equals or exceeds such limit, the member shall no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than such limit;

(C) thereafter, in any subsequent limitation year, the member's annual benefit including any automatic cost-of-living increase applicable shall be tested under the then applicable benefit limit including any adjustment to the dollar limit under section 415(b)(1)(A) or 415(d) of the federal internal revenue code and the regulations thereunder; and

(D) in no event shall a member's annual benefit payable from a retirement plan in any limitation year be greater than the limit applicable

at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the federal internal revenue code and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding sentence is applied by reducing the limit under section 415(b) of the federal internal revenue code applicable at the annuity starting date to an actuarially equivalent amount determined using the assumptions specified in treasury regulation section 1.415(b)-1(c)(2)(ii) that take into account the death benefits under the form of benefit. This subsection applies to distributions made on and after January 1, 1993. A distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a transfer made from the retirement system.

(i) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (a) Any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life or the life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary or for a specified period of 10 years or more; (b) any distribution to the extent such distribution is required under section 401(a)(9) of the federal internal revenue code; (c) the portion of any distribution that is not includable in gross income; and (d) any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the federal internal revenue code, or to a qualified defined contribution plan described in section 401(a) of the federal internal revenue code or to a qualified plan described in section 403(a) of the federal internal revenue code, *that agrees to separately account for amounts so transferred and earnings on such amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable*, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the federal internal revenue code or to an annuity contract described in section 403(b) of the federal internal revenue code, that agrees to separately account for amounts so transferred and earnings thereon, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable.

(ii) An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the federal internal revenue code;

(b) an individual retirement annuity described in section 408(b) of the federal internal revenue code;

(c) an annuity plan described in section 403(a) of the federal internal revenue code;

(d) a qualified trust described in section 401(a) of the federal internal revenue code;

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the federal internal revenue code;

(f) effective January 1, 2002, a plan eligible under section 457(b) of the federal internal revenue code that is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into the plan from a retirement plan; or

(g) effective January 1, 2008, a roth IRA described in section 408(A) of the federal internal revenue code.

(iii) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the federal internal revenue code.

(iv) A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the federal internal revenue code. Effective July 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the federal internal revenue code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(v) A direct rollover is a payment by the retirement system to the eligible retirement plan specified by the distributee.

(8) Notwithstanding any law to the contrary, the board may accept a direct or indirect eligible rollover distributions for the purpose of the purchase of service credit. In addition, the board may accept a direct trustee to trustee transfer from a deferred compensation plan under section 457(b) of the federal internal revenue code or a tax sheltered annuity under section 403(b) of the federal internal revenue code for: (A) The purchase of permissive service credit, as defined under section 415(n)(3)(A) of the federal internal revenue code; or (B) a repayment to which section 415 of the federal internal revenue code does not apply pursuant to section 415(k)(3) of the federal internal revenue code. Any

such transfer shall be allowed as provided in this subsection to the extent permitted by law, subject to any conditions, proofs or acceptance established or required by the board or the board's designee.

(9) Where required by the act, an employer shall pick up and pay contributions that would otherwise be payable by members of a retirement plan in accordance with section 414(h)(2) of the federal internal revenue code as follows:

(A) The contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee;

(B) the employee must not have been given the option of receiving the amounts directly instead of having them paid to the retirement plan; and

(C) the pickup shall apply to amounts that a member elects to contribute to receive credit for prior or participating service if the election is irrevocable and applies to amounts contributed before retirement.

(10) (A) Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the federal internal revenue code and the uniformed services employment and reemployment rights act of 1994.

(B) *Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in chapter 43 of title 38, United States code, to the extent required by section 401(a)(37) of the federal internal revenue code, survivors of a member in the system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. A deceased member's period of qualified military service must be counted for vesting purposes.*

(C) *Effective with respect to deaths or disabilities, or both, occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in chapter 43 of title 38, United States code, to the extent permitted by section 414(u)(9) of the federal internal revenue code, for the benefit accrual purposes and in the case of death, for vesting purposes, the member will be treated as having earned years of service for the period of qualified military service, having returned to employment on the day before the death or disability, or both, and then having terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.*

(D) *Beginning January 1, 2009, to the extent required by section 414(u)(12) of the federal internal revenue code, an individual receiving differential wage payments, as defined under section 3401(h)(2) of the federal internal revenue code, from an employer shall be treated as employed by that employer, and the differential wage payment shall be*

*treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the federal internal revenue code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.*

(11) Upon the complete or partial termination of a retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

(d) The plan year for the retirement plan begins on July 1.

(e) The limitation year for purposes of section 415 of the federal internal revenue code is the calendar year.

(f) The board may not engage in a transaction prohibited by section 503(b) of the federal internal revenue code.

(g) (1) For purposes of determining an “actuarial equivalent” or of an “actuarial computation” for members hired prior to July 1, 2009, the board shall use the following:

(A) The applicable mortality table is specified in revenue ruling 2001-62 or revenue ruling 2007-67, as applicable; and

(B) the applicable interest factor is 8% per year.

(2) For purposes of determining an “actuarial equivalent” or an “actuarial computation” for members hired on or after July 1, 2009, the board shall use the following:

(A) The applicable mortality table is the 50/50 male/female blend of the RP 2000 health annuitant mortality table, projected to 2025; and

(B) The applicable interest factor is 8% per year.

(3) For converting amounts payable under the partial lump sum option, the board shall use the following:

(A) The applicable mortality table is a 50/50 male/female blend of the 1983 group annuity mortality table; and

(B) the applicable interest factor is 8% per year.

(4) For benefit testing under section 415(b) of the federal internal revenue code, the factors required by treasury regulations shall be used. The applicable mortality table is specified in revenue ruling 2001-62 for years prior to January 1, 2009, and notice 2008-85 for years after December 31, 2008.

Sec. 4. K.S.A. 74-4910 and K.S.A. 2011 Supp. 74-4920 and 74-49,123 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 9, 2012.

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## CHAPTER 12

HOUSE BILL No. 2441  
(Amended by Chapter 166)

AN ACT designating a portion of United States highway 75 as the Floyd H. Robinson memorial highway; amending K.S.A. 2011 Supp. 68-1051 and repealing the existing section.

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

New Section 1. The portion of United States highway 75 from the northern border of Coffey county, then south on United States highway 75 to the northern border of Woodson county is hereby designated as the Floyd H. Robinson memorial highway Vietnam MIA. The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the highway is the Floyd H. Robinson memorial highway Vietnam MIA, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and an additional 50% of the initial cost to defray future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 2. K.S.A. 2011 Supp. 68-1051 is hereby amended to read as follows: 68-1051. The portion of United States highway 75 where it enters the state on the Kansas-Nebraska border on the north then south to the junction with K-9 then west to the junction of K-9 with K-62 then south to the junction of K-62 with K-16 then east to the junction with United States highway 75 then south on United States highway 75 to the southern city limits of Holton, then from the junction of United States highway 75 and N.W. 46th street in Shawnee county then south on United States highway 75 to the *southern boundary of Osage county, then from the northern boundary of Woodson county south on United States highway 75 to the Kansas-Oklahoma border*, is hereby designated the purple heart/combat wounded veterans highway. The secretary of transportation shall place markers along the highway right-of-way at proper intervals to indicate that the highway is the purple heart/combat wounded veterans highway. The secretary of transportation may accept and administer gifts and donations to aid in obtaining suitable highway signs bearing the proper approved inscription.

Sec. 3. K.S.A. 2011 Supp. 68-1051 is hereby repealed.

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

Approved March 9, 2012.

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## CHAPTER 13

## HOUSE BILL No. 2484

AN ACT concerning civil procedure; relating to depositions; amending K.S.A. 2011 Supp. 60-228 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 60-228 is hereby amended to read as follows: 60-228. (a) *Within the United States.* (1) *Inside this state.* Depositions in this state must be taken before:

(A) An officer or person authorized to administer oaths by the laws of this state; and

(B) a person who is certified as a certified court reporter by the Kansas supreme court.

(2) *Outside this state.* Outside this state, but within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) An officer authorized to administer oaths by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(3) *Granting of commission.* A court of this state in which an action is pending may grant a commission to one or more persons to take depositions inside or outside this state. The clerk may issue the commission under the seal of the court.

(b) *In a foreign country.* (1) *In general.* A deposition may be taken in a foreign country:

(A) Under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a “letter rogatory”;

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) *Issuing a letter of request or a commission.* A letter of request, a commission, or both may be issued:

(A) On appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Form of a request, notice or commission.* When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed “To the Appropriate Authority in (name of country).” A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of request; admitting evidence.* Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath or because of any similar departure from the requirements for depositions taken within this state.

(c) *Disqualification.* A deposition must not be taken before a person who is any party's relative, employee or attorney, who is related to or employed by any party's attorney or who is financially interested in the action.

Sec. 2. K.S.A. 2011 Supp. 60-228 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 14, 2012.

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## CHAPTER 14

### HOUSE BILL No. 2569

AN ACT concerning public records; relating to legislative review of exceptions to disclosure; amending K.S.A. 2011 Supp. 45-229 and repealing the existing section.

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

Section 1. K.S.A. 2011 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 subsection (h), all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception to disclosure or substantial amendment of an existing ex-

ception 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 which 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 which 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 which 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.

(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) of this subsection (h) would occur if the records were made public.

(i) Exceptions contained in the following statutes as continued in existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas and 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) of this section during 2009 are hereby continued in existence until July 1, 2015, at which time such exceptions shall expire: 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, 17-2036, 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, 38-1664, 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, 40-5301, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43), (a)(45) and (a)(46) of 45-221, 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, 60-3351, 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, 72-972a, 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, 74-99d05, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-53,105, 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.

(j) Exceptions contained in the following statutes as continued in existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas and 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) of this section during 2010, are hereby continued in existence until July 1, 2016, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 39-970, 44-1132, 60-3333, 65-525, 65-5117, 65-6016, 65-6017, 65-6154, 71-218, 74-7508, 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) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-50,184, 74-8134, 74-99b06 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 2011 are hereby continued in existence until July 1, 2017, at which time such exceptions shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-8772 and 75-7427.*

Sec. 2. K.S.A. 2011 Supp. 45-229 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 14, 2012.

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## CHAPTER 15

## HOUSE BILL No. 2459

AN ACT concerning driver's licenses; relating to motorcycles; amending K.S.A. 2011 Supp. 8-240 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 8-240 is hereby amended to read as follows: 8-240. (a) (1) Every application for an instruction permit shall be made upon a form furnished by the division of vehicles and accompanied by a fee of \$2 for class A, B, C or M and \$5 for all commercial classes. Every other application shall be made upon a form furnished by the division and accompanied by an examination fee of \$3, unless a different fee is required by K.S.A. 8-241, and amendments thereto, and by the proper fee for the license for which the application is made. If the applicant is not required to take an examination the examination fee shall not be required. The examination shall consist of three tests, as follows: ~~(1)~~(A) Vision; ~~(2)~~(B) written; and ~~(3)~~(C) driving. If the applicant fails the vision test, the applicant may have correction of vision made and take the vision test again without any additional fee. If an applicant fails the written test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails the driving test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails to pass all three of the tests within a period of six months from the date of original application and desires to take additional tests, the applicant shall file an application for reexamination upon a form furnished by the division, which shall be accompanied by a reexamination fee of \$3, except that any applicant who fails to pass the written or driving portion of an examination four times within a six-month period, shall be required to wait a period of six months from the date of the last failed examination before additional examinations may be given. Upon the filing of such application and the payment of such reexamination fee, the applicant shall be entitled to reexamination in like manner and subject to the additional fees and time limitation as provided for examination on an original application. If the applicant passes the reexamination, the applicant shall be issued the classified driver's license for which the applicant originally applied, which license shall be issued to expire as if the applicant had passed the original examination.

(2) *Applicants for class M licenses who have completed prior motorcycle safety training in accordance with department of defense instruction 6055.04 (DoDI 6055.04) are not required to complete further written and driving testing pursuant to paragraph (1) of this subsection.*

(b) (1) For the purposes of obtaining any driver's license or instruction permit, an applicant shall submit, with the application, proof of age

and proof of identity as the division may require. The applicant also shall provide a photo identity document, except that a non-photo identity document is acceptable if it includes both the applicant's full legal name and date of birth, and documentation showing the applicant's name, the applicant's address of principal residence and the applicant's social security number. The applicant's social security number shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number the applicant shall provide proof of lawful presence and Kansas residency. The division shall assign a distinguishing number to the license or permit.

(2) The division shall not issue any driver's license or instruction permit to any person who fails to provide proof that the person is lawfully present in the United States. Before issuing a driver's license or instruction permit to a person, the division shall require valid documentary evidence that the applicant: (A) Is a citizen or national of the United States; (B) is an alien lawfully admitted for permanent or temporary residence in the United States; (C) has conditional permanent resident status in the United States; (D) has an approved application for asylum in the United States or has entered into the United States in refugee status; (E) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States; (F) has a pending application for asylum in the United States; (G) has a pending or approved application for temporary protected status in the United States; (H) has approved deferred action status; or (I) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(3) If an applicant provides evidence of lawful presence set out in subsections (b)(2)(E) through (2)(I), or is an alien lawfully admitted for temporary residence under subsection (b)(2)(B), the division may only issue a driver's license to the person under the following conditions: (A) A driver's license issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year; (B) a drivers' license issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires; (C) no driver's license issued pursuant to this subparagraph shall be for a longer period of time than the time period permitted by subsection (a) of K.S.A. 8-247, and amendments thereto; and (D) a driver's license issued pursuant to this subparagraph may be renewed, subject at the time of renewal, to the same requirements and conditions as set out in this subsection (b) for the issuance of the original driver's license.

(4) The division shall not issue any driver's license or instruction per-

mit to any person who is not a resident of the state of Kansas, except as provided in K.S.A. 8-2,148, and amendments thereto.

(5) The division shall not issue a driver's license to a person holding a driver's license issued by another state without making reasonable efforts to confirm that the person is terminating or has terminated the driver's license in the other state.

(6) The parent or guardian of an applicant under 16 years of age shall sign the application for any driver's license submitted by such applicant.

(c) Every application shall state the full legal name, date of birth, gender and address of principal residence of the applicant, and briefly describe the applicant, and shall state whether the applicant has been licensed as a driver prior to such application, and, if so, when and by what state or country. Such application shall state whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation or refusal. In addition, applications for commercial drivers' licenses and instruction permits for commercial licenses must include the following: The applicant's social security number; the person's signature; the person's colored digital photograph; certifications, including those required by 49 C.F.R. 383.71(a), effective January 1, 1991; a consent to release driving record information; and, any other information required by the division.

(d) When an application is received from a person previously licensed in another jurisdiction, the division shall request a copy of the driver's record from the other jurisdiction. When received, the driver's record shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(e) When the division receives a request for a driver's record from another licensing jurisdiction the record shall be forwarded without charge.

(f) A fee shall be charged as follows:

(1) For a class C driver's license issued to a person at least 21 years of age, but less than 65 years of age, \$18;

(2) for a class C driver's license issued to a person 65 years of age or older, \$12;

(3) for a class M driver's license issued to a person at least 21 years of age, but less than 65 years of age, \$12.50;

(4) for a class M driver's license issued to a person 65 years of age or older, \$9;

(5) for a class A or B driver's license issued to a person who is at least 21 years of age, but less than 65 years of age, \$24;

(6) for a class A or B driver's license issued to a person 65 years of age or older, \$16;

(7) for any class of commercial driver's license issued to a person 21 years of age or older, \$18; or

(8) for class A, B, C or M, or a farm permit, or any commercial driver's license issued to a person less than 21 years of age, \$20.

A fee of \$10 shall be charged for each commercial driver's license endorsement, except air brake endorsements which shall have no charge.

A fee of \$3 per year shall be charged for any renewal of a license issued prior to the effective date of this act to a person less than 21 years of age.

If one fails to make an original application or renewal application for a driver's license within the time required by law, or fails to make application within 60 days after becoming a resident of Kansas, a penalty of \$1 shall be added to the fee charged for the driver's license.

(g) Any person who possesses an identification card as provided in K.S.A. 8-1324, and amendments thereto, shall surrender such identification card to the division upon being issued a valid Kansas driver's license or upon reinstatement and return of a valid Kansas driver's license.

(h) The division shall require that any person applying for a driver's license submit to a mandatory facial image capture.

(i) The director of vehicles may issue a temporary driver's license to an applicant who cannot provide valid documentary evidence as defined by subsection (b)(2), if the applicant provides compelling evidence proving current lawful presence. Any temporary license issued pursuant to this subsection shall be valid for one year.

Sec. 2. K.S.A. 2011 Supp. 8-240 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 20, 2012.

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## CHAPTER 16

HOUSE BILL No. 2535

(Amended by Chapters 150, 166 and 172)

AN ACT concerning the prisoner review board; updating references and corresponding changes due to the transfer of authority from the Kansas parole board to the prisoner review board; amending K.S.A. 22-3706, 22-3709, 22-3710, 22-3711, 22-3712, 22-3713, 22-3718, 22-3719, 22-3720, 22-3722, 22-3726, 22-4111, 60-4305, 74-7320, 74-7321, 74-9102 and 75-5202 and K.S.A. 2011 Supp. 12-4516, 19-4804, 21-6603, 21-6606, 21-6609, 21-6614, 21-6803, 22-3701, 22-3717, 22-3728, 22-3729, 22-4701, 59-29a02, 74-4911f, 74-9101, 75-4318, 75-4319, 75-5210a, 75-5217, 75-5266, 77-421 and 77-603 and repealing the existing sections; also repealing K.S.A. 22-3707a and 22-3708 and K.S.A. 2011 Supp. 21-6614a, 21-6614b, 21-6614c and 22-3707.

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

Section 1. K.S.A. 2011 Supp. 12-4516 is hereby amended to read as

follows: 12-4516. (a) (1) Except as provided in subsection (b), (c) and (d), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

- (A) Satisfied the sentence imposed; or
- (B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsection (b), (c) and (d), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) a violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603, *prior to its repeal*, or 8-1604, and amendments thereto;

(7) a violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.

(d) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. 8-2,144, and amendments thereto.

(e) When a petition for expungement is filed, the court shall set a

date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state: (1) The defendant's full name;

(2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(3) the defendant's sex, race and date of birth;

(4) the crime for which the defendant was arrested, convicted or diverted;

(5) the date of the defendant's arrest, conviction or diversion; and

(6) the identity of the convicting court, arresting law enforcement agency or diverting authority. A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the ~~Kansas parole~~ *prisoner review* board.

(f) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(g) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer, as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2011 Supp. 75-7c01 *et seq.*, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the arrest, conviction or diversion is to be disclosed; and

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

(h) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, is placed on parole or probation or is granted a suspended sentence for such a violation, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(i) Subject to the disclosures required pursuant to subsection (g), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

(j) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the com-

mission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(12) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(13) the attorney general, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

(14) the Kansas sentencing commission;

(15) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 *et seq.*, and amendments thereto; or

(16) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto.

Sec. 2. K.S.A. 2011 Supp. 19-4804 is hereby amended to read as follows: 19-4804. (a) An application for compensation shall be made in the manner and form prescribed by the state crime victims compensation board. A victim may seek compensation under this act whether or not an offender has been charged with the crime which results in the victim's loss.

(b) Compensation may not be awarded unless the crime has been reported to an appropriate law enforcement agency within 72 hours after its discovery and the claim has been filed with the local board within 60

days after the filing of such report, unless the local board finds there was good cause for the failure to report such crime within the time required.

(c) Compensation may not be awarded to a victim who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice.

(d) Compensation may not be awarded unless the local board finds the victim has fully cooperated with appropriate law enforcement agencies. The local board may deny, withdraw or reduce an award of compensation for noncooperativeness.

(e) Compensation otherwise payable to a victim shall be diminished:

(1) To the extent, if any, that the economic loss upon which the victim's claim is based is recouped from other persons, including collateral sources; or

(2) to the extent a local board deems reasonable because of the contributory misconduct of the victim.

(f) Compensation may be awarded only if the local board finds a genuine need is present.

(g) No compensation payment may exceed \$500 if the property crime results in a felony charge. If the crime is committed by a juvenile, whether this subsection applies shall be determined on the basis of whether a felony would be charged had the offender been an adult.

(h) No compensation payment may exceed \$250 if the property crime results in a misdemeanor or traffic charge. If the crime is committed by a juvenile, whether this subsection applies shall be determined on the basis of whether a misdemeanor would be charged had the offender been an adult. If the original crime charged was a felony and through plea negotiations the adult or juvenile offender is charged with and pleads guilty or *nolo contendere* to a misdemeanor, in the discretion of the local board, subsection (g) limits may apply to the compensation payment.

(i) If extraordinary circumstances are present and subject to the requirements imposed by subsection (c) of K.S.A. 19-4803, and amendments thereto, the local board may exceed the amounts in subsections (g) and (h).

(j) Compensation for work loss or personal injury due to criminally injurious conduct shall be governed by K.S.A. 74-7301 *et seq.*, and amendments thereto, and rules and regulations promulgated by the state crime victims compensation board for that purpose. No local board may duplicate compensation for criminally injurious conduct through payments under this act.

(k) The local board may determine a floor amount of compensation which would be administratively wasteful. Once such an amount is chosen it shall be made public and must be uniformly applied to all persons filing claims with the local board.

(l) The local board may provide written policy for the handling of an

expedited claims process where prompt assistance and payment of services needed to repair property damage is needed to thwart the possibility of the onset of illness or disease to the victim or victim's family, and where the victim has no other means of paying for such services.

(m) No award made pursuant to this act shall be subject to execution, attachment, garnishment or other legal process, except that an award for allowable expenses shall not be exempt from a claim of a creditor to the extent the creditor has provided products, services or accommodations the costs of which are included in the payment made pursuant to this act.

(n) No assignment or agreement to assign any right to compensation for loss under this act shall be enforceable in this state.

(o) No local fund shall pay any single individual or such individual's immediate family member compensation on more than two claims within a given fiscal year.

(p) No claim shall be allowed unless the crime charged is pursuant to article 37 of chapter 21 of Kansas Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the Kansas Statutes Annotated, or subsection (a)(6) of K.S.A. 2011 Supp. 21-6412, and amendments thereto, or similar crimes in county or municipal penal codes. If the crime charged is pursuant to K.S.A. 21-3707, 21-3708, 21-3722, 21-3725, 21-3734, 21-3736, 21-3737, 21-3739, 21-3748, 21-3749, 21-3750, 21-3753, 21-3754 and 21-3756, prior to their repeal, and K.S.A. 2011 Supp. 21-5806, 21-5815, subsection (a) of 21-5817, 21-5820, 21-5821, 21-5830, 21-5831, 21-5832 and 21-5837, and amendments thereto, no claim for compensation under this act shall be allowed. In addition to claims that may be made for criminally injurious conduct with the state crime victims compensation board, a claim for compensation for property damage may be allowed under this act for crimes charged under K.S.A. 21-3418, 21-3426 or 21-3427, prior to their repeal, and K.S.A. 2011 Supp. 21-5420 or 21-6418, and amendments thereto.

(q) Payment or payments made from a local fund under this act shall not limit, impair or preclude the ability of a court or the ~~parole~~ *parole prisoner review* board to order restitution, and prescribe the manner and conditions of payment of restitution, as allowed by law.

Sec. 3. K.S.A. 2011 Supp. 21-6603 is hereby amended to read as follows: 21-6603. As used in K.S.A. 2011 Supp. 21-6601 through 21-6616, 21-6702 through 21-6712, and 21-6801 through 21-6805, and amendments thereto:

(a) "Court" means any court having jurisdiction and power to sentence offenders for violations of the laws of this state;

(b) "community correctional services program" means a program which operates under the community corrections act and to which a defendant is assigned for supervision, confinement, detention, care or treatment, subject to conditions imposed by the court. A defendant assigned

to a community correctional services program shall be subject to the continuing jurisdiction of the court and in no event shall be considered to be in the custody of or under the supervision of the secretary of corrections;

(c) “correctional institution” means any correctional institution established by the state for the confinement of offenders, and under control of the secretary of corrections;

(d) “house arrest” is an individualized program in which the freedom of an inmate is restricted within the community, home or noninstitutional residential placement and specific sanctions are imposed and enforced. “House arrest” may include:

(1) Electronic monitoring which requires a transmitter to be worn by the defendant or inmate which broadcasts an encoded signal to the receiver located in the defendant’s or inmate’s home. The receiver is connected to a central office computer and is notified of any absence of the defendant or inmate; or

(2) voice identification-encoder which consists of an encoder worn by the defendant or inmate. A computer is programmed to randomly call the defendant or inmate and such defendant or inmate is required to provide voice identification and then insert the encoder into the verifier box, confirming identity;

(e) “parole” means the release of a prisoner to the community by the ~~Kansas parole~~ *Kansas parole prisoner review* board prior to the expiration of such prisoner’s term, subject to conditions imposed by the board and to the secretary of correction’s supervision. Parole also means the release by a court of competent jurisdiction of a person confined in the county jail or other local place of detention after conviction and prior to expiration of such person’s term, subject to conditions imposed by the court and its supervision. Where a court or other authority has filed a warrant against the prisoner, the ~~Kansas parole~~ *Kansas parole prisoner review* board or paroling court may release the prisoner on parole to answer the warrant of such court or authority;

(f) “postrelease supervision,” for crimes committed on or after July 1, 1993, means the same as in K.S.A. 2011 Supp. 21-6803, and amendments thereto;

(g) “probation” means a procedure under which a defendant, convicted of a crime, is released by the court after imposition of sentence, without imprisonment except as provided in felony cases, subject to conditions imposed by the court and subject to the supervision of the probation service of the court or community corrections. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence pursuant to subsection (b)(3) of K.S.A. 2011 Supp. 21-6702, and amendments thereto; and

(h) “suspension of sentence” means a procedure under which a de-

defendant, convicted of a crime, is released by the court without imposition of sentence. The release may be with or without supervision in the discretion of the court. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence pursuant to subsection (b)(4) of K.S.A. 2011 Supp. 21-6702, and amendments thereto.

Sec. 4. K.S.A. 2011 Supp. 21-6606 is hereby amended to read as follows: 21-6606. (a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.

(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole, on conditional release or on postrelease supervision for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

(d) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, shall serve the sentence consecutively to the term or terms under which the person was released.

(e) (1) Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(2) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while the person was imprisoned for an offense committed prior to July 1, 1993, and the person is not eligible for the retroactive application of the sentencing guidelines act, the new sentence shall not be aggregated with the old sentence but shall begin when the person is paroled or reaches the conditional release date on the old sentence, whichever is earlier. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence

shall not be aggregated with the old sentence but shall begin when the person is ordered released by ~~the Kansas parole~~ *prisoner review* board or reaches the maximum sentence date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of post incarceration supervision shall be based on the longest term of post incarceration supervision imposed for all crimes upon which sentence was imposed or until discharged from supervision by the ~~Kansas parole~~ *prisoner review* board. The term of post incarceration supervision imposed by this paragraph shall apply retroactively to crimes committed prior to July 1, 2008.

(3) As used in this subsection, “post incarceration supervision” includes parole and postrelease supervision.

(f) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after that date only to the extent that the terms of this subsection are not in conflict with the provisions of K.S.A. 22-3717, and amendments thereto. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:

(1) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by conditional release or discharge on the longest maximum term if the terms are imposed on the same date.

(2) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of imprisonment to reach parole eligibility, conditional release and maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and maximum may be computed and projected from another to determine the controlling sentence.

(3) When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

(4) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. For the purpose of determining the sentence begins date and the parole eligibility and conditional release dates, the inmate shall be given credit on the aggregate sentence for time spent imprisoned on the previous sentences, but not exceeding an amount equal to the previous minimum sentence less the maximum amount of good

time credit that could have been earned on the minimum sentence. For the purpose of computing the maximum date, the inmate shall be given credit for all time spent imprisoned on the previous sentence. This method for computation of the maximum sentence shall be utilized for all sentences computed pursuant to this subsection after July 1, 1983.

Nothing in this subsection (f)(4) shall affect the authority of the ~~Kansas parole prisoner review~~ board to determine the parole eligibility of inmates pursuant to subsection (d) of K.S.A. 22-3717, and amendments thereto.

(5) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, assigned to a community correctional services program, on parole or on conditional release, the amount of time served on probation, on assignment to a community correctional services program, on parole or on conditional release shall not be credited as service on the aggregate sentence in determining the parole eligibility, conditional release and maximum dates, except that credit shall be given for any amount of time spent in a residential facility while on probation or assignment to a community correctional residential services program.

(g) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term. The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

(h) When a defendant is sentenced in a state court and is also under sentence from a federal court or other state court or is subject to sentence in a federal court or other state court for an offense committed prior to the defendant's sentence in a Kansas state court, the court may direct that custody of the defendant may be relinquished to federal or other state authorities and that such state sentences as are imposed may run concurrently with any federal or other state sentence imposed.

Sec. 5. K.S.A. 2011 Supp. 21-6609 is hereby amended to read as follows: 21-6609. (a) The court or the secretary of corrections may implement a house arrest program for defendants or inmates being sentenced by the court or in the custody of the secretary of corrections or as a sanction for offenders who have failed to comply with the conditions of probation, parole or postrelease supervision, except:

(1) No defendant shall be placed by the court under house arrest if found guilty of:

(A) Any crime designated as a class A or B felony in article 34 or 35 of the Kansas Statutes Annotated, prior to their repeal;

(B) subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto;

(C) K.S.A. 2011 Supp. 21-5602, and amendments thereto;

(D) any off-grid felony; or

(E) any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, unless the offender has been sentenced to probation;

(2) no inmate shall be placed under house arrest if such inmate's security status is greater than minimum security; or

(3) no inmate shall be placed under house arrest who has been denied parole by the ~~parole~~ *parole prisoner review* board within the last ~~6~~ six months. Any inmate who, while participating in the house arrest program, is denied parole by the ~~parole~~ *parole prisoner review* board shall be allowed to remain under house arrest until the completion of the sentence or until the inmate is otherwise removed from the program.

(b) At the time of placement of an inmate under house arrest, the court, secretary or house arrest staff shall provide written notification to the sheriff and district or county attorney of the county in which any person under house arrest is to be placed and to the chief law enforcement officer of any incorporated city or town in which such person is to be placed of the placement of the person under house arrest within the county or incorporated city or town.

(c) House arrest sanctions shall be administered by the court and the secretary of corrections, respectively, through rules and regulations, and may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the inmate's liberty.

(d) Upon placement in a house arrest program, the court, secretary or house arrest staff shall inform the offender, and any other people residing with such offender, of the nature and extent of such house arrest monitoring, and shall obtain the written agreement of such offender to comply with all requirements of the program.

(e) The offender shall remain within the property boundaries of the offender's residence at all times during the term of house arrest, except as provided under the house arrest agreement with such offender.

(f) The offender shall allow any law enforcement officer, community corrections officer, court services officer or duly authorized agent of the department of corrections, to enter such offender's residence at any time to verify the offender's compliance with the conditions of the house release.

(g) As a condition of house arrest, the court or secretary may require an offender placed under house arrest to pay any supervision costs associated with the house arrest program.

(h) The offender shall consent to be monitored by:

- (1) An electronic monitoring device on such offender's person;
- (2) an electronic monitoring device in such offender's home;
- (3) a remote blood alcohol monitoring device;
- (4) a home telephone verification procedure;

(5) radio frequency devices; or  
(6) any combination of monitoring methods as the court, secretary or house arrest staff finds necessary.

(i) The secretary or the court may contract for independent monitoring services. Such independent monitoring service shall be able to provide monitoring 24 hours a day, every day of the year, and any other services as determined by the secretary or the court.

(j) An offender violating the provisions of K.S.A. 8-1567, and amendments thereto, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. On a second conviction of K.S.A. 8-1567, and amendments thereto, an offender placed under house arrest shall serve a total of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours. On a third or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed under house arrest shall serve a total of 240 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 240 hours.

(k) As used in this section:

(1) "House arrest staff" means an independent contractor or government entity, and agents thereof, utilized by the secretary or court to administer the provisions of a house arrest program;

(2) "electronic monitoring device" means:

(A) An active or passive global positioning system-enabled device capable of recording and transmitting an offender's location at all times or at designated intervals. Such monitoring device may record or transmit sound, visual images or other information regarding such offender's location, via wireless communication; or

(B) a radio frequency device capable of monitoring an offender's location; and

(3) "remote alcohol monitoring device" means a device capable of monitoring an offender's blood alcohol content via micro fuel cell or deep lung tissue sample. Such monitoring devices shall be of comparable accuracy to roadside breath alcohol testing devices utilized by law enforcement, and shall have wireless or landline telephone transmission capabilities. Such device may be used in conjunction with an alcohol and drug-sensing bracelet to monitor such offender's compliance with the terms of house arrest.

Sec. 6. K.S.A. 2011 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c) ~~and~~, (d) *and* (e), any person convicted in this state of a traffic infraction, cig-

arette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c) ~~and~~, (d) *and* (e), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in subsections (c) ~~and~~, (d) *and* (e), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603, *prior to its repeal*, or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(d) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

(7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2011 Supp. 21-5604, and amendments thereto;

(8) endangering a child or aggravated endangering a child as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2011 Supp. 21-5601, and amendments thereto;

(9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2011 Supp. 21-5602, and amendments thereto;

(10) capital murder as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2011 Supp. 21-5401, and amendments thereto;

(11) murder in the first degree as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto;

(12) murder in the second degree as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto;

(13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto;

(14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto;

(15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto;

(17) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(18) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(e) *Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.*

~~(e)~~(f) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after ~~April 15, 2010 through June 30, 2011~~ *May 19, 2011, through June 30, 2012*, the supreme court may impose a charge, not to exceed ~~\$15~~ \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the ~~Kansas parole~~ *prisoner review* board.

~~(f)~~(g) At the hearing on the petition, the court shall order the peti-

tioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement;

(3) the expungement is consistent with the public welfare.

~~(g)~~(h) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2011 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or

prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2011 Supp. 75-7c01 *et seq.*, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

~~(h)~~(i) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

~~(i)~~(j) Subject to the disclosures required pursuant to subsection ~~(f)~~(g), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

~~(j)~~(k) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records

of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;
- (10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and

prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 *et seq.*, and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; ~~or~~

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act; *or*

(17) *the Kansas bureau of investigation for the purposes of:*

(A) *Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or*

(B) *providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.*

(l) *The provisions of subsection (k)(17) shall apply to records created prior to, on and after July 1, 2011.*

Sec. 7. K.S.A. 2011 Supp. 21-6803 is hereby amended to read as follows: 21-6803. As used in K.S.A. 2011 Supp. 21-6801 through 21-6824, and amendments thereto:

(a) "Aggravating factor" means a substantial and compelling reason justifying an exceptional sentence whereby the sentencing court may impose a departure sentence outside the standard sentencing range for a crime. An aggravating factor may result in a dispositional or durational departure;

(b) "commission" means the Kansas sentencing commission;

(c) “criminal history” means and includes an offender’s criminal record of adult felony, class A misdemeanor, class B person misdemeanor or select misdemeanor convictions and comparable juvenile adjudications at the time such offender is sentenced;

(d) “criminal history score” means the summation of the convictions described as criminal history that place an offender in one of the criminal history score categories listed on the horizontal axis of the sentencing guidelines grids;

(e) “decay factor” means prior convictions that are no longer considered as part of an offender’s criminal history score;

(f) “departure” means a sentence which is inconsistent with the presumptive sentence for an offender;

(g) “dispositional departure” means a departure sentence imposing a nonprison sanction when the presumptive sentence is prison or prison when the presumptive sentence is nonimprisonment;

(h) “dispositional line” means the solid black line on the sentencing guidelines grids which separates the grid blocks in which the presumptive sentence is a term of imprisonment and postrelease supervision from the grid blocks in which the presumptive sentence is nonimprisonment;

(i) “durational departure” means a departure sentence which is inconsistent with the presumptive term of imprisonment or nonimprisonment;

(j) “good time” means a method of behavior control or sanctions utilized by the department of corrections;

(k) “grid” means the sentencing guidelines grid for nondrug crimes as provided in K.S.A. 2011 Supp. 21-6804, and amendments thereto, or the sentencing guidelines grid for drug crimes as provided in K.S.A. 2011 Supp. 21-6805, and amendments thereto, or both;

(l) “grid block” means a box on the grid formed by the intersection of the crime severity ranking of a current crime of conviction and an offender’s criminal history classification;

(m) “imprisonment” means imprisonment in a facility operated by the Kansas department of corrections;

(n) “mitigating factor” means a substantial and compelling reason justifying an exceptional sentence whereby the sentencing court may impose a departure sentence outside of the standard sentencing range for a crime. A mitigating factor may result in a dispositional or durational departure;

(o) “nonimprisonment,” “nonprison” or “nonprison sanction” means probation, community corrections, conservation camp, house arrest or any other community based disposition;

(p) “postrelease supervision” means the release of a prisoner to the community after having served a period of imprisonment or equivalent time served in a facility where credit for time served is awarded as set forth by the court, subject to conditions imposed by the ~~Kansas parole~~ *prisoner review* board and to the secretary of correction’s supervision;

(q) “presumptive sentence” means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime severity ranking of the offender’s current crime of conviction and the offender’s criminal history;

(r) “prison” means a facility operated by the Kansas department of corrections; and

(s) “sentencing range” means the sentencing court’s discretionary range in imposing a nonappealable sentence.

Sec. 8. K.S.A. 2011 Supp. 22-3701 is hereby amended to read as follows: 22-3701. (1) The governor may pardon, or commute the sentence of, any person convicted of a crime in any court of this state upon such terms and conditions as prescribed in the order granting the pardon or commutation.

(2) The ~~Kansas parole~~ *prisoner review* board, hereafter referred to as the board, shall adopt rules and regulations governing the procedure for initiating, processing, and reviewing applications for pardon, or commutation of sentence filed by and on behalf of persons convicted of crime.

(3) Except as otherwise provided, no pardon or commutation of sentence shall be granted until more than 30 days after written notice of the application therefor has been given to: (a) The prosecuting attorney and the judge of the court in which the defendant was convicted; and (b) any victim of the person’s crime or the victim’s family, if the person was convicted of a crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto. Notice of such application for pardon or commutation of sentence shall be given by the secretary of corrections to the victim who is alive and whose address is known to the secretary of corrections, or if the victim is deceased, to the victim’s family if the family’s address is known to the secretary of corrections. Notice of the receipt of such application shall be given by publication in the official county paper of the county of conviction. The form of notice shall be prescribed by the board. If the applicant executes a poverty affidavit, the cost of one publication of the notice during a twelve-month period shall be paid by the state. If more than one notice of application is published during any twelve-month period the additional cost of publication shall be paid by the applicant. Subject to the provisions of subsection (4), if written notification is not given to such victim who is alive and whose address is known to the secretary of corrections or, if the victim is deceased, to the victim’s family if the family’s address is known to the secretary of corrections, the governor shall not grant or deny such application until a time at least 30 days after notification is given by publication as provided in this section.

(4) All applications for pardon or commutation of sentence shall be

referred to the board. The board shall examine each case and submit a report, together with such information as the board may have concerning the applicant, to the governor within 120 days after referral to the board. The governor shall not grant or deny any such application until the governor has received the report of the board or until 120 days after the referral to the board, whichever time is the shorter and the provisions of subsection (3) have been satisfied.

Sec. 9. K.S.A. 22-3706 is hereby amended to read as follows: 22-3706. No person acting as agent or representative for an individual before the board for pardon, commutation of sentence, parole or revocation of parole, conditional release or postrelease supervision shall contract for or receive a fee contingent upon a certain decision by the board. Such agent or representative shall submit a statement on the applicant's behalf to the ~~Kansas parole prisoner review~~ board in writing and shall submit therewith an affidavit stating such agent's representative's name; place of residence; the name of the applicant being represented or has been represented; the fee, if any, paid to or to be paid to such agent or representative by any person for such services; that such fee is not or was not a contingent fee. If any person representing any applicant for pardon, commutation of sentence, or parole shall fail to file such affidavit the application shall not be considered. Any affidavit filed as provided in this section shall be a public record.

Sec. 10. K.S.A. 22-3709 is hereby amended to read as follows: 22-3709. The chairperson and vice-chairperson of the ~~Kansas parole prisoner review~~ board shall be designated by the ~~governor~~ *secretary of corrections*. The chairperson of the board shall have the authority to organize and administer the activities of the board. The chairperson of the board may designate panels, consisting of two members of the board, which shall have the full authority and power of the board to order the denial, grant or revocation of an inmate's parole or conditional release, or for crimes committed on or after July 1, 1993, grant parole for off-grid crimes or revocation of postrelease supervision or to order the revocation of an inmate's conditional release, upon hearing by one or more members of the panel, and by a majority vote of the board.

Sec. 11. K.S.A. 22-3710 is hereby amended to read as follows: 22-3710. The ~~Kansas parole prisoner review~~ board shall adopt an official seal of which the courts shall take judicial notice. The orders of the ~~parole~~ board shall not be reviewable except as to compliance with the terms of this act or other applicable laws of this state. The ~~parole~~ board shall keep a record of its acts and shall notify each institution and the secretary of corrections of its decisions relating to the persons who are or have been confined therein. At the close of each fiscal year, the ~~parole~~ board shall submit to the governor and to the legislature a report with statistical and other data of its work, including research studies which it may make of

probation, sentencing, parole, postrelease supervision or related functions, and a compilation and analysis of dispositions of criminal cases by district courts throughout the state or by executive authority. *Such report may be part of the annual report of the department of corrections, so long as such information is presented separately and distinctly.*

Sec. 12. K.S.A. 22-3711 is hereby amended to read as follows: 22-3711. The presentence report, the preparole report, the pre-postrelease supervision report and the supervision history, obtained in the discharge of official duty by any member or employee of the ~~Kansas parole~~ *parole prisoner review* board or any *other* employee of the department of corrections, shall be privileged and shall not be disclosed directly or indirectly to anyone other than the ~~parole~~ *parole prisoner review* board, the judge, the attorney general or others entitled to receive the information, except that the ~~parole~~ board, secretary of corrections or court may permit the inspection of the report or parts of it by the defendant, inmate, defendant's or inmate's attorney or other person having a proper interest in it, whenever the best interest or welfare of a particular defendant or inmate makes the action desirable or helpful.

Sec. 13. K.S.A. 22-3712 is hereby amended to read as follows: 22-3712. As a condition of probation, parole or postrelease supervision, a probationer, parolee or person on postrelease supervision may be placed in a diagnostic, or treatment facility by order of the court or ~~parole~~ *parole prisoner review* board. Placement in a diagnostic or treatment facility shall not exceed 90 days or the maximum period of the prison sentence that could be imposed, but may be renewed for further ninety-day periods on certificates presented to the court by the director of such facility.

Sec. 14. K.S.A. 22-3713 is hereby amended to read as follows: 22-3713. (a) The ~~parole~~ *parole prisoner review* board may authorize one or more of its members to conduct hearings on behalf of the ~~parole~~ board.

(b) The secretary of corrections shall provide the ~~Kansas parole~~ *parole prisoner review* board with necessary personnel and accounting services.

Sec. 15. K.S.A. 2011 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638, prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642, prior to its repeal; K.S.A. 2011 Supp. 21-6617, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment

for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, prior to its repeal, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or K.S.A. 2011 Supp. 21-6606, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period

of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 1 through 4 crimes and drug severity levels 1 and 2 crimes must serve 36 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes and drug severity level 3 crimes must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on post-release supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 12 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(D) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the post-release supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, prior to its repeal, or K.S.A. 2011 Supp. 21-6820, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2011 Supp. 21-6813, and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the ~~parole~~ *parole prisoner review*

board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2011 Supp. 21-6817, and amendments thereto.

(vi) Upon petition, the ~~parole~~ *parole prisoner review* board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the ~~parole~~ *parole prisoner review* board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of post-release supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,

prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto; or

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section.

“Sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the ~~Kansas parole prisoner review~~ board may postpone the inmate’s parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate’s parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, prior to its repeal, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender’s conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the ~~Kansas parole prisoner review~~ board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of post-release supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed

pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the ~~Kansas parole~~ board.

(g) Subject to the provisions of this section, the ~~Kansas parole~~ *prisoner review* board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The ~~Kansas parole~~ *prisoner review* board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the

inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the ~~Kansas parole~~ *parole prisoner review* board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the ~~parole prisoner review~~ board ~~will~~ *shall* review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a, and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) (1) Before ordering the parole of any inmate, the ~~Kansas parole~~ *parole prisoner review* board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the ~~Kansas parole~~ board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If pa-

role is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the ~~parole~~ board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the ~~parole~~ board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the ~~parole~~ board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the ~~parole~~ board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a parole board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the ~~parole~~ *prisoner review* board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the ~~parole~~ *prisoner review* board determines that such resources are insufficient. If the ~~parole~~ *prisoner review* board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The ~~Kansas parole~~ *prisoner review* board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order

for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the ~~Kansas parole~~ *prisoner review* board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or post-release supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the ~~parole~~ *prisoner review* board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the ~~Kansas parole~~ *prisoner review* board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided

in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the ~~Kansas parole~~ *prisoner review* board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to May 25, 2000 who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the ~~Kansas parole~~ *prisoner review* board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the ~~Kansas parole~~ *prisoner review* board or the court orders a person to be electronically monitored, the board or court shall

order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board or court shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

Sec. 16. K.S.A. 22-3718 is hereby amended to read as follows: 22-3718. Upon release, an inmate who has served the inmate's maximum term or terms, less such work and good behavior credits as have been earned, shall be subject to such written rules and conditions as the ~~Kansas parole~~ *prisoner review* board may impose, until the expiration of the maximum term or terms for which the inmate was sentenced or until the inmate is otherwise discharged. If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of release pursuant to this section, the ~~parole~~ board may set aside restitution as a condition of release payment of restitution, if the board finds compelling circumstances which would render a plan of restitution unworkable. If the court which sentenced an inmate specified reimbursement of all or part of the expenditures by the state board of indigents' defense services as a condition of release, the ~~parole~~ board may set aside such reimbursement, if the board finds compelling circumstances which would render a plan of reimbursement unworkable. Prior to the release of any inmate on parole, conditional release or expiration of sentence, if an inmate is released into the community under a program under the supervision of the secretary of corrections, the secretary shall give written notice of such release to any victim or victim's family as provided in K.S.A. 22-3727, and amendments thereto.

Sec. 17. K.S.A. 22-3719 is hereby amended to read as follows: 22-3719. It shall be the duty of all correctional institution officials to grant to the members of the ~~Kansas parole~~ *prisoner review* board, or its properly accredited representatives, access at all reasonable times to any inmate, to provide for the ~~parole~~ board or such representative facilities for communicating with and observing such inmate, and to furnish to the ~~parole~~ board such reports as the ~~parole~~ board shall require concerning the conduct and character of any inmate in their custody and any other facts deemed by the ~~parole~~ board to be pertinent in determining any issue before the ~~parole~~ board.

Sec. 18. K.S.A. 22-3720 is hereby amended to read as follows: 22-3720. The ~~Kansas parole~~ *prisoner review* board shall have power to issue subpoenas requiring the attendance of any witnesses and the production of any records, books, papers and documents that it considers necessary for the investigation of the issues before it. Subpoenas may be signed and oaths administered by any member of the ~~parole~~ board. Subpoenas so issued may be served by any law enforcement officer, in the same manner as similar process in the district court. Any person who testifies falsely,

fails to appear when subpoenaed or fails or refuses to produce material pursuant to the subpoena shall be subject to the same orders and penalties to which a person before a court is subject. Any district court of this state, upon application of the parole board, may in its discretion compel the attendance of witnesses, the production of material and the giving of testimony before the parole board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before the district court.

Sec. 19. K.S.A. 22-3722 is hereby amended to read as follows: 22-3722. The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in K.S.A. 75-5217, and amendments thereto, relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. The period served on post-release supervision shall vest in and be subject to the provisions contained in K.S.A. 75-5217, and amendments thereto, relating to an inmate who is a fugitive from or has fled from justice. The total time served shall not exceed the postrelease supervision period established at sentencing.

When an inmate on parole or conditional release has performed the obligations of the release for such time as shall satisfy the ~~Kansas parole~~ *Kansas parole prisoner review* board that final release is not incompatible with the best interest of society and the welfare of the individual, the parole board may make a final order of discharge and issue a certificate of discharge to the inmate but no such order of discharge shall be made in any case within a period of less than one year after the date of release except where the sentence expires earlier thereto. When an inmate has reached the end of the postrelease supervision period, the parole board shall issue a certificate of discharge to the releasee. Such discharge, and the discharge of an inmate who has served the inmate's term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state. Nothing herein contained shall be held to impair the power of the governor to grant a pardon or commutation of sentence in any case.

Sec. 20. K.S.A. 22-3726 is hereby amended to read as follows: 22-3726. The secretary of corrections may place, on a six-month supervised furlough, any inmate who is classified at a custody level not higher than minimum and who will be eligible for parole under K.S.A. 22-3717, and amendments thereto, by the end of the six-month period. If, at the end of the six-month period, the secretary determines that the inmate has successfully completed the furlough, the secretary shall certify that fact to the ~~Kansas parole~~ *Kansas parole prisoner review* board, which shall promptly order the inmate's release on parole, without hearing, under the level of supervision specified by the secretary and subject to such conditions as

imposed by the board. The provisions of this section shall not apply to crimes committed by inmates on or after July 1, 1993.

Sec. 21. K.S.A. 2011 Supp. 22-3728 is hereby amended to read as follows: 22-3728. (a) (1) Upon application of the secretary of corrections, the ~~Kansas parole~~ *prisoner review* board may grant release to any person deemed to be functionally incapacitated, upon such terms and conditions as prescribed in the order granting such release.

(2) The ~~Kansas parole board~~ *secretary of corrections* shall adopt rules and regulations governing the *prisoner review board's* procedure for initiating, processing, reviewing and establishing criteria for review of applications filed on behalf of persons deemed to be functionally incapacitated. Such rules and regulations shall include criteria and guidelines for determining whether the functional incapacitation precludes the person from posing a threat to the public.

(3) Subject to the provisions of subsections (a)(4) and (a)(5), a functional incapacitation release shall not be granted until at least 30 days after written notice of the application has been given to: (A) The prosecuting attorney and the judge of the court in which the person was convicted; and (B) any victim of the person's crime or the victim's family. Notice of such application shall be given by the secretary of corrections to the victim who is alive and whose address is known to the secretary, or if the victim is deceased, to the victim's family if the family's address is known to the secretary. Subject to the provisions of subsection (a)(4), if there is no known address for the victim, if alive, or the victim's family, if deceased, the board shall not grant or deny such application until at least 30 days after notification is given by publication in the county of conviction. Publication costs shall be paid by the department of corrections.

(4) All applications for functional incapacitation release shall be referred to the board. The board shall examine each case and may approve such application and grant a release. An application for release shall not be approved unless the board determines that the person is functionally incapacitated and does not represent a future risk to public safety. The board shall determine whether a hearing is necessary on the application. The board may request additional information or evidence it deems necessary from a medical or mental health practitioner.

(5) The board shall establish any conditions related to the release of the person. The release shall be conditional, and be subject to revocation pursuant to K.S.A. 75-5217, and amendments thereto, if the person's functional incapacity significantly diminishes, if the person fails to comply with any condition of release, or if the board otherwise concludes that the person presents a threat or risk to public safety. The person shall remain on release supervision until the release is revoked, expiration of the maximum sentence, or discharged by the board. Subject to the pro-

visions of subsection (f) of K.S.A. 75-5217, and amendments thereto, the person shall receive credit for the time during which the person is on functional incapacitation release supervision towards service of the prison and postrelease supervision obligations of determinate sentences or indeterminate sentences.

(6) The secretary of corrections shall cause the person to be supervised upon release, and shall have the authority to initiate revocation of the person at any time for the reasons indicated in subsection (a)(5).

(7) The decision of the board on the application or any revocation shall be final and not subject to review by any administrative agency or court.

(8) In determining whether a person is functionally incapacitated, the board shall consider the following: (A) The person's current condition as confirmed by medical or mental health care providers, including whether the condition is terminal;

(B) the person's age and personal history;

(C) the person's criminal history;

(D) the person's length of sentence and time the person has served;

(E) the nature and circumstances of the current offense;

(F) the risk or threat to the community if released;

(G) whether an appropriate release plan has been established; and

(H) any other factors deemed relevant by the board.

(b) Nothing in this section shall be construed to limit or preclude submission of an application for pardon or commutation of sentence pursuant to K.S.A. 22-3701, and amendments thereto.

(c) Nothing in this section shall apply to the release of people with terminal medical conditions as described in K.S.A. 2011 Supp. 22-3729, and amendments thereto.

(d) This section does not apply to any person sentenced to imprisonment for an off-grid offense.

Sec. 22. K.S.A. 2011 Supp. 22-3729 is hereby amended to read as follows: 22-3729. (a) (1) Upon application of the secretary of corrections, the chairperson of the ~~Kansas parole~~ *prisoner review* board may grant release to any person deemed by a doctor licensed to practice medicine and surgery in Kansas to have a terminal medical condition likely to cause death within 30 days upon such terms and conditions as prescribed in the order granting such release.

(2) The ~~Kansas parole board~~ *secretary of corrections* shall adopt rules and regulations governing the *prisoner review board's* procedure for initiating, processing, reviewing and establishing criteria for review of applications filed on behalf of persons deemed to have a terminal medical condition likely to cause death within 30 days. Such rules and regulations shall include criteria and guidelines for determining whether the terminal medical condition precludes the person from posing a threat to the public.

(3) All applications for a terminal medical condition release shall be referred to the chairperson of the board. The chairperson of the board shall examine each case and may approve such application and grant a release. An application for release shall not be approved unless the chairperson of the board determines that the person has been deemed by a doctor licensed to practice medicine and surgery in Kansas to have a terminal medical condition likely to cause death within 30 days and does not represent a future risk to public safety. The chairperson of the board may request additional information or evidence the chairperson of the board deems necessary from a doctor licensed to practice medicine and surgery in Kansas.

(4) The chairperson of the board shall establish any conditions related to the release of the person. The release shall be conditional, and be subject to revocation pursuant to K.S.A. 75-5217, and amendments thereto, if the person's illness or condition significantly improves, the person does not die within 30 days of release, if the person fails to comply with any condition of release, or if the board otherwise concludes that the person presents a threat or risk to public safety. The person shall remain on release supervision until the release is revoked, expiration of the maximum sentence or discharged by the board. Subject to the provisions of subsection (f) of K.S.A. 75-5217, and amendments thereto, the person shall receive credit for the time during which the person is on terminal medical condition release supervision towards service of the prison and postrelease supervision obligations of determinate sentences or indeterminate sentences.

(5) The secretary of corrections shall cause the person to be supervised upon release, and shall have the authority to initiate revocation of the person at any time for the reasons indicated in subsection (a)(4).

(6) The decision of the chairperson of the board on the application and the decision of the board regarding any revocation shall be final and not subject to review by any administrative agency or court.

(7) In determining whether a person meets the criteria to be released under this section, the chairperson of the board shall consider the following: (A) The person's current condition as confirmed by a doctor licensed to practice medicine and surgery in Kansas, including whether the condition is terminal and likely to cause death within 30 days;

(B) the person's age and personal history;

(C) the person's criminal history;

(D) the person's length of sentence and time the person has served;

(E) the nature and circumstances of the current offense;

(F) the risk or threat to the community if released;

(G) whether an appropriate release plan has been established; and

(H) any other factors deemed relevant by the board member.

(b) Nothing in this section shall be construed to limit or preclude

submission of an application for pardon or commutation of sentence pursuant to K.S.A. 22-3701, and amendments thereto.

(c) The secretary shall give notice of the granting of a terminal medical condition release to: (1) The prosecuting attorney and the judge of the court in which the person was convicted; and (2) any victim of the person's crime if alive or the victim's family if the victim is deceased, whose address is known by the secretary.

(d) This section does not apply to any person sentenced to imprisonment for an off-grid offense.

Sec. 23. K.S.A. 22-4111 is hereby amended to read as follows: 22-4111. (a) The Kansas council for interstate adult offender supervision shall consist of the following members:

- (1) The governor or the governor's designee;
- (2) the chief justice of the supreme court or the chief justice's designee;
- (3) the attorney general or the attorney general's designee;
- (4) a person representing crime victims groups appointed by the attorney general;
- (5) one county attorney or district attorney appointed by the governor;
- (6) one private defense counsel appointed by the governor;
- (7) the chairperson of the ~~Kansas parole~~ *prisoner review* board or such chairperson's designee;
- (8) the secretary of corrections or the secretary's designee;
- (9) two senators, one shall be appointed by the president of the senate and one shall be appointed by the minority leader of the senate; and
- (10) two representatives, one shall be appointed by the speaker of the house of representatives and one shall be appointed by the minority leader of the house of representatives.

(b) The appointments shall be made within 30 days after the effective date of this act. The initial meeting of the council shall be convened within 60 days after the effective date of this act by the secretary of corrections at a time and place designated by the secretary of corrections. The council shall elect a chairperson and may elect any additional officers from among its members necessary to discharge its duties.

(c) Meetings of the council subsequent to its initial meeting shall be held and conducted in accordance with policies and procedures established by the council.

(d) The council shall meet upon call of its chairperson as necessary to carry out its duties under this act.

(e) Each member of the council appointed by the governor or the attorney general shall be appointed for a term of four years. All other members shall be appointed for a term of two years and shall continue to serve during that time as long as the member occupies the position

which made the member eligible for the appointment. Each member shall continue in office until a successor is appointed and qualifies. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term.

(f) The council shall oversee and administer the state's participation in the interstate compact for adult offenders supervision, K.S.A. 22-4110, and amendments thereto, and shall develop policies concerning the operations and procedures of the compact within the state. The council shall appoint the compact administrator.

(g) Each member of the council shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, for each day or part thereof actually spent on council activities.

(h) The provisions of this section shall take effect and be in force from and after the later of July 1, 2002, or upon enactment into law by the 35th jurisdiction of the interstate compact for adult offenders supervision.

Sec. 24. K.S.A. 2011 Supp. 22-4701 is hereby amended to read as follows: 22-4701. As used in this act, unless the context clearly requires otherwise:

(a) "Central repository" means the criminal justice information system central repository created by this act and the juvenile offender information system created pursuant to K.S.A. 2011 Supp. 38-2326, and amendments thereto.

(b) "Criminal history record information" means all data initiated or collected by a criminal justice agency on a person pertaining to a reportable event, and any supporting documentation. Criminal history record information does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) wanted posters, police blotter entries, court records of public judicial proceedings or published court opinions;

(3) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide; or

(4) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation.

(c) "Criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited

to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and countywide law enforcement agencies, correctional facilities, jails and detention centers;

(2) the offices of the attorney general, county or district attorneys and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts;

(4) the Kansas sentencing commission;

(5) the ~~Kansas parole~~ *prisoner review* board; and

(6) the juvenile justice authority.

(d) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing, preservation and dissemination of criminal history record information.

(e) "Director" means the director of the Kansas bureau of investigation.

(f) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(g) "Reportable event" means an event specified or provided for in K.S.A. 22-4705, and amendments thereto.

Sec. 25. K.S.A. 2011 Supp. 59-29a02 is hereby amended to read as follows: 59-29a02. As used in this act:

(a) "Sexually violent predator" means any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in repeat acts of sexual violence.

(b) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

(c) "Likely to engage in repeat acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(d) "Sexually motivated" means that one of the purposes for which

the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) "Sexually violent offense" means:

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(6) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(8) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

(9) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

(10) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto;

(11) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent offense as defined in subparagraphs (1) through (11) or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this section;

(12) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent offense as defined in this subsection; or

(13) any act which either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this act, has been determined beyond a reasonable doubt to have been sexually motivated.

(f) "Agency with jurisdiction" means that agency which releases upon

lawful order or authority a person serving a sentence or term of confinement and includes the department of corrections, the department of social and rehabilitation services and the ~~Kansas parole~~ *prisoner review board*.

(g) “Person” means an individual who is a potential or actual subject of proceedings under this act.

(h) “Treatment staff” means the persons, agencies or firms employed by or contracted with the secretary to provide treatment, supervision or other services at the sexually violent predator facility.

(i) “Transitional release” means any halfway house, work release, sexually violent predator treatment facility or other placement designed to assist the person’s adjustment and reintegration into the community once released from commitment.

(j) “Secretary” means the secretary of the department of social and rehabilitation services.

Sec. 26. K.S.A. 60-4305 is hereby amended to read as follows: 60-4305. Records or information in the custody of the ~~Kansas parole~~ *prisoner review board, the secretary of corrections*, any community correctional service program or any district court regarding the financial assets, income or employment of a criminal offender shall be subject to disclosure to any victim to whom such offender has been ordered to pay restitution, or to anyone acting on behalf of such victim to collect the ordered restitution, until such time as all restitution is paid in full.

Sec. 27. K.S.A. 2011 Supp. 74-4911f is hereby amended to read as follows: 74-4911f. (a) Subject to procedures or limitations prescribed by the governor, any person who is not an employee and who becomes a state officer may elect to not become a member of the system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. Such election shall be irrevocable. If such election is not filed by such state officer, such state officer shall be a member of the system.

(b) Any such state officer who is a member of the Kansas public employees retirement system, on or after the effective date of this act, may elect to not be a member by filing an election with the office of the retirement system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. If such election is not filed by such state officer, such state officer shall be a member of the system.

(c) Subject to limitations prescribed by the board, the state agency employing any employee who has filed an election as provided under subsection (a) or (b) and who has entered into an employee participation agreement, as provided in K.S.A. 2011 Supp. 74-49b10, and amendments thereto, for deferred compensation pursuant to the Kansas public employees deferred compensation plan shall contribute to such plan on such

employee's behalf an amount equal to 8% of the employee's salary, as such salary has been approved pursuant to K.S.A. 75-2935b, and amendments thereto, or as otherwise prescribed by law. With regard to a state officer who is a member of the legislature who has retired pursuant to the Kansas public employees retirement system and who files an election as provided in this section, employee's salary means per diem compensation as provided by law as a member of the legislature.

(d) As used in this section and K.S.A. 74-4927k, and amendments thereto, "state officer" means the secretary of administration, secretary on aging, secretary of commerce, secretary of corrections, secretary of health and environment, secretary of labor, secretary of revenue, secretary of social and rehabilitation services, secretary of transportation, secretary of wildlife ~~and parks~~, *parks and tourism*, superintendent of the Kansas highway patrol, secretary of agriculture, executive director of the Kansas lottery, executive director of the Kansas racing commission, president of the Kansas development finance authority, state fire marshal, state librarian, securities commissioner, adjutant general, judges and chief hearing officer of the state court of tax appeals, ~~members of the Kansas parole board~~, members of the state corporation commission, any unclassified employee on the staff of officers of both houses of the legislature, any unclassified employee appointed to the governor's or lieutenant governor's staff, any person employed by the legislative branch of the state of Kansas, other than any such person receiving service credited under the Kansas public employees retirement system or any other retirement system of the state of Kansas therefor, who elected to be covered by the provisions of this section as provided in subsection (e) of K.S.A. 46-1302, and amendments thereto, or who is first employed on or after July 1, 1996, by the legislative branch of the state of Kansas and any member of the legislature who has retired pursuant to the Kansas public employees retirement system.

(e) The provisions of this section shall not apply to any state officer who has elected to remain eligible for assistance by the state board of regents as provided in subsection (a) of K.S.A. 74-4925, and amendments thereto.

Sec. 28. K.S.A. 74-7320 is hereby amended to read as follows: 74-7320. Upon the receipt of any moneys pursuant to K.S.A. 74-7319, and amendments thereto, the crime victims compensation board shall deposit the entire amount in a separate escrow account to be used only as follows:

(a) Upon dismissal of charges against the accused person or upon acquittal of the accused person, the board shall promptly pay the entire amount to such person, or such person's representatives or assignees.

(b) Upon conviction of the accused person or if the accused person has already been convicted, the board shall promptly distribute the entire

amount and any future moneys paid to the board under K.S.A. 74-7319, and amendments thereto, as follows:

(1) First, to pay any restitution ordered by the court or by the ~~Kansas parole~~ *prisoner review* board to be paid by the convicted person to the person directed by the court or *prisoner review* board;

(2) if any moneys remain after payment pursuant to subsection (b)(1), to repay any amount expended by the state board of indigents' defense services on behalf of the convicted person in defending prosecution for the crime, including appeals;

(3) if any moneys remain after payment pursuant to subsections (b)(1) and (2), to pay any court costs assessed against the convicted person in proceedings for prosecution for the crime, including appellate proceedings;

(4) if any moneys remain after payment pursuant to subsections (b)(1), (2) and (3), to pay compensation pursuant to K.S.A. 74-7321, and amendments thereto; and

(5) if any moneys remain after payment pursuant to subsections (b)(1), (2), (3) and (4), to pay crime victims compensation pursuant to K.S.A. 74-7301 through 74-7318, and amendments thereto, for which purpose such moneys shall be deposited in the state treasury and credited to the state general fund.

Sec. 29. K.S.A. 74-7321 is hereby amended to read as follows: 74-7321. (a) When moneys are to be distributed pursuant to subsection (b) of K.S.A. 74-7320, and amendments thereto, the victim of the crime, and the victim's dependents, heirs, representatives or assignees, may apply to the crime victims compensation board for compensation for losses arising from the convicted person's crime. To the extent that moneys received by the board pursuant to K.S.A. 74-7319, and amendments thereto are sufficient, such compensation shall be in an amount equal to the applicant's actual loss, as determined by the board, less any restitution paid pursuant to order of a court or order of the ~~Kansas parole~~ *prisoner review* board and any compensation paid by the crime victims compensation board pursuant to K.S.A. 74-7301 *et seq.*, and amendments thereto. If moneys received by the board pursuant to K.S.A. 74-7319, and amendments thereto, are not sufficient to pay compensation as otherwise provided under this subsection (a), such moneys shall be prorated among all applicants eligible to receive compensation for losses arising from the convicted person's crime on the basis that the amount each applicant is entitled to receive under this subsection (a) bears to the total amount all such applicants would be entitled to receive under this subsection (a).

(b) The limitations provided by K.S.A. 74-7301 *et seq.*, and amendments thereto, shall not apply to compensation paid pursuant to this section.

(c) The crime victims compensation board shall adopt such rules and

regulations as necessary to administer the provisions of K.S.A. 74-7319, 74-7320 and 74-7321, and amendments thereto.

Sec. 30. K.S.A. 2011 Supp. 74-9101 is hereby amended to read as follows: 74-9101. (a) There is hereby established the Kansas sentencing commission.

(b) The commission shall:

(1) Develop a sentencing guideline model or grid based on fairness and equity and shall provide a mechanism for linking justice and corrections policies. The sentencing guideline model or grid shall establish rational and consistent sentencing standards which reduce sentence disparity, to include, but not be limited to, racial and regional biases which may exist under current sentencing practices. The guidelines shall specify the circumstances under which imprisonment of an offender is appropriate and a presumed sentence for offenders for whom imprisonment is appropriate, based on each appropriate combination of reasonable offense and offender characteristics. In developing its recommended sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities. In its report, the commission shall make recommendations regarding whether there is a continued need for and what is the projected role of, if any, the ~~Kansas parole~~ *prisoner review* board and whether the policy of allocating good time credits for the purpose of determining an inmate's eligibility for parole or conditional release should be continued;

(2) consult with and advise the legislature with reference to the implementation, management, monitoring, maintenance and operations of the sentencing guidelines system;

(3) direct implementation of the sentencing guidelines system;

(4) assist in the process of training judges, county and district attorneys, court services officers, state parole officers, correctional officers, law enforcement officials and other criminal justice groups. For these purposes, the sentencing commission shall develop an implementation policy and shall construct an implementation manual for use in its training activities;

(5) receive presentence reports and journal entries for all persons who are sentenced for crimes committed on or after July 1, 1993, to develop post-implementation monitoring procedures and reporting methods to evaluate guideline sentences. In developing the evaluative criteria, the commission shall take into consideration rational and consistent sentencing standards which reduce sentence disparity to include, but not be limited to, racial and regional biases;

(6) advise and consult with the secretary of corrections and members of the legislature in developing a mechanism to link guidelines sentence practices with correctional resources and policies, including but not lim-

ited to the capacities of local and state correctional facilities. Such linkage shall include a review and determination of the impact of the sentencing guidelines on the state's prison population, review of corrections programs and a study of ways to more effectively utilize correction dollars and to reduce prison population;

(7) make recommendations relating to modification to the sentencing guidelines as provided in K.S.A. 2011 Supp. 21-6822, and amendments thereto;

(8) prepare and submit fiscal impact and correctional resource statement as provided in K.S.A. 74-9106, and amendments thereto;

(9) make recommendations to those responsible for developing a working philosophy of sentencing guideline consistency and rationality;

(10) develop prosecuting standards and guidelines to govern the conduct of prosecutors when charging persons with crimes and when engaging in plea bargaining;

(11) analyze problems in criminal justice, identify alternative solutions and make recommendations for improvements in criminal law, prosecution, community and correctional placement, programs, release procedures and related matters including study and recommendations concerning the statutory definition of crimes and criminal penalties and review of proposed criminal law changes;

(12) perform such other criminal justice studies or tasks as may be assigned by the governor or specifically requested by the legislature, department of corrections, the chief justice or the attorney general;

(13) develop a program plan which includes involvement of business and industry in the public or other social or fraternal organizations for admitting back into the mainstream those offenders who demonstrate both the desire and ability to reconstruct their lives during their incarceration or during conditional release;

(14) appoint a task force to make recommendations concerning the consolidation of probation, parole and community corrections services;

(15) produce official inmate population projections annually on or before six weeks following the date of receipt of the data from the department of corrections. When the commission's projections indicate that the inmate population will exceed available prison capacity within two years of the date of the projection, the commission shall identify and analyze the impact of specific options for (A) reducing the number of prison admissions; or (B) adjusting sentence lengths for specific groups of offenders. Options for reducing the number of prison admissions shall include, but not be limited to, possible modification of both sentencing grids to include presumptive intermediate dispositions for certain categories of offenders. Intermediate sanction dispositions shall include, but not be limited to: intensive supervision; short-term jail sentences; halfway houses; community-based work release; electronic monitoring and house arrest; substance abuse treatment; and pre-revocation incarceration. In-

intermediate sanction options shall include, but not be limited to, mechanisms to explicitly target offenders that would otherwise be placed in prison. Analysis of each option shall include an assessment of such options impact on the overall size of the prison population, the effect on public safety and costs. In preparing the assessment, the commission shall review the experience of other states and shall review available research regarding the effectiveness of such option. The commission's findings relative to each sentencing policy option shall be presented to the governor and the joint committee on corrections and juvenile justice oversight no later than November 1;

(16) at the request of the governor or the joint committee on corrections and juvenile justice oversight, initiate and complete an analysis of other sentencing policy adjustments not otherwise evaluated by the commission;

(17) develop information relating to the number of offenders on post-release supervision and subject to electronic monitoring for the duration of the person's natural life;

(18) determine the effect the mandatory sentencing established in K.S.A. 21-4642 and 21-4643, prior to their repeal, or K.S.A. 2011 Supp. 21-6626 and 21-6627, and amendments thereto, would have on the number of offenders civilly committed to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto;

(19) assume the designation and functions of the state statistical analysis center. All criminal justice agencies, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, and the juvenile justice authority shall provide any data or information, including juvenile offender information, requested by the commission to facilitate the function of the state statistical analysis center; and

(20) subject to the provisions of appropriation acts and the availability of funds therefor, produce official juvenile correctional facility population projections annually on or before November 1, not more than six weeks following the receipt of the data from the juvenile justice authority and develop bed impacts regarding legislation that may affect juvenile correctional facility population.

Sec. 31. K.S.A. 74-9102 is hereby amended to read as follows: 74-9102. (a) The Kansas sentencing commission shall consist of 17 members, as follows:

(1) The chief justice of the supreme court or the chief justice's designee;

(2) two district court judges appointed by the chief justice of the supreme court;

(3) the attorney general or the attorney general's designee;

(4) one public defender appointed by the governor;

- (5) one private defense counsel appointed by the governor;
- (6) one county attorney or district attorney appointed by the governor;
- (7) the secretary of corrections or the secretary's designee;
- (8) the chairperson of the ~~Kansas parole~~ *prisoner review* board or such chairperson's designee;
- (9) two members of the general public, at least one of whom shall be a member of a racial minority group, appointed by the governor;
- (10) a director of a community corrections program appointed by the governor; and
- (11) a court services officer appointed by the chief justice of the supreme court. Not more than three members of the commission appointed by the governor shall be of the same political party.

(b) In addition to the members appointed pursuant to subsection (a), four members of the legislature shall serve as voting members of the commission. Such members shall be appointed as follows: One shall be appointed by the president of the senate, one shall be appointed by the minority leader of the senate, one shall be appointed by the speaker of the house of representatives and one shall be appointed by the minority leader of the house of representatives.

(c) The governor shall appoint a chairperson from the two district court judges appointed by the chief justice of the supreme court or the chief justice of the supreme court. The members of the commission appointed pursuant to subsection (a) shall elect any additional officers from among its members necessary to discharge its duties.

(d) The commission shall meet upon call of its chairperson as necessary to carry out its duties under this act.

(e) Each appointed member of the commission shall be appointed for a term of two years and shall continue to serve during that time as long as the member occupies the position which made the member eligible for the appointment. Each member shall continue in office until a successor is appointed and qualifies. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term.

(f) Each member of the commission shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the commission shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on commission activities.

Sec. 32. K.S.A. 2011 Supp. 75-4318 is hereby amended to read as follows: 75-4318. (a) Subject to the provisions of subsection (g), all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions,

authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot. Meetings of task forces, advisory committees or subcommittees of advisory committees created pursuant to a governor's executive order shall be open to the public in accordance with this act.

(b) Notice of the date, time and place of any regular or special meeting of a public body designated hereinabove shall be furnished to any person requesting such notice, except that:

(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition;

(2) if notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association; and

(3) the public body may require that a request to receive notice must be submitted again to the body prior to the commencement of any subsequent fiscal year of the body during which the person wishes to continue receiving notice, but, prior to discontinuing notice to any person, the public body must notify the person that notice will be discontinued unless the person resubmits a request to receive notice.

(c) It shall be the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the notice required by subsection (b).

(d) Prior to any meeting hereinabove mentioned, any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda.

(e) The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting mentioned by subsection (a), but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.

(f) Except as provided by section 22 of article 2 of the constitution of the state of Kansas, interactive communications in a series shall be open if they collectively involve a majority of the membership of the body or agency, share a common topic of discussion concerning the business or affairs of the body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency.

(g) The provisions of the open meetings law shall not apply:

(1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;

(2) to the ~~parole~~ *prisoner review* board when conducting parole hearings or parole violation hearings held at a correctional institution;

(3) to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives; and

(4) if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.

Sec. 33. K.S.A. 2011 Supp. 75-4319 is hereby amended to read as follows: 75-4319. (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

- (1) Personnel matters of nonelected personnel;
- (2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
- (3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;
- (4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- (5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
- (6) preliminary discussions relating to the acquisition of real property;
- (7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804, and amendments thereto;
- (8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (d)(1) of K.S.A. 38-1507, and amendments thereto, or subsection (e) of K.S.A. 38-1508, and amendments thereto;
- (9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243, and amendments thereto;
- (10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596, and amendments thereto;
- (11) matters permitted to be discussed in a closed or executive meet-

ing pursuant to subsection (g) of K.S.A. 39-7,119, and amendments thereto;

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

(13) matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto;

(15) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2011 Supp. 75-7427, and amendments thereto; and

(16) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2011 Supp. 46-3801, and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) (1) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

(2) (A) Except as otherwise provided by law, any confidential documents, records or reports relating to the ~~parole~~ *prisoner review* board provided or received under the provisions of subsection (b)(16) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

(B) Notwithstanding any other provision of law to the contrary, any summary statement provided or received under the provisions of subsection (b)(16) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 34. K.S.A. 75-5202 is hereby amended to read as follows: 75-

5202. As used in K.S.A. 75-5201 *et seq.*, and amendments thereto, unless the context clearly requires otherwise:

- (a) "Secretary" means the secretary of corrections.
- (b) "~~Parole~~ Prisoner review board" means the ~~Kansas parole prisoner review~~ board established by K.S.A. ~~22-3707~~ 2011 Supp. 75-52,152, and amendments thereto.
- (c) "Inmate" means any person incarcerated in any correctional institution of the state of Kansas.
- (d) "Correctional institution" means the Lansing correctional facility, Hutchinson correctional facility, Topeka correctional facility, Norton correctional facility, Ellsworth correctional facility, Winfield correctional facility, Osawatomie correctional facility, Larned correctional mental health facility, Toronto correctional work facility, Stockton correctional facility, Wichita work release facility, El Dorado correctional facility, and any other correctional institution established by the state for the confinement of offenders under control of the secretary of corrections.
- (e) "Warden" means the person in charge of the operation and supervision of a correctional institution.
- (f) "Corrections officer" means a full-time, salaried officer or employee under the jurisdiction of the secretary, whose duties include the receipt, custody, control, maintenance, discipline, security and apprehension of persons convicted of criminal offense in this state and sentenced to a term of imprisonment under the custody of the secretary.
- (g) "Parole officer" means a full-time salaried officer or employee under the jurisdiction of the secretary whose duties include:
  - (1) Investigation, supervision, arrest and control of persons on parole or postrelease supervision and the enforcement of the conditions of parole or postrelease supervision; and
  - (2) services which relate to probationers, parolees or persons on post-release supervision and are required by the uniform act for out-of-state parolee supervision.

Sec. 35. K.S.A. 2011 Supp. 75-5210a is hereby amended to read as follows: 75-5210a. (a) Within a reasonable time after a defendant is committed to the custody of the secretary of corrections, for service of a sentence for an indeterminate or off grid crime, the secretary shall enter into a written agreement with the inmate specifying those educational, vocational, mental health or other programs which the secretary determines the inmate must satisfactorily complete in order to be prepared for release on parole supervision. To the extent practicable, the agreement shall require the inmate to have made progress towards or to have successfully completed the equivalent of a secondary education before release on parole if the inmate has not previously completed such educational equivalent and is capable of doing so. The agreement shall be conditioned on the inmate's satisfactory conduct, employment and atti-

tude while incarcerated. If the secretary determines that the inmate's conduct, employment, attitude or needs require modifications or additions to those programs which are set forth in the agreement, the secretary shall revise the requirements. The secretary shall agree that, when the inmate satisfactorily completes the programs required by the agreement, or any revision thereof, the secretary shall report that fact in writing to the ~~Kansas parole~~ *prisoner review* board. If the inmate becomes eligible for parole before satisfactorily completing such programs, the secretary shall report in writing to the ~~Kansas parole~~ board the programs which are not completed.

(b) A copy of any agreement and any revisions thereof shall be entered into the inmate's record.

Sec. 36. K.S.A. 2011 Supp. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole, conditional release or postrelease supervision, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize any law enforcement officer to arrest and deliver the released inmate to a place as provided by subsection (g). Any parole officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written or verbal arrest and detain order setting forth that the released inmate, in the judgment of the parole officer, has violated the conditions of the inmate's release. A written arrest and detain order delivered to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a similar arrest and detain order and statement of the circumstances of violation. Pending a hearing, as provided in this section, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for detention.

(b) Upon such arrest and detention, the parole officer shall notify the secretary of corrections, or the secretary's designee, within five days and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. After such notification is given to the secretary of corrections, or upon an arrest by warrant as herein provided, and the finding of probable cause pursuant to procedures established by the secretary of a violation of the released inmate's conditions of release, the secretary or the secretary's designee may cause the released inmate to be brought before the ~~Kansas parole~~ *prisoner review* board, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the board may adopt, or may

dismiss the charges that the released inmate has violated the conditions of release and order the released inmate to remain on parole, conditional release or post release supervision. It is within the discretion of the ~~Kansas parole board~~ whether such hearing requires the released inmate to appear personally before the board when such inmate's violation results from a conviction for a new felony or misdemeanor. An offender under determinative sentencing whose violation does not result from a conviction of a new felony or misdemeanor may waive the right to a final revocation hearing before the ~~Kansas parole board~~ under such conditions and terms as may be prescribed by rules and regulations promulgated by the ~~Kansas parole board secretary of corrections~~. Relevant written statements made under oath shall be admitted and considered by the ~~Kansas parole board~~, its designee or designees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the ~~Kansas parole board~~, the board may continue or revoke the parole or conditional release, or enter such other order as the board may see fit. The revocation of release of inmates who are on a specified period of postrelease supervision shall be for a six-month period of confinement from the date of the revocation hearing before the board or the effective date of waiver of such hearing by the offender pursuant to rules and regulations promulgated by the ~~Kansas parole board~~, if the violation does not result from a conviction for a new felony or misdemeanor. Such period of confinement may be reduced by not more than three months based on the inmate's conduct, work and program participation during the incarceration period. The reduction in the incarceration period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(c) If the violation results from a conviction for a new felony, upon revocation, the inmate shall serve the entire remaining balance of the period of postrelease supervision even if the new conviction did not result in the imposition of a new term of imprisonment.

(d) If the violation results from a conviction for a new misdemeanor, upon revocation, the inmate shall serve a period of confinement, to be determined by the ~~Kansas parole prisoner review board~~, which shall not exceed the remaining balance of the period of postrelease supervision.

(e) In the event the released inmate reaches conditional release date as provided by K.S.A. 22-3718, and amendments thereto, after a finding of probable cause, pursuant to procedures established by the secretary of corrections of a violation of the released inmate's conditions of release, but prior to a hearing before the ~~Kansas parole prisoner review board~~, the secretary of corrections shall be authorized to detain the inmate until the hearing by the ~~Kansas parole board~~. The secretary shall then enforce the order issued by the ~~Kansas parole board~~.

(f) If the secretary of corrections issues a warrant for the arrest of a released inmate for violation of any of the conditions of release and the released inmate is subsequently arrested in the state of Kansas, either

pursuant to the warrant issued by the secretary of corrections or for any other reason, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest.

If a released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state, and the released inmate has been authorized as a condition of such inmate's release to reside in or travel to the state in which the released inmate was arrested, and the released inmate has not absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant to the date of the released inmate's arrest. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state for reasons other than the secretary's warrant and the released inmate does not have authorization to be in the other state or if authorized to be in the other state has been charged by the secretary with having absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant by the secretary to the date the released inmate is first available to be returned to the state of Kansas. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of a condition of release is subsequently arrested in another state pursuant only to the secretary's warrant, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, regardless of whether the released inmate's presence in the other state was authorized or the released inmate had absconded from supervision.

The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such released inmate be employed including but not limited to notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of the released inmate.

(g) Law enforcement officers shall execute warrants issued by the secretary of corrections, and shall deliver the inmate named in the warrant to the jail used by the county where the inmate is arrested unless some other place is designated by the secretary, in the same manner as for the execution of any arrest warrant.

(h) For the purposes of this section, an inmate or released inmate is an individual under the supervision of the secretary of corrections, including, but not limited to, an individual on parole, conditional release, postrelease supervision, probation granted by another state or an individual supervised under any interstate compact in accordance with the pro-

visions of the uniform act for out-of-state parolee supervision, K.S.A. 22-4101 *et seq.*, and amendments thereto.

Sec. 37. K.S.A. 2011 Supp. 75-5266 is hereby amended to read as follows: 75-5266. Psychiatric evaluation reports of correctional facilities shall be privileged and shall not be disclosed directly or indirectly to anyone except as provided herein. The court, the district or county attorney, the attorney for the defendant or inmate, the ~~Kansas parole prisoner review~~ board and its staff, the wardens and classification committees of the state correctional institutions and those persons authorized by the secretary shall have access to such reports. Such reports may be disclosed to: (1) The defendant or inmate or members of the defendant's or inmate's family; (2) the defendant's or inmate's friends when authorized by the defendant or inmate or the defendant's or inmate's family; or (3) the superintendent or director of any other state institution when authorized by the warden, or secretary of corrections. Employees of the correctional institutions under the supervision of the secretary are expressly forbidden from disclosing the contents of such reports to anyone except as provided herein. Nothing in this section shall be construed as preventing the attorney for the defendant or inmate from discussing such reports with the defendant or inmate.

Sec. 38. K.S.A. 2011 Supp. 77-421 is hereby amended to read as follows: 77-421. (a) (1) Except as provided by subsection (a)(2), subsection (a)(3) or subsection (a)(4), prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations established by K.S.A. 77-436, and amendments thereto. The notice shall be provided to the secretary of state and to the chairperson, vice chairperson, ranking minority member of the joint committee and legislative research department and shall be published in the Kansas register. A complete copy of all proposed rules and regulations and the complete economic impact statement required by K.S.A. 77-416, and amendments thereto, shall accompany the notice sent to the secretary of state. The notice shall contain:

(A) A summary of the substance of the proposed rules and regulations;

(B) a summary of the economic impact statement indicating the estimated economic impact on governmental agencies or units, persons subject to the proposed rules and regulations and the general public;

(C) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed rules and regulations;

(D) the address where a complete copy of the proposed rules and regulations, the complete economic impact statement, the environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto, may be obtained;

(E) the time and place of the public hearing to be held; the manner in which interested parties may present their views; and

(F) a specific statement that the period of 60 days' notice constitutes a public comment period for the purpose of receiving written public comments on the proposed rules and regulations and the address where such comments may be submitted to the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and regulations.

(2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of ~~the department of wildlife and parks~~ *wildlife, parks and tourism* shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(3) Prior to adopting any rule and regulation which establishes any permanent prior authorization on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state medicaid plan, and after such rule and regulation has been approved by the secretary of administration and the attorney general, the Kansas health policy authority shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(4) Prior to adopting any rule and regulation pursuant to subsection (c), the state agency shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1)

shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of notice constitutes a public comment period on such rules and regulations.

(b) (1) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. At the time it adopts or amends a rule and regulation, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including:

(A) The agency's reasons for not accepting substantial arguments made in testimony and comments; and

(B) the reasons for any substantial change between the text of the proposed adopted or amended rule and regulation contained in the published notice of the proposed adoption or amendment of the rule and regulation and the text of the rule and regulation as finally adopted.

(2) Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of following the requirements or statutory procedure set out in such other law, may give notice and hold hearings on proposed rules and regulations in the manner prescribed by this section.

(3) Notwithstanding the other provisions of this section, ~~the Kansas parole board and the secretary of corrections; may give notice or an opportunity to be heard to any inmate in the custody of the secretary of corrections with regard to the adoption of any rule and regulation, but the secretary shall not be required to give such notice or opportunity.~~

(c) (1) The agency shall initiate new rulemaking proceedings under this act, if a state agency proposes to adopt a final rule and regulation that:

(A) Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

(B) is not a logical outgrowth of the rule and regulation as originally proposed.

(2) In accordance with subsection (a), the period for public comment required by K.S.A. 77-421, and amendments thereto, may be shortened to not less than 30 days.

(3) For the purposes of this provision, a rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed if a person affected by the final rule and regulation was not put on notice that such person's interests were affected in the rulemaking.

(d) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a proposed rule and regulation, the agency shall cause written minutes or other records, including a record maintained on sound recording tape or on any electronically accessed media or any combination of written or electronically accessed media records of

the hearing to be made. If the proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for not less than three years after its effective date, such minutes or other records, together with any recording, transcript or other record made of the hearing and a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.

(e) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

Sec. 39. K.S.A. 2011 Supp. 77-603 is hereby amended to read as follows: 77-603. (a) This act applies to all agencies and all proceedings for judicial review and civil enforcement of agency actions not specifically exempted by statute from the provisions of this act.

(b) This act creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes.

(c) This act does not apply to agency actions:

(1) Of the ~~Kansas parole~~ *prisoner review* board concerning inmates or persons under parole or conditional release supervision;

(2) concerning the management, discipline or release of persons in the custody of the secretary of corrections;

(3) concerning the management, discipline or release of persons in the custody of the commissioner of juvenile justice;

(4) under the election laws contained in chapter 25 of the Kansas Statutes Annotated, and amendments thereto, except as provided by K.S.A. 25-4185, and amendments thereto;

(5) concerning pardon, commutation of sentence, clemency or extradition;

(6) concerning military or naval affairs other than actions relating to armories;

(7) governed by the provisions of the open records act and subject to an action for enforcement pursuant to K.S.A. 45-222, and amendments thereto;

(8) governed by the provisions of K.S.A. 75-4317 *et seq.*, and amendments thereto, relating to open public meetings, and subject to an action for civil penalties or enforcement pursuant to K.S.A. 75-4320 or 75-4320a, and amendments thereto; or

(9) concerning the civil commitment of sexually violent predators pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto.

Sec. 40. K.S.A. 22-3706, 22-3707a, 22-3708, 22-3709, 22-3710, 22-

3711, 22-3712, 22-3713, 22-3718, 22-3719, 22-3720, 22-3722, 22-3726, 22-4111, 60-4305, 74-7320, 74-7321, 74-9102 and 75-5202 and K.S.A. 2011 Supp. 12-4516, 19-4804, 21-6603, 21-6606, 21-6609, 21-6614, 21-6614a, 21-6614b, 21-6614c, 21-6803, 22-3701, 22-3707, 22-3717, 22-3728, 22-3729, 22-4701, 59-29a02, 74-4911f, 74-9101, 75-4318, 75-4319, 75-5210a, 75-5217, 75-5266, 77-421 and 77-603 are hereby repealed.

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

Approved March 20, 2012.

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## CHAPTER 17

### SENATE BILL No. 270

AN ACT concerning the department of revenue; relating to confidentiality of licensure information; exceptions; amending K.S.A. 2011 Supp. 75-5133 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 75-5133 is hereby amended to read as follows: 75-5133. (a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions, shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax, in accordance with proper judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

(b) The secretary of revenue or the secretary's designee may:

- (1) Publish statistics, so classified as to prevent identification of particular reports or returns and the items thereof;
- (2) allow the inspection of returns by the attorney general or the attorney general's designee;
- (3) provide the post auditor access to all such excise tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto;
- (4) disclose taxpayer information from excise tax returns to persons or entities contracting with the secretary of revenue where the secretary

has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) provide information from returns and reports filed under article 42 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, to county appraisers as is necessary to insure proper valuations of property. Information from such returns and reports may also be exchanged with any other state agency administering and collecting conservation or other taxes and fees imposed on or measured by mineral production;

(6) provide, upon request by a city or county clerk or treasurer or finance officer of any city or county receiving distributions from a local excise tax, monthly reports identifying each retailer doing business in such city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month, and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number;

(7) provide information from returns and applications for registration filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-3601, and amendments thereto, to a city or county treasurer or clerk or finance officer to explain the basis of statistics contained in reports provided by subsection (b)(6);

(8) disclose the following oil and gas production statistics received by the department of revenue in accordance with K.S.A. 79-4216 *et seq.*, and amendments thereto: Volumes of production by well name, well number, operator's name and identification number assigned by the state corporation commission, lease name, leasehold property description, county of production or zone of production, name of purchaser and purchaser's tax identification number assigned by the department of revenue, name of transporter, field code number or lease code, tax period, exempt production volumes by well name or lease, or any combination of this information;

(9) release or publish liquor brand registration information provided by suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: Item number, universal numeric code, type status, product description, alcohol percentage, selling units, unit size, unit of measurement, supplier number, supplier name, distributor number and distributor name;

(10) release or publish liquor license information provided by liquor licensees, distributors, suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: County name, owner, business name, address, license type, license number, license expiration date and the process agent contact information;

(11) release or publish cigarette and tobacco license information ob-

tained from cigarette and tobacco licensees in accordance with the Kansas cigarette and tobacco products act. The information to be released is limited to: County name, owner, business name, address, license type and license number;

(12) provide environmental surcharge or solvent fee, or both, information from returns and applications for registration filed pursuant to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary of health and environment or the secretary's designee for the sole purpose of ensuring that retailers collect the environmental surcharge tax or solvent fee, or both;

(13) provide water protection fee information from returns and applications for registration filed pursuant to K.S.A. 82a-954, and amendments thereto, to the secretary of the state board of agriculture or the secretary's designee and the secretary of the Kansas water office or the secretary's designee for the sole purpose of verifying revenues deposited to the state water plan fund;

(14) provide to the secretary of commerce copies of applications for project exemption certificates sought by any taxpayer under the enterprise zone sales tax exemption pursuant to subsection (cc) of K.S.A. 79-3606, and amendments thereto;

(15) disclose information received pursuant to the Kansas cigarette and tobacco act and subject to the confidentiality provisions of this act to any criminal justice agency, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, or to any law enforcement officer, as defined in K.S.A. 2011 Supp. 21-5111, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation;

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department; ~~and~~

(17) provide information concerning remittance by sellers, as defined in K.S.A. 2011 Supp. 12-5363, and amendments thereto, of prepaid wireless 911 fees from returns to the local collection point administrator, as defined in K.S.A. 2011 Supp. 12-5363, and amendments thereto, for purposes of verifying seller compliance with collection and remittance of such fees; *and*

(18) *release or publish charitable gaming information obtained in bingo licensee and registration applications and renewals in accordance with the bingo act, K.S.A. 79-4701 et seq., and amendments thereto. The information to be released is limited to: The name, address, phone number, license or registration number and email address of the organization, distributor or lessor of premises.*

(c) Any person receiving any information under the provisions of subsection (b) shall be subject to the confidentiality provisions of subsection (a) and to the penalty provisions of subsection (d).

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general. The district attorney or county attorney and the attorney general shall have authority to prosecute any violation of this section if the offender is a city or county clerk or treasurer or finance officer of a city or county.

Sec. 2. K.S.A. 2011 Supp. 75-5133 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 20, 2012.

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## CHAPTER 18

### SENATE BILL No. 264

AN ACT concerning insurance; relating to life insurance companies; designating trust companies as nominee; amending K.S.A. 2011 Supp. 40-2b20 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 40-2b20 is hereby amended to read as follows: 40-2b20. (a) Any life insurance company organized under any law of this state, with the direction or approval of a majority of its board of directors, may:

(1) Adopt a nominee name unique to such insurance company in which such insurance company's securities may be registered;

(2) designate a state or national bank, *a trust company* or a federal home loan bank having trust powers to obtain a nominee name for such insurance company in which such insurance company's securities may be registered; or

(3) designate a state or national bank *or a trust company* having trust powers as trustee to make any investment authorized by this act in the name of such trustee or such trustee's nominee.

(b) Under the provisions of paragraphs (2) and (3) of subsection (a), the designated state or national bank, *the trust company* or the federal home loan bank may arrange for such securities to be held in a clearing corporation. Such arrangement must be in accordance with a written agreement, approved by the commissioner of insurance, between the insurance company and its designated bank *or trust company* and must impose the same degree of responsibility on the bank *or trust company* as if such securities were held in definitive form by such bank *or trust company*.

(c) As used in this section “clearing corporation” means: (1) A corporation defined in subsection (3) of K.S.A. 84-8-102, and amendments thereto;

(2) any organization or system for the clearance and settlement of securities transactions which is operated or owned by a bank, trust company or other entity that is subject to regulation by the United States federal reserve board or the United States comptroller of the currency; or

(3) any clearing agency registered with the securities and exchange commission pursuant to the securities exchange act of 1934, section 17A; ~~and amendments thereto.~~

Sec. 2. K.S.A. 2011 Supp. 40-2b20 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 20, 2012.

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## CHAPTER 19

### SENATE BILL No. 266

AN ACT concerning insurance; relating to risk-based capital requirements for certain insurers; amending K.S.A. 2011 Supp. 40-2c01 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) “Adjusted RBC report” means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) “Corrective order” means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address a RBC level event.

(c) “Domestic insurer” means any insurance company or risk retention group which is licensed and organized in this state.

(d) “Foreign insurer” means any insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated or K.S.A. 40-209, and amendments thereto.

(e) “NAIC” means the national association of insurance commissioners.

(f) “Life and health insurer” means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a

licensed property and casualty insurer writing only accident and health insurance.

(g) “Property and casualty insurer” means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) “Negative trend” means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the “trend test calculation” included in the RBC instructions defined in subsection (j).

(i) “RBC” means risk-based capital.

(j) “RBC instructions” mean the risk-based capital instructions promulgated by the NAIC, which are in effect on December 31, ~~2010~~ 2011, or any later version promulgated by the NAIC as may be adopted by the commissioner under K.S.A. 2011 Supp. 40-2c29, and amendments thereto.

(k) “RBC level” means an insurer’s company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) “Company action level RBC” means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) “regulatory action level RBC” means the product of 1.5 and its authorized control level RBC;

(3) “authorized control level RBC” means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) “mandatory control level RBC” means the product of .70 and the authorized control level RBC.

(l) “RBC plan” means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner’s recommendation, the plan shall be called the “revised RBC plan.”

(m) “RBC report” means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) “Total adjusted capital” means the sum of:

(1) An insurer’s capital and surplus or surplus only if a mutual insurer; and

(2) such other items, if any, as the RBC instructions may provide.

(o) “Commissioner” means the commissioner of insurance.

Sec. 2. K.S.A. 2011 Supp. 40-2c01 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

## CHAPTER 20

## SENATE BILL No. 249

AN ACT concerning the division of post audit; relating to employees; criminal history record check; amending K.S.A. 46-1103 and repealing the existing section.

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

Section 1. K.S.A. 46-1103 is hereby amended to read as follows: 46-1103. (a) There is hereby established the division of post audit within the legislative branch of the government. The division of post audit shall be under the direct supervision of the post auditor in accordance with policies adopted by the legislative post audit committee.

(b) (1) Employees in the division of post audit shall be in the unclassified service, shall receive such compensation as is provided under this act and shall be covered by the state group health plan and Kansas public employees retirement system to the same extent as other state employees.

(2) Employees of the division of post audit shall receive travel expenses and subsistence expenses and allowances as provided for other state employees.

(3) Employees in the division of post audit shall be employed by and be responsible to the post auditor who shall fix the compensation of each such employee subject to approval of the legislative post audit committee and within budget and appropriations therefor.

(c) (1) *The post auditor may require employees of the division of post audit to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the employee and to determine whether the employee has a record of criminal history in this state or another jurisdiction. The post auditor shall submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the post auditor in the taking and processing of fingerprints of employees. The post auditor may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the employee and in the official determination of the qualifications and fitness of the employee to be employed by the division of post audit.*

(2) *Any person offered a position of employment in the division of post audit, subject to a criminal history records check, shall be given a written notice that a criminal history records check is required. The post auditor may require such applicant to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The post auditor shall submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national*

*criminal history record check. Local and state law enforcement officers and agencies shall assist the post auditor in the taking and processing of fingerprints of applicants. The post auditor may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the applicant and in the official determination of the eligibility of the applicant to perform tasks within the division of post audit. If the criminal history record information is used to disqualify an applicant, the applicant shall be informed in writing of that decision.*

(d) The annual budget request of the division shall be prepared by the post auditor and the post auditor shall present it to the legislative post audit committee. The committee shall make any changes it desires in said budget request and then shall transmit it to the legislative coordinating council. Such council shall make any changes it desires in such budget request and upon approval of the budget request by the council, the post auditor shall submit it to the director of the budget as other budget requests are submitted.

Sec. 2. K.S.A. 46-1103 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 20, 2012.

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## CHAPTER 21

### SENATE BILL No. 384

AN ACT concerning the Kansas 911 act; definitions; terms of council members; fees, distribution; amending K.S.A. 2011 Supp. 12-5363, 12-5364 and 12-5374 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 12-5363 is hereby amended to read as follows: 12-5363. As used in the Kansas 911 act:

(a) “Consumer” means a person who purchases prepaid wireless service in a retail transaction.

(b) “Department” means the Kansas department of revenue.

(c) “Enhanced 911 service” or “E-911 service” means an emergency telephone service that generally may provide, but is not limited to, selective routing, automatic number identification and automatic location identification features.

(d) “Exchange telecommunications service” means the service that provides local telecommunications exchange access to a service user.

(e) “Governing body” means the board of county commissioners of a county or the governing body of a city.

(f) “Local collection point administrator” or “LCPA” means, on the effective date of this act, the statewide association of cities established by K.S.A. 12-1610e, and amendments thereto, and the statewide association of counties established by K.S.A. 19-2690, and amendments thereto. After January 1, 2012, “local collection point administrator” means the person designated by the 911 coordinating council to serve as the local collection point administrator to collect and distribute 911 fees and 911 state grant fund moneys.

(g) “*Multi-line telephone system*” means a system comprised of common control units, telephones and control hardware and software providing local telephone service to multiple end-use customers that may include VoIP service and network and premises based systems such as centrex, private branch exchange and hybrid key telephone systems.

~~(g)~~(h) “Next generation 911” means 911 service that enables PSAPs to receive Enhanced 911 service calls and emergency calls from Internet Protocol (IP) based technologies and applications that may include text messaging, image, video and data information from callers.

~~(h)~~(i) “Person” means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy or any other legal entity.

~~(i)~~(j) “Prepaid wireless service” means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

~~(j)~~(k) “Place of primary use” has the meaning provided in the mobile telecommunications act as defined by 4 U.S.C. § 116 *et seq.*, as in effect on the effective date of this act.

~~(k)~~(l) “Provider” means any person providing exchange telecommunications service, wireless telecommunications service, VoIP service or other service capable of contacting a PSAP.

~~(l)~~(m) “PSAP” means a public safety answering point operated by a city or county.

~~(m)~~(n) “Retail transaction” means the purchase of prepaid wireless service from a seller for any purpose other than resale, not including the use, storage or consumption of such services.

~~(n)~~(o) “Seller” means a person who sells prepaid wireless service to another person.

~~(o)~~(p) “Service user” means any person who is provided exchange telecommunications service, wireless telecommunications service, VoIP service, prepaid wireless service or any other service capable of contacting a PSAP.

~~(p)~~(q) “Subscriber account” means the 10-digit access number assigned to a service user ~~regardless of whether more than one such number is aggregated by a provider~~ for the purpose of billing a service user *up to the maximum capacity of the simultaneous outbound calling capability of a multi-line telephone system or equivalent service.*

~~(q)~~(r) “Subscriber radio equipment” means mobile and portable radio equipment installed in vehicles or carried by persons for voice communication with a radio system.

~~(r)~~(s) “VoIP service” means voice over internet protocol.

~~(s)~~(t) “Wireless telecommunications service” means commercial mobile radio service as defined by 47 C.F.R. § 20.3 as in effect on the effective date of this act.

Sec. 2. K.S.A. 2011 Supp. 12-5364 is hereby amended to read as follows: 12-5364. (a) (1) There is hereby created the 911 coordinating council which shall monitor the delivery of 911 services, develop strategies for future enhancements to the 911 system and distribute available grant funds to PSAPs. In as much as possible, the council shall include individuals with technical expertise regarding 911 systems, internet technology and GIS technology.

(2) The 911 coordinating council shall consist of 12 voting members to be appointed by the governor: Two members representing information technology personnel from government units; one member representing a law enforcement officer; one member representing a fire chief; one member recommended by the adjutant general; one member recommended by the Kansas emergency medical services board; one member recommended by the Kansas commission for the deaf and hard of hearing; two members representing PSAPs located in counties with less than 75,000 in population; two members representing PSAPs located in counties with greater than 75,000 in population; and one member representing PSAPs without regard to size. At least two of the members representing PSAPs shall be administrators of a PSAP or have extensive prior 911 experience in Kansas.

(3) Other voting members of the 911 coordinating council shall include: One member of the Kansas house of representatives as appointed by the speaker of the house; one member of the Kansas house of representatives as appointed by the minority leader of the house; one member of the Kansas senate as appointed by the senate president; and one member of the Kansas senate as appointed by the senate minority leader.

(4) The 911 coordinating council shall also include nonvoting members to be appointed by the governor: One member representing rural telecommunications companies recommended by the Kansas rural independent telephone companies; one member representing incumbent local exchange carriers with over 50,000 access lines; one member representing large wireless providers; one member representing VoIP pro-

viders; one member recommended by the league of Kansas municipalities; one member recommended by the Kansas association of counties; one member recommended by the Kansas geographic information systems policy board; one member recommended by KAN-ED; one member recommended by the Kansas division of information systems and communications; and one member, a Kansas resident, recommended by the Mid-America regional council.

(b) (1) *Except as provided in subsection (b)(2), the terms of office for voting members of the 911 coordinating council shall commence on the effective date of this act and shall be subject to reappointment every three years. No voting member shall serve longer than two successive three-year terms. A voting member appointed as a replacement for another voting member may finish the term of the predecessor and may serve two additional successive three-year terms.*

(2) *The following members, whose terms began on the effective date of this act, shall serve initial terms as follows:*

(A) *One member representing information technology personnel from government units, one member recommended by the adjutant general, one member representing PSAPs located in counties with less than 75,000 in population and one member representing PSAPs located in counties with greater than 75,000 in population shall serve a term of two years;*

(B) *one member representing information technology personnel from government units, one member recommended by the Kansas emergency medical services board, one member representing PSAPs located in counties with less than 75,000 in population and one member representing PSAPs without regard to size shall serve a term of three years; and*

(C) *one member representing a fire chief, one member recommended by the Kansas commission for the deaf and hard of hearing, one member representing a law enforcement officer and one member representing PSAPs located in counties with greater than 75,000 in population shall serve a term of four years.*

(3) *The terms of members specified in this subsection shall expire on June 30 in the last year of such member's term.*

(c) (1) The governor shall select the chair of the 911 coordinating council, who shall serve at the pleasure of the governor and have extensive prior 911 experience in Kansas.

(2) The chair shall serve as the coordinator of E-911 services and next generation 911 services in the state, implement statewide 911 planning, have the authority to sign all certifications required under 47 C.F.R. part 400 and administer the 911 federal grant fund and 911 state maintenance fund. The chair shall serve subject to the direction of the council and ensure that policies adopted by the council are carried out. The chair shall serve as the liaison between the council and the LCPA. The chair shall preside over all meetings of the council and assist the council in effectuating the provisions of this act.

(d) Upon the advice and consent of the legislative coordinating council, the 911 coordinating council shall select the local collection point administrator, pursuant to K.S.A. 2011 Supp. 12-5367, and amendments thereto, to collect 911 fees and to distribute such fees to PSAPs and to distribute 911 state grant fund moneys as directed by the council. The council shall adopt rules and regulations for the terms of the contract with the LCPA. All contract terms and conditions shall satisfy all contract requirements as established by the secretary of administration. The council may, pursuant to rules and regulations, increase the duration of the contract with the LCPA to a maximum of three years. The council shall determine the compensation of the LCPA who, after January 1, 2012, shall provide the council with any staffing necessary in carrying out the business of the council or effectuating the provisions of this act. Prior to January 1, 2012, the department of administration shall provide the council with any staffing necessary in carrying out the business of the council or effectuating the provisions of this act. The moneys used to reimburse these expenses shall be paid from the 911 state grant fund, pursuant to subsection (i).

(e) The 911 coordinating council is hereby authorized to adopt rules and regulations necessary to effectuate the provisions of this act, including, but not limited to, creating a uniform reporting form designating how moneys, including 911 fees, have been spent by the PSAPs, requiring service providers to notify the council pursuant to subsection (j), setting standards for coordinating and purchasing equipment, recommending standards for training of PSAP personnel and assessing civil penalties. The chair of the council shall work with the council to develop rules and regulations necessary for the distribution of moneys in the 911 federal grant fund. The council shall work with the chair to carry out the provisions of this act. Rules and regulations necessary to begin administration of this act shall be adopted by December 31, 2011.

(f) The council may, pursuant to rules and regulations, raise or lower the 911 fee upon a finding based on information submitted on the uniform reporting forms, that moneys generated by such fee are in excess of or below the costs required to operate PSAPs in the state. The council shall not set the 911 fee above \$.60.

(g) The council may appoint subcommittees as necessary to administer grants, oversee collection and distribution of moneys by the LCPA, develop technology standards, develop training recommendations and other issues as deemed necessary by the council. Subcommittees, if appointed, shall include members of the council and other persons as needed.

(h) The council may reimburse independent contractors or state agencies for expenses incurred in carrying out the business of the council, including salaries, that are directly attributable to effectuating the pro-

visions of this act. The moneys used to reimburse these expenses shall be paid from the 911 state grant fund, pursuant to subsection (i).

(i) All expenses related to the council shall be paid from the 911 state grant fund. No more than 1.5% of the total receipts from providers and the department received by the LCPA shall be used to pay for such expenses. Members of the council may receive reimbursement for meals and travel expenses, but shall serve without other compensation with the exception of legislative members.

(j) Every provider shall submit contact information for the provider to the council prior to January 1, 2012. Any provider that has not previously provided wireless telecommunications service in this state shall submit contact information for the provider to the council within three months of first offering wireless telecommunications services in this state.

(k) Each PSAP shall file with the council, by March 1, 2012, and every March 1 thereafter, a report demonstrating how such PSAP has spent the moneys earned from the 911 fee during the preceding calendar year. The council shall designate the content and form of such report.

(l) The council, upon a finding that a provider has violated any provision of this act, may impose a civil penalty. No civil penalty shall be imposed pursuant to this section except upon the written order of the council. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to a hearing before the council. Any such person may, within 15 days after service of the order, make a written request to the council for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(m) Any action of the council pursuant to subsection (l) is subject to review in accordance with the Kansas judicial review act.

(n) Any civil penalty recovered pursuant to this section shall be transferred to the LCPA for deposit in the 911 state grant fund.

(o) As long as the provider is working in good faith to comply with the provisions of this act, no civil penalty shall be imposed prior to January 1, 2013.

(p) The 911 coordinating council shall make an annual report, to include a detailed description of all expenditures made from 911 fees received by the PSAPs, to the house committee on energy and utilities and the senate committee on utilities.

Sec. 3. K.S.A. 2011 Supp. 12-5374 is hereby amended to read as follows: 12-5374. (a) Not later than 30 days after the receipt of moneys from providers pursuant to K.S.A. 2011 Supp. 12-5370 and 12-5371, and amendments thereto, and the department pursuant to K.S.A. 2011 Supp. 12-5372, and amendments thereto, the LCPA shall distribute such moneys to PSAPs based upon the following distribution method: In a county with a population over 80,000, 82% of the money collected from service

users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 65,000 and 79,999, 85% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 55,000 and 64,999, 88% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 45,000 and 54,999, 91% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 35,000 and 44,999, 94% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 25,000 and 34,999, 97% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; and in a county with a population of less than 25,000, 100% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information. There shall be a minimum county distribution of \$50,000 and no county shall receive less than \$50,000 of direct distribution moneys. If there is more than one PSAP in a county then the direct distribution allocated to that county by population shall be deducted from the minimum county distribution and the difference shall be proportionately divided between the PSAPs in the county. All moneys remaining after distribution and any moneys which cannot be attributed to a specific PSAP shall be transferred to the 911 state grant fund.

(b) All fees remitted to the LCPA shall be deposited in the 911 state fund and for the purposes of this act be treated as if they are public funds, pursuant to article 14 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

(c) All moneys in the 911 state fund that have been collected from the prepaid wireless 911 fee shall be deposited in the 911 state grant fund unless \$2 million of such moneys have been deposited in any given year then all remaining moneys shall be distributed to the PSAPs pursuant to ~~subsection (a)~~ *counties in an amount proportional to each county's population as a percentage share of the population of the state. For each PSAP within a county, such moneys shall be distributed to each PSAP in an*

*amount proportional to the PSAP's population as a percentage share of the population of the county. If there is no PSAP within a county, then such moneys shall be distributed to the PSAP providing service to such county. Such moneys distributed to counties and PSAPs only shall be used for the uses authorized in K.S.A. 2011 Supp. 12-5375, and amendments thereto.*

(d) The LCPA shall keep accurate accounts of all receipts and disbursements of moneys from the 911 fees.

(e) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to this act will be treated as proprietary records which will be withheld from the public upon request of the party submitting such records.

(f) The provisions of subsection (e) shall expire on July 1, 2017, unless the legislature acts to reenact such provision. The provisions of subsection (e) shall be reviewed by the legislature prior to July 1, 2016.

(g) This section shall take effect on and after January 1, 2012.

Sec. 4. K.S.A. 2011 Supp. 12-5363, 12-5364 and 12-5374 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 20, 2012.

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## CHAPTER 22

### SENATE BILL No. 406

AN ACT concerning the Kansas storage tank act; relating to the underground storage tank fund; amending K.S.A. 65-34,123 and K.S.A. 2011 Supp. 65-34,102, 65-34,110, 65-34,117, 65-34,131, 65-34,132, 65-34,133 and 65-34,134 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 65-34,102 is hereby amended to read as follows: 65-34,102. As used in the Kansas storage tank act:

(a) "Aboveground storage tank" means:

(1) Any storage tank in which greater than 90% of the tank volume, including volume of the piping, is not below the surface of the ground; or

(2) any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(b) "Aboveground fund" means the aboveground petroleum storage tank release trust fund.

(c) “Department” means the Kansas department of health and environment.

(d) “Facility” means all contiguous land, structures and other appurtenances and improvements on the land used in connection with one or more storage tanks.

(e) “Federal act” means the solid waste disposal act, ~~42 U.S.C. sections 3152 et seq., as amended, particularly by the hazardous and solid waste amendments of 1984, P.L. 98-616, 42 U.S.C. sections 6991 et seq., as amended by P.L. 99-499, 1986, (42 U.S.C. § 3152 et seq., 42 U.S.C. § 6991 et seq., as in effect on January 1, 2012)~~ and rules and regulations adopted pursuant to such federal laws and in effect on ~~the effective date of this act~~ January 1, 2012.

(f) “Financial responsibility” means insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the secretary to provide for taking corrective action, including cleanup and restoration of any damage to the land, air or waters of the state, and compensating third parties for cleanup, bodily injury or property damage resulting from a sudden or nonsudden release of a regulated substance arising from the construction, relining, ownership or operation of an underground storage tank and in the amount specified in the federal act.

(g) “Guarantor” means any person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator.

(h) “Operator” means any person in control of or having responsibility for the daily operation of a storage tank, but such term shall not include a person whose only responsibility regarding such storage tank is filling such tank with a regulated substance and who does not dispense or have control of the dispensing of regulated substances from the storage tank.

(i) “Own” means to hold title to or possess an interest in a storage tank or the regulated substance in a storage tank.

(j) (1) “Owner” means any person who: (A) Is or was the owner of any underground storage tank which was in use on November 8, 1984, or brought into use subsequent to that date; (B) in the case of an underground storage tank in use prior to November 8, 1984, owned such tank immediately prior to the discontinuation of its use; (C) is or was the owner of any aboveground storage tank which was in use on July 1, 1992, or brought into use subsequent to that date; or (D) in the case of an aboveground storage tank in use prior to July 1, 1992, owned such tank immediately prior to the discontinuation of its use.

(2) Owner does not include: (A) A person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the storage tank; and (B) any city or county which obtains a storage tank or regulated substance as a result of tax foreclosure proceedings.

(k) “Person” means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, state, interstate body, municipality, commission, political subdivision or any agency, board, department or bureau of this state or of any other state or of the United States government.

(l) “Petroleum” means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure—, 60 degrees Fahrenheit and 14.7 pound per square inch absolute—, including but not limited to, gasoline, gasohol, diesel fuel, fuel oils, kerosene and biofuels.

(m) “Petroleum product” means petroleum other than crude oil.

(n) “Petroleum storage tank” means any storage tank used to contain an accumulation of petroleum.

(o) “Regulated substance” means petroleum or any element, compound, mixture, solution or substance defined in section 101(14) of the comprehensive environmental response, compensation and liability act of 1980 of the United States as in effect on January 1, 1989, but not if regulated as a hazardous waste under the resource conservation and recovery act of 1976—, 42 U.S.C. ~~Sees.~~ §§ 6921 through 6939b—, as in effect on January 1, 1989.

(p) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into groundwater, surface water or soils.

(q) “Removal” means the process of removing or disposing of a storage tank, no longer in service, and also shall mean the process of abandoning such tank, in place.

(r) “Repair” means modification or correction of a storage tank through such means as relining, replacement of piping, valves, fillpipes, vents and liquid level monitoring systems, and the maintenance and inspection of the efficacy of cathodic protection devices, but the term does not include the process of conducting a tightness test to establish the integrity of a tank.

(s) “Secretary” means the secretary of health and environment.

(t) “Storage tank” means any one or combination of tanks used to contain an accumulation of regulated substances, the associated piping and ancillary equipment and the containment system.

(u) “Tank” means a stationary device designed to contain an accumulation of substances and constructed of non-earthen materials such as concrete, steel or plastic, that provide structural support.

(v) “Terminal” means a bulk storage facility for storing petroleum supplied by pipeline or marine vessel.

(w) “Trade secret” has the same meaning as provided in K.S.A. 60-3320, and amendments thereto.

(x) “Underground storage tank” means any storage tank in which 10% or more of the tank volume, including volume of the piping, is below the

surface of the ground. Underground storage tank does not include any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(y) “Underground storage tank contractor” or “contractor” means a business which holds itself out as being qualified to install, repair or remove underground storage tanks.

(z) “Underground fund” means the underground petroleum storage tank release trust fund.

(aa) “Underground storage tank installer” or “installer” means an individual who has an ownership interest or exercises a management or supervisory position with an underground storage tank contractor. The term shall include the crew chief, expeditor, engineer, supervisor, leadman or foreman in charge of a tank installation project.

~~(bb) “Bulk plant” means an aboveground storage tank facility, not located at a pipeline terminal or located on a federal facility, with a storage capacity of 1,320 gallons or more, but less than 1,000,000 gallons, used to dispense petroleum to tanker trucks for transportation and sale at another location;~~

~~(cc) “fuels supply fund” means the Kansas essential fuels supply trust~~ “UST redevelopment fund” means the Kansas UST property redevelopment trust fund.

(cc) “Abandoned underground storage tank” means an underground storage tank that exhibits one or more of the following conditions:

- (1) Is not in use for more than three months;
- (2) does not have a current tank permit issued by the department; or
- (3) has been temporarily closed, in accordance with department guidelines, for more than 12 months.

(dd) “Property owner” means for the purposes of the UST redevelopment fund, a person who owns real property on which an abandoned underground storage tank is located.

Sec. 2. K.S.A. 2011 Supp. 65-34,110 is hereby amended to read as follows: 65-34,110. (a) It shall be unlawful for any person to practice, or hold oneself out as authorized to practice, as an underground storage tank installer or underground storage tank contractor or use other words or letters to indicate such person is a licensed installer or contractor unless the person is licensed in accordance with this section.

(b) The secretary shall:

- (1) Develop and administer a written examination to candidates for licensing under the terms of this section. Questions used in the examination shall be derived from standard instructions and recommended practices published by such authorities as the petroleum equipment institute, American petroleum institute, steel tank institute, national association of corrosion engineers, Fiberglass tank and pipe manufacturers

institute, national fire protection association, western fire chiefs association and underwriters laboratories. Additional questions shall be derived from state and federal regulations applicable to storage tanks. The secretary shall make available sample questions and related material to qualified candidates to be used as a study guide in preparation for the examination.

(2) Conduct at least one on-site inspection annually, observing procedures used by each licensed underground storage tank contractor for installing, repairing or removing an underground storage tank.

(c) Any person who willfully violates any provision of subsection (a) shall be guilty of a class C misdemeanor and, upon conviction thereof, shall be punished as provided by law.

(d) Prior to 12 months after the effective date of this act, the department shall conduct written examinations, at such times and locations within the state as the department may designate, for the purpose of identifying installers as being qualified to receive an underground tank installer's license. Each underground tank installer's license shall be issued for a period of two years and shall be subject to periodic renewal thereafter under procedures prescribed by the department.

(e) Beginning 18 months after the effective date of this act, no contractor shall engage in the installation, repair or removal of an underground storage tank unless such contractor has been issued a contractor license. Each contractor license shall be issued for a period of two years and shall be subject to periodic renewal thereafter under procedures prescribed by the department.

(f) A contractor must meet the following requirements to qualify for a contractor license:

(1) At least one active officer or executive of the business must possess a valid underground storage tank installer's license.

(2) Any person who manufactures an underground ~~fuel~~ storage tank for use in Kansas, or piping for such tank, or who installs or repairs such tanks or piping, shall maintain evidence of financial responsibility in an amount equal to or greater than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for the costs of corrective action directly related to releases caused by improper manufacture, installation or repair of such tank or piping.

(3) The requirement in paragraph (2) shall not apply to the installation or repair of a ~~fuel~~ tank or piping performed by the owner or operator of such ~~fuel~~ tank or piping.

(4) Evidence of financial responsibility shall be presented with an application for a contractor license and subsequent renewals of contractor license to the department.

(5) The contractor must state in its license application and agree that at all times on any and all jobs involving the installation, repair or removal of an underground storage tank, an individual who possesses a valid un-

derground storage tank installer's license will be present at the job site not less than 75% of the time during the progress of the work, and that such installer shall exercise responsible supervisory control over the work.

(6) The secretary may promulgate rules and regulations to implement the provisions of this subsection.

(g) The secretary may elect to establish reciprocal arrangements with states having similar licensing requirements and to provide for the licensing in this state of persons who have successfully completed examinations and otherwise qualified for licensure in another state.

(h) A valid interim contractor license or an unexpired contractor license shall be valid in all counties and municipalities throughout the state, and the issuance of either license to a contractor shall serve as authority for the contractor to engage in the installation, repair and removal of underground storage tanks in any jurisdiction within the state without requirement for obtaining additional county or local licenses. However, local jurisdictions may impose more stringent requirements for installation, repair or removal of such tanks than are imposed by state regulations, in which case a contractor shall be required to conduct its operations in the local jurisdiction in conformity with the local requirements.

Sec. 3. K.S.A. 2011 Supp. 65-34,117 is hereby amended to read as follows: 65-34,117. (a) There is hereby established on and after July 1, 1992, an environmental assurance fee of \$.01 on each gallon of petroleum product, other than aviation fuel, manufactured in or imported into this state. The environmental assurance fee shall be paid by the manufacturer, importer or distributor first selling, offering for sale, using or delivering petroleum products within this state. The environmental assurance fee shall be paid to the department of revenue at the same time and in the same manner as the inspection fee established pursuant to K.S.A. 55-426, and amendments thereto, is paid. The secretary of revenue shall remit the environmental assurance fees paid hereunder to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of either the aboveground fund or underground fund, as provided by subsection (b). Exchanges of petroleum products on a gallon-for-gallon basis within a terminal and petroleum product which is subsequently exported from this state shall be exempt from this fee.

(b) Moneys collected from the environmental assurance fee imposed by this section shall be credited as follows:

(1) At any time when the unobligated principal balance of the underground fund is equal to \$2,000,000 or less, the moneys shall be credited to the underground fund until the unobligated principal balance of underground fund equals or exceeds \$5,000,000.

(2) At any time when the unobligated principal balance of the above-

ground fund is equal to \$500,000 or less and the moneys are not required to be credited to the underground fund under subsection (b)(1), such moneys shall be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first. At any time when the unobligated principal balance of the aboveground fund exceeds \$1,500,000, the excess shall be transferred to the underground fund.

(3) At any time when the moneys cease to be credited to aboveground fund before the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000, such moneys shall again be credited to the aboveground fund when the unobligated principal balance of the underground fund equals or exceeds \$5,000,000. Such moneys shall continue to be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first.

(4) At any time when subsections (b)(1), (b)(2) and (b)(3) do not require moneys to be credited to either the underground fund or the aboveground fund, the excess shall be transferred to the ~~Kansas essential fuels supply trust~~ *UST redevelopment* fund. If the unobligated principal balance of the ~~Kansas essential fuels supply trust~~ *UST redevelopment* fund is equal to \$2,000,000 or less, the moneys shall be credited to the ~~Kansas essential fuels supply trust~~ *UST redevelopment* fund until the unobligated principal balance of the ~~Kansas essential fuels supply trust~~ *UST redevelopment* fund equals or exceeds \$5,000,000 or until subsections (b)(1), (b)(2) or (b)(3) require money.

(c) At any time when subsections (b)(1), (b)(2), (b)(3) and (b)(4) do not require moneys to be credited to either the underground fund or the aboveground fund, no environmental assurance fees shall be levied unless and until such time as the unobligated principal balance in the underground fund is less than or equal to \$2,000,000 or the unobligated principal balance in the aboveground fund is less than or equal to \$500,000, in which case the collection of the environmental assurance fee will resume within 90 days following the end of the month in which such unobligated balance occurs. If no environmental assurance fees are being levied, the director of accounts and reports shall notify the secretary of revenue whenever the unobligated principal balance in the underground fund is \$2,000,000 or the unobligated principal balance in the aboveground fund is \$500,000, and the secretary of revenue shall then give notice to each person subject to the environmental assurance fee as to the imposition of the fee and the duration thereof.

The director of accounts and reports shall cause to be published each month, in the second issue of the Kansas register published in such month, the amount of the unobligated principal balances in the under-

ground fund and the aboveground fund on the last day of the preceding calendar month.

(d) Every manufacturer, importer or distributor of any petroleum product liable for the payment of environmental assurance fees as provided in this act, shall report in full and detail before the 25th day of every month to the secretary of revenue, on forms prepared and furnished by the secretary of revenue, and at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of fees due on all petroleum products subject to such fee during the preceding month.

(e) All fees imposed under the provisions of this section and not paid on or before the 25th day of the month succeeding the calendar month in which such petroleum products were subject to such fee shall be deemed delinquent and shall bear interest at the rate of 1% per month, or fraction thereof, from such due date until paid. In addition thereto, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5% thereof. Such penalty shall be added to and collected as a part of such fees by the secretary of revenue.

(f) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

Sec. 4. K.S.A. 65-34,123 is hereby amended to read as follows: 65-34,123. The underground fund and the aboveground fund shall be and are hereby abolished on July 1, ~~2014~~ 2024.

Sec. 5. K.S.A. 2011 Supp. 65-34,131 is hereby amended to read as follows: 65-34,131. (a) There is hereby established as a segregated fund in the state treasury the Kansas essential fuels supply trust fund. *The Kansas essential fuels supply trust fund is hereby redesignated as the UST redevelopment fund.* ~~The fuels supply-UST redevelopment fund shall be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the fuels supply UST redevelopment fund:~~

(1) The applicable proceeds of the environmental assurance fee imposed by K.S.A. 65-34,117, and amendments thereto; and

(2) interest attributable to investment of moneys in the ~~fuels supply~~ UST redevelopment fund.

(b) ~~The fuels supply fund shall be used for the following funds credited to the UST redevelopment fund may be expended to:~~

(1) ~~To Reimburse an eligible property owner of an aboveground storage tank or bulk plant in accordance with the provisions of K.S.A. 2011 Supp. 65-34,132, and amendments thereto, for allowable expenses for an upgrade or permanent closure of an aboveground abandoned underground storage tank or bulk plant; and;~~

(2) *permit the secretary to conduct activities to permanently close an abandoned underground storage tank, if the underground storage tank owner or operator has not been identified or is unable or unwilling to perform permanent closure of the underground storage tank; or*

(3) ~~payment of~~ *pay the administrative technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 2011 Supp. 65-34,131 and 65-34,132, and amendments thereto, including the cost of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the ~~fuels supply trust~~ UST redevelopment fund.*

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the above ~~Kansas essential fuels supply trust~~ UST redevelopment fund interest earnings based on:

(1) The average daily balance of moneys in the ~~above Kansas essential fuels supply trust~~ UST redevelopment fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the above ~~Kansas essential fuels supply trust~~ UST redevelopment fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

(e) This section shall be part of and supplemental to the Kansas storage tank act.

Sec. 6. K.S.A. 2011 Supp. 65-34,132 is hereby amended to read as follows: 65-34,132. (a) The secretary may provide for the reimbursement to eligible *property owners of aboveground storage tanks or bulk plants* in accordance with the provisions of this section and subject to the availability of moneys in the ~~Kansas essential fuels supply trust~~ UST redevelopment fund. ~~An aboveground storage tank or bulk plant~~ *A property owner shall be eligible for reimbursement under this section, if such aboveground storage tank or bulk plant is used for the storage of petroleum products for resale, property owner has been approved by the secretary and:*

(1) *The property owner has never placed petroleum in the underground storage tank or withdrawn petroleum from the underground storage tank;*

(2) *the property owner is not the United States government or any of its agencies;*

(3) *the property owner is in substantial compliance with the Kansas storage tank act;*

(4) *the property owner provides 30-day notice and access to the de-*

partment to perform an environmental assessment of the site during the underground storage tank removal; and

(5) if petroleum contamination is discovered during the environmental assessment of this site, the property owner applies to the underground fund to perform corrective action to address the contamination.

(b) A property owner shall not be eligible for reimbursement unless the underground storage tank owner or operator is unable or unwilling to perform corrective action or cannot be found. In such case the secretary may recover all reimbursement paid and any related administrative and legal expenses, from the underground storage tank owner or operator.

(c) Reimbursement pursuant to subsection (a) is subject to the following:

(1) The property owner must submit an application for reimbursement on forms supplied by the department and receive approval from the secretary of the proposed underground storage tank removal plan;

(2) upon approval of such plan, the property owner shall obtain and submit to the secretary at least three bids from persons qualified to perform the underground storage tank removal except that, the secretary may waive this requirement upon a showing that the property owner has made a good faith effort, but has not been able to obtain three bids from qualified bidders.

(3) The secretary may, in the secretary's discretion, determine those costs which are allowable as underground storage tank removal costs.

(d) The secretary may reimburse the property owner of an above-ground storage tank facility or bulk plant for upgrade expenses or for permanent closure expenses, in the amount specified in subsection ~~(c)~~(e), if all of the following criteria are met:

(1) The ~~above-ground~~ underground storage tank facility was registered with the department on or after ~~November 22, 1993~~ May 1, 1981;

(2) the ~~above-ground~~ underground storage tank ~~contains~~ contained petroleum products; and

(3) a deed restriction was placed on the property prohibiting the installation of underground storage tanks for the 10 years following the date of the underground storage tank removal. As a condition for reimbursement, the applicant must provide a notarized copy of the recorded deed restriction for the property with the seal of the register of deeds to the department.

~~(3) application is made on or before January 1, 2011, on a form provided by the department;~~

~~(4) upgrade expenses must be incurred after August 1, 2001, and not later than July 1, 2009. Upgrade expenses are limited to reasonable and necessary to the installation or improvement of equipment or systems required for compliance with 40 CFR 112. Such expenses shall include, but are not limited to, installation or upgrade of the following:~~

~~(A) Secondary containment;~~

- ~~(B) integrity testing;~~
- ~~(C) corrosion protection;~~
- ~~(D) loss prevention;~~
- ~~(E) engineering costs;~~
- ~~(F) security;~~
- ~~(G) drainage; and~~
- ~~(H) removal of noncompliant tanks;~~

~~(5) expenses for permanent closure activities, must be incurred after August 1, 2001, and not later than July 1, 2009.~~

~~(e) Only expenses for activities reasonable and necessary to permanently close an ~~aboveground~~ *underground* storage tank facility are eligible for reimbursement. Reasonable and necessary activities eligible for reimbursement include, but are not limited to, the following:~~

- ~~(A) Removal of the tank and piping system;~~
- ~~(B) removal of tank support and confinement systems;~~
- ~~(C) removal of security systems;~~
- ~~(D) cleaning and disposal of tanks; and~~
- ~~(E)(C) disposal of waste petroleum and other waste material including concrete.~~

~~(e)(f) Applications for reimbursement must be made on forms supplied by the department. Applications for reimbursement must include documentation of the facility upgrade or permanent closure activities and expense. Proof of payment of all expenses for which reimbursement is requested must be provided. The department will review those expenses based on current industry costs and provide reimbursement of reasonable and necessary costs. The department shall reimburse an applicant for 90% of the approved cost of the facility upgrade or permanent closure not to exceed \$25,000 per facility. Disputes regarding application approval, reimbursements rates or reimbursement amounts will be referred to the ~~Kansas essential fuel supply trust~~ *UST redevelopment* fund compensation advisory board.~~

~~(d) If the owner of an aboveground storage tank facility contracts with another individual or business entity to perform the upgrade or permanent closure activities, the expenses may be submitted to the department for reimbursement under this section. The department may deny any claim for reimbursement that fails to provide adequate proof of payment in full to the contracting party. The owner may obtain prior approval from the department of the activities to be performed and the expenses to be incurred.~~

~~(e) Owners of aboveground storage tanks or bulk plant may enter into an agreement with the department to perform upgrades or permanent closures after the deadline and receive reimbursement if they comply with the following criteria:~~

- ~~(1) The owner has signed a contract with a vendor to perform the work prior to the deadline; and~~

~~(2) the vendor indicates that they are unable to perform the work before the deadline.~~

~~(f)~~(g) The secretary may adopt such rules and regulations deemed necessary to carry out the provisions of this section.

~~(g)~~(h) The provisions of this section shall be part of and supplemental to the Kansas storage tank act.

Sec. 7. K.S.A. 2011 Supp. 65-34,133 is hereby amended to read as follows: 65-34,133. (a) There is hereby established the ~~Kansas essential fuel supply trust~~ *UST redevelopment* fund compensation advisory board composed of five members, including the state fire marshal or the state fire marshal's designee, the director of the division of environment of the department or designee, two representatives from the petroleum industry, at least one of which shall be a petroleum marketer and one representative from the petroleum equipment installation industry. The governor shall appoint the appointive members of the board, and the members so appointed shall serve for terms of the duration of ~~fuels supply~~ *UST redevelopment* fund. The governor also shall designate a member of the board as its chair, to serve in such capacity at the pleasure of the governor. The secretary shall provide staff to support the activities of the board.

(b) Appointed members of the board attending meetings of such board, or attending a subcommittee meeting thereof, when authorized by such board, shall receive the amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(c) The board shall provide advice and counsel and make recommendations to the secretary regarding disputes over the disbursement of moneys from the ~~Kansas essential fuel supply trust~~ *UST redevelopment* fund.

Sec. 8. K.S.A. 2011 Supp. 65-34,134 is hereby amended to read as follows: 65-34,134. The ~~Kansas essential fuels supply trust~~ *UST redevelopment* fund compensation advisory board and the ~~Kansas essential fuels supply trust~~ *UST redevelopment* fund shall be and are hereby abolished on July 1, ~~2012~~2024. At the time of such abolishment remaining funds shall be deposited in the underground fund.

Sec. 9. K.S.A. 65-34,123 and K.S.A. 2011 Supp. 65-34,102, 65-34,110, 65-34,117, 65-34,131, 65-34,132, 65-34,133 and 65-34,134 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 20, 2012.

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## CHAPTER 23

## SENATE BILL No. 374

AN ACT concerning utilities, relating to the Kansas corporation commission; rules and regulations; amending K.S.A. 66-1,150, 66-1,151 and 66-1,153 and repealing the existing sections.

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

Section 1. K.S.A. 66-1,150 is hereby amended to read as follows: 66-1,150. (a) The state corporation commission is hereby authorized to adopt such rules and regulations as may be necessary to be in conformance with the natural gas pipeline safety act of 1968 (~~49 USCA 1671 et seq.~~) (*49 U.S.C. § 60101 et seq.*), as amended. Notwithstanding the exemption provisions of K.S.A. 66-104 and 66-131, and amendments thereto, and related statutes, for the purpose of gas pipeline safety such rules and regulations shall be applicable to: (1) All public utilities and all municipal corporations or quasi-municipal corporations transporting natural gas or rendering gas utility service; (2) all operators of master meter systems, as defined by 49 C.F.R. § 191.3; (3) all operators of privately or publicly owned pipelines providing natural gas service or transportation directly to the ultimate consumer for the purpose of manufacturing goods or generating power; and (4) providers of rural gas service under the provisions of K.S.A. 66-2101 through 66-2106, and amendments thereto.

(b) As used in subsection (a)(3), “manufacturing goods” does not include farming or activities associated with production of oil or gas.

(c) Nothing in this section shall be construed as invalidating any present rules or regulations of the state corporation commission, concerning the regulation of pipelines and pipeline companies.

Sec. 2. K.S.A. 66-1,151 is hereby amended to read as follows: 66-1,151. Any person who violates any rule or regulation adopted pursuant to this act, or any rule and regulation adopted by the commission and in effect on July 1, 1969, shall be subject to a civil penalty not to exceed \$25,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed ~~\$500,000~~ \$1,000,000 for any related series of violations.

Sec. 3. K.S.A. 66-1,153 is hereby amended to read as follows: 66-1,153. Every ~~public utility~~ *person* engaged in the operation of gas pipeline systems in this state ~~which is~~ subject to the jurisdiction and control of the state corporation commission; ~~under K.A.R. 82-11-1 et seq.~~ shall ~~pay~~ annually ~~pay a fee~~ to the commission ~~a fee~~ for the inspection and supervision of the standards of safety prescribed by rules and regulations adopted in conformance with the natural gas pipeline safety act of 1968 (~~49 U.S.C.A. § 1671 et seq.~~); ~~Provided, That~~ (*49 U.S.C. § 60101 et seq.*), as amended. Nothing in this act shall apply to any public utility required to pay the fee provided for by K.S.A. 66-1503, ~~and amendments thereto.~~ ~~Said~~ Such fee

shall be due and payable on or before September 1 of each year, commencing in the year 1973, and shall be for the fiscal year in which payment is due. Such fee shall be in addition to any and all property, franchise or license fees and other taxes, fees and charges fixed, assessed or charged by law against such utility.

Sec. 4. K.S.A. 66-1,150, 66-1,151 and 66-1,153 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 23, 2012.

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## CHAPTER 24

### SENATE BILL No. 265

AN ACT concerning credit unions; relating to the administrator's approval of bylaw amendments; amending K.S.A. 17-2202 and repealing the existing section.

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

Section 1. K.S.A. 17-2202 is hereby amended to read as follows: 17-2202. (a) Amendments of the bylaws may be adopted and amendments of the charter may be requested by the membership pursuant to K.S.A. 17-2207, and amendments thereto, or by the affirmative vote of  $\frac{2}{3}$  of the authorized number of members of the board of directors at any duly held meeting, if the members of the board have been given prior written notice of the meeting and the notice has contained a copy of the proposed amendment or amendments.

(b) *Except as provided in paragraphs (1) and (2), no amendment to the bylaws shall become operative until approved by the administrator in writing, and until a certified copy has been filed as original bylaws are filed.*

(1) *If the administrator disapproves any proposed amendment, the credit union may appeal the decision in accordance with the Kansas administrative procedure act.*

(2) *Any proposed amendment shall be deemed to be approved if the administrator has not acted upon such proposed amendment within 60 calendar days of the date of receipt thereof by the administrator.*

Sec. 2. K.S.A. 17-2202 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 23, 2012.

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## CHAPTER 25

## SENATE BILL No. 263

AN ACT concerning credit unions; relating to the credit committee of a credit union; amending K.S.A. 17-2208, 17-2210 and 17-2211 and repealing the existing sections.

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

Section 1. K.S.A. 17-2208 is hereby amended to read as follows: 17-2208. (a) Annually the members of the credit union shall elect members of a board of directors as shall be provided in the bylaws. The bylaws shall state the manner of appointment or election of a supervisory committee ~~and a credit committee~~. *If the bylaws provide for a credit committee, the credit committee may be appointed by the board of directors or elected by the members of the credit union.* All directors and committee members shall be chosen from the membership. They shall hold their several offices for such terms as may be provided in the bylaws and until their successors are elected or appointed and qualified.

(b) ~~Unless the number of members of the credit union is less than 11, no member of the board shall be a member of either of the committees, except the treasurer may serve as a member of the credit committee and~~ One member of the supervisory committee may be a director other than the treasurer. Regular terms of supervisory committee members shall be for such term as shall be provided in the bylaws and until the selection and qualification of their successors.

(c) All members of the board and committees and all officers shall be sworn and shall hold their several offices for such terms as may be provided in the bylaws. The oath shall be subscribed by the individual taking it and certified by the officer before whom it is taken and shall immediately be transmitted to the administrator and filed and preserved in the administrator's office.

(d) The board of directors may suspend any or all members of the credit and supervisory committees for failure to perform their duties. ~~until the next members' meeting, which members' meeting shall be held not less than seven nor more than 21 days after such suspension and at which meeting such suspension shall be acted upon by the members~~

(1) *If the bylaws provide for the election of committee members, the suspension shall be effective until the next meeting of the members of the credit union, which meeting shall be held not less than seven nor more than 21 days after such suspension and at which meeting such suspension shall be acted upon by the members of the credit union.*

(2) *If the bylaws provide for appointment of the committee members, the suspension shall be effective until acted upon by the board at the next regular or special meeting of the board, which meeting shall be held not less than seven nor more than 21 days after such suspension.*

(e) *Any person suspended shall have the right to appear and be heard at the meeting.*

Sec. 2. K.S.A. 17-2210 is hereby amended to read as follows: 17-2210.

(a) ~~The credit committee shall approve every loan or advance made by the credit union. Every application for a loan shall be in writing and shall state the purpose for which the loan is desired and the security, if any, offered. Endorsement of a note or assignment of shares or investments in any credit union shall be deemed security in the meaning of this section.~~

(b) ~~No loan shall be made unless it has received the unanimous approval of the members of the credit committee present when the loan was considered, which number shall constitute at least a majority of the credit committee, nor if any member of the credit committee shall disapprove thereof. The credit committee may appoint one or more loan officers, who may be the treasurer or an assistant treasurer and delegate to such persons power to approve or disapprove loans. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by such officer within seven days of the date of the filing of the application therefor or the date of the next credit committee meeting, whichever is later. All such loans not approved by a loan officer may be acted upon by the credit committee. An applicant for a loan may appeal to the directors from the decision of the credit committee, if it is so provided in the bylaws, and in the way and manner therein provided.~~

(c) ~~The credit committee shall meet as often as the business of the credit union requires, to consider applications for loans or review the work of the loan officers, or both and after due notice has been given to each member. The credit committee, credit manager, or loan officer shall have the general supervision of all loans to members. The credit committee, credit manager or loan officer may approve or disapprove loans, subject to written policies established by the board of directors. The president or general manager or a designee thereof may serve as the credit manager.~~

(b) *Any person who is denied a loan by the credit committee, credit manager or loan officer, may appeal the denial of such loan to the board of directors, if the bylaws of the credit union provide for such appeal. Such appeal shall be conducted in the manner provided in the bylaws.*

Sec. 3. K.S.A. 17-2211 is hereby amended to read as follows: 17-2211.

(a) The supervisory committee shall supervise the acts of the board of directors, credit committee and officers. The supervisory committee may suspend by a ~~unanimous~~  $\frac{2}{3}$  vote any officer of the credit union or any member of the credit committee or the board of directors, until the next ~~members'~~ *meeting of the members of the credit union*, which ~~members'~~ meeting shall be held not less than seven nor more than 21 days after such suspension; and at which meeting such suspension shall be acted

upon by the members of the credit union. Any person suspended shall have the right to appear and be heard at the meeting.

(b) By a majority vote the supervisory committee may call a meeting of the shareholders to consider any violation of this act or of the bylaws, or any practice of the credit union which, in the opinion of the committee, is unsafe and unauthorized.

(c) The committee shall fill vacancies in their own number until the next annual meeting of the members or vacancies shall be filled in such a manner as is provided in the bylaws.

(d) Subject to rules and regulations adopted by the administrator, the supervisory committee shall make or cause to be made a thorough annual audit of the receipts, disbursements, income, assets and liabilities of the credit union and shall make a full report to the directors, which report shall be presented at the annual meeting and shall be filed and preserved with the records of the credit union. The supervisory committee shall make or cause to be made such supplementary audits as it deems necessary or as may be ordered by the administrator, and submit reports of the supplementary audits to the board of directors. The administrator may accept in lieu of any required audit, an audit by a certified public accountant or other independent accountant.

(e) Subject to rules and regulations adopted by the administrator, the supervisory committee shall make, or cause to be made, a certification of members' accounts using either of the following methods:

(1) A controlled certification of 100% of members' accounts at least once each two years; or

(2) a controlled random statistical sampling in accordance with American institute of certified public accountants' guidelines which tests sufficient accounts in number and scope to assure accuracy of the members' accounts at least once each year.

Sec. 4. K.S.A. 17-2208, 17-2210 and 17-2211 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 23, 2012.

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## CHAPTER 26

### SENATE BILL No. 298

AN ACT regulating traffic; relating to penalties for violating size and weight laws, exceptions; amending K.S.A. 2011 Supp. 8-1901 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 8-1901 is hereby amended to read as

follows: 8-1901. (a) It shall be unlawful for any person to drive or move or for the owner or lessee to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles of a size or weight exceeding the limitations stated in article 19 of chapter 8 of Kansas Statutes Annotated or otherwise in violation of this article, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter such limitations except as express authority may be granted in this article.

(b) Any person violating any of the provisions of article 19 of chapter 8 of the Kansas Statutes Annotated, except for the provisions of K.S.A. 8-1908 and 8-1909, and amendments thereto, shall, upon conviction thereof, be fined in an amount not to exceed \$500.

(c) Any person violating any of the provisions of K.S.A. 8-1908 or 8-1909, and amendments thereto, shall, upon a first conviction thereof, pay a fine from one, but not both of the schedules listed in subsection (c) of K.S.A. 8-2118, and amendments thereto.

(d) Except as otherwise specifically provided in this act, the provisions of article 19 of chapter 8 of Kansas Statutes Annotated governing size, weight and load shall not apply to fire apparatus, road machinery, farm tractors or to implements of husbandry temporarily moved upon a highway, or to a vehicle operated under the terms of a currently valid special permit issued in accordance with K.S.A. 8-1911, and amendments thereto.

(e) Except on highways designated as part of the national system of interstate defense highways, the gross weight limitation prescribed by article 19 of chapter 8 of Kansas Statutes Annotated on any axle or tandem, triple or quad axles shall not apply to: (1) Trucks specifically designed and equipped and used exclusively for garbage, refuse or solid waste disposal operations when loaded with garbage, refuse or waste; or (2) trucks mounted with a fertilizer spreader used or manufactured principally to spread animal dung, except that this paragraph (2) shall not apply to truck tractors so equipped. Except that such trucks under this subsection shall not exceed ~~the maximum gross weight limitations contained in the table in K.S.A. 8-1909, and amendments thereto~~ *60,000 pounds for three axles or 40,000 pounds for two axles, regardless of width spacing between axles.*

(f) As used in this section, "conviction" means a final conviction without regard to whether sentence was suspended or probation granted after such conviction, and a forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, is equivalent to a conviction.

Sec. 2. K.S.A. 2011 Supp. 8-1901 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 23, 2012.

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CHAPTER 27

HOUSE BILL No. 2472

AN ACT concerning rural water districts; definitions; amending K.S.A. 2011 Supp. 82a-612 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 82a-612 is hereby amended to read as follows: 82a-612. As used in this act, unless the context clearly requires otherwise:

(a) “District” means a rural water district organized pursuant to this act;

(b) “board” means the governing body of a district;

(c) the terms “board of county commissioners” and “county clerk” shall mean, respectively, the board of county commissioners and county clerk of the county in which the greatest portion of the territory of any existing or proposed rural water district is located;

(d) “participating member” means an individual, firm, partnership, association or corporation ~~which owns land located within a district~~ and:

(1) Which has subscribed to one or more benefit units of such district;

or

(2) which is charged a franchise fee for water service which is paid, either directly or indirectly through another water provider, to such district;

(e) “chief engineer” means the chief engineer of the division of water resources, Kansas department of agriculture.

Sec. 2. K.S.A. 2011 Supp. 82a-612 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 26, 2012.

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## CHAPTER 28

## SUBSTITUTE FOR HOUSE BILL No. 2055

AN ACT concerning criminal procedure; relating to district attorney offender reports; amending K.S.A. 22-3432 and K.S.A. 2011 Supp. 22-3427 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 22-3427 is hereby amended to read as follows: 22-3427. (a) When any person has been convicted of a violation of any law of the state of Kansas and has been sentenced to confinement, it shall be the duty of the sheriff of the county, upon receipt of a certified copy of the journal entry of judgment, judgment form showing conviction, sentence, and commitment, or an order of commitment supported by a recorded judgment of sentence, to cause such person to be confined in accordance with the sentence.

(b) The certified copy of a judgment and sentence to confinement or imprisonment shall be sufficient authority for the jailer or warden or other person in charge of the place of confinement to detain such person for the period of the sentence.

(c) The court shall forward a copy of all complaints, supporting affidavits, ~~county and district attorney reports,~~ presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the state security hospital, to the officer having the offender in custody for delivery with the offender to the correctional institution.

Sec. 2. K.S.A. 22-3432 is hereby amended to read as follows: 22-3432.

(a) It shall be the duty of the county or district attorney of the county in which a person has been convicted of a felony and sentenced to imprisonment to furnish to the secretary of corrections information pertaining to ~~the any special facts and circumstances surrounding concerning~~ the commission of the offense, ~~including any aggravating or mitigating circumstances, and such other information which has come to the attention of the county attorney which might have a bearing in determining the possibility of the inmate thereafter becoming a useful citizen or the offender that cannot be obtained from records provided to the secretary pursuant to K.S.A. 22-3427, and amendments thereto.~~ ~~This~~

(b) *If applicable,* such information shall be set forth on forms provided by the secretary and shall be submitted at the time ~~the such~~ inmate is committed. Such information shall be forwarded by the secretary to the correctional institution receiving such inmate.

Sec. 3. K.S.A. 22-3432 and K.S.A. 2011 Supp. 22-3427 are hereby repealed.

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

Approved March 26, 2012.

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CHAPTER 29

HOUSE BILL No. 2588

AN ACT concerning water; relating to debt authorization for water districts; amending K.S.A. 19-3553 and K.S.A. 2011 Supp. 82a-619 and repealing the existing sections.

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

Section 1. K.S.A. 19-3553 is hereby amended to read as follows: 19-3553. (a) The governing body on behalf of the district may issue and sell revenue bonds *for the following purposes:*

(1) To finance the cost of acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of the water supply system; *or*

(2) *to refund any outstanding revenue bonds or warrants or to refund any notes or loans payable to the department of health and environment, to the United States department of agriculture or otherwise.*

Such revenue bonds are hereby made a lien on the water supply system and on the revenues produced from such water supply system, but shall not be general obligations of the public agencies participating in the agreement. All revenue bonds issued under this act shall be signed by the president of the governing body of the district and attested by the secretary of the governing body of the district and shall contain recitals stating the authority under which such bonds are issued and that they are to be paid by the district from the net revenue derived from the operation of the water supply system and not from any other fund or source and that ~~said~~ such bonds are negotiable. All such bonds shall be registered in the office of the county clerk of each county wherein such district is located and in the office of the state treasurer and when so registered and issued shall import absolute verity, and shall be conclusive in favor of all persons purchasing such bonds, that all proceedings and conditions precedent have been had and performed to authorize the issuance thereof. The provisions of K.S.A. 10-112, *and amendments thereto*, shall not apply to any bonds issued under this act.

(b) Revenue bonds issued under this act shall have all of the qualities and incidents of negotiable instruments, shall mature serially over a period beginning not later than five ~~(5)~~ years after the date of the bonds and ending not later than ~~forty~~ (40) years after such date and shall bear interest at a rate not exceeding the maximum rate of interest prescribed by K.S.A. 10-1009, *and amendments thereto*. Such bonds may be in such

denominations, may be in such form, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment and may be subject to such terms of redemption, with or without premium, as may be provided by resolution of the governing body. In no case shall the total amount of bonds issued hereunder be in excess of the actual cost of the plan or program which shall include, in addition to all expenses incurred in acquiring, constructing, or improving the water supply system, all no-fund warrants issued under the provisions of K.S.A. 19-3554, *and amendments thereto*, and unpaid at the time ~~said such~~ revenue bonds are issued. No water district or county in which the water district lies shall have any right or authority to levy taxes to pay any of the principal or interest on any such bonds or any judgment against the issuing water district on account thereof, and the provision of K.S.A. 10-113, *and amendments thereto*, shall not apply to any bonds issued hereunder.

(c) The governing body shall by appropriate resolution make provisions for the payment of ~~said such~~ bonds by fixing rates, fees and charges, for the use of all services rendered by such water district, which rates, fees and charges shall be sufficient to pay the costs of operation, improvement and maintenance of the water supply system, to provide an adequate depreciation fund, provide an adequate sinking fund to retire ~~said such~~ bonds and pay interest thereon when due, and to create reasonable reserves for such purposes. ~~Said Such~~ fees, rates or charges shall be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants or restrictions deemed necessary or advisable by the governing body to effect the efficient operation of the system and to safeguard the interests of the holders of the revenue bonds and to secure the payment of the bonds and the interest thereon.

Sec. 2. K.S.A. 2011 Supp. 82a-619 is hereby amended to read as follows: 82a-619. Every district incorporated under this act shall have perpetual succession, subject to dissolution or consolidation pursuant to law and shall have the power to:

- (a) Exercise eminent domain within the boundaries of such district;
- (b) sue and be sued;
- (c) contract;
- (d) hold real and personal property acquired by will, gift, purchase, or otherwise, as authorized by law;
- (e) construct, install, maintain and operate such ponds, reservoirs, pipelines, wells, check dams, pumping installations or other facilities for the storage, transportation or utilization of water and such appurtenant structures and equipment necessary to carry out the purposes of its organization;
- (f) contract with cities or counties, or both, to operate and maintain

state-permitted wastewater treatment works, systems and other facilities relating to the treatment of wastewater within the boundaries of the district;

(g) cooperate with and enter into agreements with the secretary of the United States department of agriculture or the secretary's duly authorized representative necessary to carry out the purposes of its organization; and to accept financial or other aid which the secretary of the United States department of agriculture is empowered to give pursuant to ~~16 U.S.C.A., secs. 590f, 590s, 590x-1, 590x-a and 590x-3, and amendments thereto~~ 7 U.S.C. § 1921 *et seq.*, as in effect on the effective date of this act;

(h) acquire loans for the financing of up to 95% of the cost of the construction or purchase of any project or projects necessary to carry out the purposes for which such district was organized and to execute notes and mortgages in evidence thereof with interest, or combined interest and mortgage insurance charges, which shall not exceed 13%, except that for purposes of interim financing, interest or combined interest and mortgage insurance charges shall not exceed 14%. Any district shall have the same power to acquire loans *or to issue revenue bonds pursuant to K.S.A. 82a-625, and amendments thereto*, for the refinancing of up to 95% of the original cost of any such project or projects. The balance of the cost of construction shall be acquired by subscription, donation, gift or otherwise than through the medium of loans, except that in the case of cooperative corporations and corporations not-for-profit being converted to water districts as provided for in K.S.A. 82a-631 to 82a-635, inclusive, and amendments thereto, the district may assume 100% of the indebtedness of the corporation, providing the corporation originally raised at least 10% of the construction cost by means otherwise than through the medium of loans. Any such loan may be secured by any or all of the physical assets owned by the district, including easements and rights-of-way, except that no district organized under this act shall have any power or authority to levy any taxes.

Sec. 3. K.S.A. 19-3553 and K.S.A. 2011 Supp. 82a-619 are hereby repealed.

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

Approved March 26, 2012.

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## CHAPTER 30

HOUSE BILL No. 2469

AN ACT concerning crimes, criminal procedure and punishment; relating to payment of board of indigents' services fees; relating to parole revocation proceedings; amending K.S.A. 22-4529 and repealing the existing section.

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

Section 1. K.S.A. 22-4529 is hereby amended to read as follows: 22-4529. Any defendant entitled to counsel pursuant to K.S.A. 22-4503, and amendments thereto, shall pay an application fee in the amount of ~~\$50 for the period commencing on the effective date of this act and ending on June 30, 2004, and the amount of \$100 on or after July 1, 2004,~~ to the clerk of the district court. *Any defendant entitled to counsel in a proceeding for a violation of a condition of release pursuant to K.S.A. 22-3716, and amendments thereto, shall pay an application fee of \$100 to the clerk of the district court. Such fee shall be paid regardless of whether the defendant has paid application fees pursuant to this section in any other proceeding.* If it appears to the satisfaction of the court that payment of the application fee will impose manifest hardship on the defendant, the court may waive payment of all or part of the application fee. All moneys received pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the indigents' defense services fund. If the defendant is acquitted or the case is dismissed, any application fee paid pursuant to this section shall be remitted to the defendant.

Sec. 2. K.S.A. 22-4529 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 26, 2012.

## CHAPTER 31

HOUSE BILL No. 2612\*

AN ACT designating a portion of Kansas highway 79 as the Barnes brothers memorial highway.

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

Section 1. The portion of Kansas highway 79 from the junction of Kansas highway 79 and Kansas highway 16 to the junction of Kansas highway 79 and county road 254 in Jackson county is hereby designated

as the Barnes brothers memorial highway. The secretary of transportation shall place highway signs along the highway right-of-way at proper intervals to indicate that the highway is the Barnes brothers memorial highway, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and additional 50% of the initial cost to defray future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 26, 2012.

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## CHAPTER 32

HOUSE BILL No. 2465  
(Amended by Chapters 150, 162 and 172)

AN ACT concerning crimes, punishment and criminal procedure; relating to lifetime electronic monitoring of certain offenders; amending K.S.A. 2011 Supp. 21-6604 and 22-3717 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 21-6604 is hereby amended to read as follows: 21-6604. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense and may impose the provisions of subsection (q);

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such con-

ditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (c) of K.S.A. 2011 Supp. 21-6602, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape from custody or aggravated escape from custody, as defined in K.S.A. 2011 Supp. 21-5911, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson or aggravated arson as defined in K.S.A. 2011 Supp. 21-5812, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 20-369, and amendments thereto;

(11) if the defendant is convicted of a misdemeanor or convicted of a felony specified in subsection (i) of K.S.A. 2011 Supp. 21-6804, and amendments thereto, assign the defendant to work release program, other than a program at a correctional institution under the control of the secretary of corrections as defined in K.S.A. 75-5202, and amendments thereto, provided such work release program requires such defendant to return to confinement at the end of each day in the work release program. On a second conviction of K.S.A. 8-1567, and amendments thereto, an

offender placed into a work release program must serve a total of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. On a third or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program must serve a total of 240 hours of confinement. Such 240 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day;

(12) order the defendant to pay the full amount of unpaid costs associated with the conditions of release of the appearance bond under K.S.A. 22-2802, and amendments thereto;

(13) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12); or

(14) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. In regard to a violation of K.S.A. 2011 Supp. 21-6107, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 *et seq.*, and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the victim. The chief judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (d) of K.S.A. 2011 Supp. 21-6602, and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 2011 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671, prior to its repeal, or K.S.A. 2011 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(3) When a new felony is committed while the offender is on release

for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 2011 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto, or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and

other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

(j) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty as a result of conviction of crime.

(k) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate:

(1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto; and

(2) otherwise meets admission criteria of the camp.

If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by

the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 2011 Supp. 21-6608, and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(n) Except as provided by subsection (f) of K.S.A. 2011 Supp. 21-6805, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2011 Supp. 21-5706, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2011 Supp. 21-6824, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2011 Supp. 75-52,144, and amendments thereto, including, but not limited to, an approved after-care plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in K.S.A. 2011 Supp. 21-6805, and amendments thereto. For those offenders who are convicted on or after July 1, 2003, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

(o) (1) Except as provided in paragraph (3), in addition to any other penalty or disposition imposed by law, upon a conviction for unlawful possession of a controlled substance or controlled substance analog in violation of K.S.A. 2011 Supp. 21-5706, and amendments thereto, in which the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle upon a highway or street, the offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be suspended for one year.

(2) Upon suspension of a license pursuant to this subsection, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the person's privilege to operate a motor vehicle is in effect.

(3) (A) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any person as pro-

vided in paragraph (1), the judge of the court in which such person was convicted may enter an order which places conditions on such person's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of more than one year.

(B) Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. If the person convicted is a nonresident, the judge shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator, of such person's state of residence. Such judge shall furnish to any person whose driver's license has had conditions imposed on it under this paragraph a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this paragraph.

(C) Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this paragraph, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court in which such person is convicted of violating such conditions.

(4) As used in this subsection, "highway" and "street" means the same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

(p) In addition to any of the above, for any criminal offense that includes the domestic violence designation pursuant to K.S.A. 2011 Supp. 22-4616, and amendments thereto, the court shall require the defendant to undergo a domestic violence offender assessment and follow all recommendations unless otherwise ordered by the court or the department of corrections. The court may order a domestic violence offender assess-

ment and any other evaluation prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence. The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence assessment and any other evaluation to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court or the department of corrections, for completion of all recommendations.

(q) In imposing a fine, the court may authorize the payment thereof in installments. In lieu of payment of any fine imposed, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed by the later of one year after the fine is imposed or one year after release from imprisonment or jail, or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance shall become due on that date. If conditional reduction of any fine is rescinded by the court for any reason, then pursuant to the court's order the person may be ordered to perform community service by one year after the date of such rescission or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date. All credits for community service shall be subject to review and approval by the court.

(r) *In addition to any other penalty or disposition imposed by law, for any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the court shall order that the defendant be electronically monitored upon release from imprisonment for the duration of the defendant's natural life and that the defendant shall reimburse the state for all or part of the cost of such monitoring as determined by the prisoner review board.*

Sec. 2. K.S.A. 2011 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638, prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642, prior to its repeal; K.S.A. 2011 Supp. 21-6617, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567, and

amendments thereto; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, prior to its repeal, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or K.S.A. 2011 Supp. 21-6606, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d)(1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 1 through 4 crimes and drug severity levels 1 and 2 crimes must serve 36 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes and drug severity level 3 crimes must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on post-release supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 12 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(D)(i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the post-release supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, prior to its repeal, or K.S.A. 2011 Supp. 21-6820, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

- (a) Written briefs or oral arguments submitted by either the defendant or the state;
- (b) any evidence received during the proceeding;
- (c) the presentence report, the victim's impact statement and any

psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2011 Supp. 21-6813, and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the ~~parole~~ *prisoner review* board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2011 Supp. 21-6817, and amendments thereto.

(vi) Upon petition, the ~~parole~~ *prisoner review* board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the ~~parole~~ *prisoner review* board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of post-release supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto; or

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section.

“Sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the ~~Kansas parole prisoner review~~ board may postpone the inmate’s parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate’s parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, prior to its repeal, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender’s conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sen-

tence but shall begin when the person is ordered released by the ~~Kansas parole prisoner review~~ board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of post-release supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the ~~Kansas parole prisoner review~~ board.

(g) Subject to the provisions of this section, the ~~Kansas parole prisoner review~~ board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The ~~Kansas parole prisoner review~~ board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision

on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the ~~Kansas parole~~ board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the ~~parole prisoner review~~ board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a, and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) (1) Before ordering the parole of any inmate, the ~~Kansas parole~~ *prisoner review* board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the ~~Kansas parole~~ *prisoner review* board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and

amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the ~~parole~~ board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the ~~parole~~ board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the ~~parole~~ board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the ~~parole~~ board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a parole board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the ~~parole~~ *prisoner review* board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the ~~parole~~ *prisoner review* board determines that such resources are insufficient. If the ~~parole~~ *prisoner review* board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The ~~Kansas parole~~ *prisoner review* board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the ~~Kansas parole~~ *prisoner review* board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the ~~parole~~ *prisoner review* board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in

K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the ~~Kansas parole~~ *prisoner review* board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the ~~Kansas parole~~ *prisoner review* board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to May 25, 2000, who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on

parole for life and shall not be discharged from supervision by the ~~Kansas parole prisoner review~~ board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the ~~Kansas parole prisoner review board or the court~~ orders a person to be electronically monitored *pursuant to this section*, or the court orders a person to be electronically monitored pursuant to subsection (r) of K.S.A. 2011 Supp. 21-6604, and amendments thereto, the board ~~or court~~ shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board ~~or court~~ shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

Sec. 3. K.S.A. 2011 Supp. 21-6604 and 22-3717 are hereby repealed.

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

Approved March 26, 2012.

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### CHAPTER 33

HOUSE BILL No. 2737  
(Amended by Chapter 150)

AN ACT concerning juvenile offenders; relating to consecutive sentencing; amending K.S.A. 2011 Supp. 38-2369 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 38-2369 is hereby amended to read as follows: 38-2369. (a) For the purpose of committing juvenile offenders to a juvenile correctional facility, the following placements shall be applied by the judge in felony or misdemeanor cases. If used, the court shall establish a specific term of commitment as specified in this subsection, unless the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2011 Supp. 38-2371, and amendments thereto.

(1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(B) The violent offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug level 1, 2 or 3 felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 24 months and up to a maximum term of the offender reaching the age 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 4, 5 or 6 person felony or a severity level 1 or 2 drug felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(B) The serious offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, 8, 9 or 10 person felony with one prior felony adjudication. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present nonperson felony adjudication and two prior felony adjudications; or

(ii) one present severity level 3 drug felony adjudication and two prior felony adjudications.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(B) The chronic offender II, escalating felon is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication;

(ii) one present felony adjudication and two prior severity level 4 drug adjudications;

(iii) one present severity level 3 drug felony adjudication and either

two prior misdemeanor adjudications or one prior person or nonperson felony adjudication; or

(iv) one present severity level 3 drug felony adjudication and two prior severity level 4 drug adjudications.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(C) The chronic offender III, escalating misdemeanant is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present misdemeanor adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures;

(ii) one present misdemeanor adjudication and two prior severity level 4 drug felony adjudications and two placement failures;

(iii) one present severity level 4 drug felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures; or

(iv) one present severity level 4 drug felony adjudication and two prior severity level 4 drug felony adjudications and two placement failures.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.

(4) *Conditional Release Violators*. Upon finding the juvenile violated a requirement or requirements of conditional release, the court may:

(A) Subject to the limitations in subsection (a) of K.S.A. 2011 Supp. 38-2366, and amendments thereto, commit the offender directly to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender shall be a minimum of two months and a maximum of six months, or the length of the aftercare originally ordered, which ever is longer.

(B) Enter one or more of the following orders:

(i) Recommend additional conditions be added to those of the existing conditional release.

(ii) Order the offender to serve a period of sanctions pursuant to subsection (f) of K.S.A. 2011 Supp. 38-2361, and amendments thereto.

(iii) Revoke or restrict the juvenile's driving privileges as described in subsection (c) of K.S.A. 2011 Supp. 38-2361, and amendments thereto.

(C) Discharge the offender from the custody of the commissioner, release the commissioner from further responsibilities in the case and enter any other appropriate orders.

(b) As used in this section: (1) "Placement failure" means a juvenile

offender in the custody of the juvenile justice authority has significantly failed the terms of conditional release or has been placed out-of-home in a community placement accredited by the commissioner and has significantly violated the terms of that placement or violated the terms of probation.

(2) “Adjudication” includes out-of-state juvenile adjudications. An out-of-state offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, shall be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an offense which if committed by an adult would constitute the commission of a felony is a felony in another state, it will be deemed a felony in Kansas. The state of Kansas shall classify the offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, as person or nonperson. In designating such offense as person or nonperson, reference to comparable offenses shall be made. If the state of Kansas does not have a comparable offense, the out-of-state adjudication shall be classified as a nonperson offense.

(c) All appropriate community placement options shall have been exhausted before a chronic offender III, escalating misdemeanant shall be placed in a juvenile correctional facility. A court finding shall be made acknowledging that appropriate community placement options have been pursued and no such option is appropriate.

(d) The commissioner shall work with the community to provide ongoing support and incentives for the development of additional community placements to ensure that the chronic offender III, escalating misdemeanant sentencing category is not frequently utilized.

(e) *Any juvenile offender committed to a juvenile correctional facility who is adjudicated for an offense committed while such juvenile was committed to a juvenile correctional facility, may be adjudicated to serve a consecutive term of commitment in a juvenile correctional facility.*

Sec. 2. K.S.A. 2011 Supp. 38-2369 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 26, 2012.

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## CHAPTER 34

HOUSE BILL No. 2509  
(Amended by Chapter 166)

AN ACT designating a part of K-9 highway as the David Mee memorial highway;  
amending K.S.A. 2011 Supp. 68-1051 and repealing the existing section.

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

New Section 1. From the junction of United States highway 75 and K-9 highway, then west on K-9 to the junction of K-9 with K-63 is hereby designated as the David Mee memorial highway. The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the highway is the David Mee memorial highway, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and an additional 50% of the initial cost to defray future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 2. K.S.A. 2011 Supp. 68-1051 is hereby amended to read as follows: 68-1051. The portion of United States highway 75 where it enters the state on the Kansas-Nebraska border on the north then south to the junction with K-9 ~~then west to the junction of K-9 with K-62~~, then south ~~from the junction of K-9 with K-62~~ to the junction of K-62 with K-16 then east to the junction with United States highway 75 then south on United States highway 75 to the southern city limits of Holton, then from the junction of United States highway 75 and N.W. 46th street in Shawnee county then south on United States highway 75 to the Kansas-Oklahoma border, is hereby designated the purple heart/combat wounded veterans highway. The secretary of transportation shall place markers along the highway right-of-way at proper intervals to indicate that the highway is the purple heart/combat wounded veterans highway. The secretary of transportation may accept and administer gifts and donations to aid in obtaining suitable highway signs bearing the proper approved inscription.

Sec. 3. K.S.A. 2011 Supp. 68-1051 is hereby repealed.

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

Approved March 26, 2012.

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## CHAPTER 35

## HOUSE BILL No. 2473

AN ACT concerning civil procedure; relating to pleadings and discovery; amending K.S.A. 2011 Supp. 60-208 and 60-226 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 60-208 is hereby amended to read as follows: 60-208. (a) *Claim for relief.* A pleading that states a claim for relief must contain:

(1) A short and plain statement of the claim showing that the pleader is entitled to relief; and

(2) a demand for the relief sought, which may include relief in the alternative or different types of relief. Except in contract actions, every pleading demanding relief for money damages in excess of \$75,000, without demanding a specific amount of money, must state only that the amount sought as damages is in excess of \$75,000. Every pleading demanding relief for money damages in an amount of \$75,000 or less must specify the amount sought as damages.

(b) *Defenses, admissions and denials.* (1) *In general.* In responding to a pleading, a party must:

(A) State in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials; responding to the substance.* A denial must fairly respond to the substance of the allegation.

(3) *General and specific denials.* A party that intends in good faith to deny all the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying part of an allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking knowledge or information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of failing to deny.* An allegation, other than one relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) *Affirmative defenses.* (1) *In general.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- (A) Accord and satisfaction;
- (B) arbitration and award;
- (C) assumption of risk;
- (D) contributory negligence or comparative fault;
- ~~(E) discharge in bankruptcy;~~
- ~~(F)(E)~~ duress;
- ~~(G)(F)~~ estoppel;
- ~~(H)(G)~~ failure of consideration;
- ~~(I)(H)~~ fraud, illegality;
- ~~(J)(I)~~ injury by fellow servant;
- ~~(K)(J)~~ laches;
- ~~(L)(K)~~ license;
- ~~(M)(L)~~ payment;
- ~~(N)(M)~~ release;
- ~~(O)(N)~~ *res judicata*;
- ~~(P)(O)~~ statute of frauds;
- ~~(Q)(P)~~ statute of limitations; and
- ~~(R)(Q)~~ waiver.

(2) *Mistaken designation.* If a party mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) *Pleading to be concise and direct; alternative statements; inconsistency.* (1) *In general.* Each allegation must be simple, concise and direct. No technical form is required.

(2) *Alternative statements of a claim or defense.* A party may set out two or more statements of a claim or defense alternately or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent claims or defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) *Construing pleadings.* Pleadings must be construed so as to do justice.

Sec. 2. K.S.A. 2011 Supp. 60-226 is hereby amended to read as follows: 60-226. (a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions on oral examination or written questions; written interrogatories; production of documents or things or permission to enter onto land or other property under K.S.A. 60-234, subsection (a)(1)(A)(iii) of K.S.A. 60-245 or K.S.A. 60-245a, and amendments thereto; physical and mental examinations; and requests for admission.

(b) *Discovery scope and limits.* (1) *Scope in general.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may

obtain discovery regarding any nonprivileged matter that is relevant to the subject matter involved in the action, whether it relates to any party's claim or defense, including the existence, description, nature, custody, condition and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations on frequency and extent.* (A) On motion, or on its own, the court may limit the frequency or extent of discovery methods otherwise allowed by the rules of civil procedure and must do so if it determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the proposed discovery in resolving the issues.

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (b)(2)(A). The court may specify conditions for the discovery.

(3) *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which an insurance business may be liable to satisfy part or all of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance is not a part of an insurance agreement.

(4) *Trial preparation; materials.* (A) *Documents and tangible things.* Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative, including the other party's attorney, consultant, surety, indemnitor, insurer or agent. But, subject to subsection (b)(5), those materials may be discovered if:

(i) They are otherwise discoverable under paragraph (1); and  
(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection against disclosure.* If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions or legal theories of a party's attorney or other representative concerning the litigation.

(C) *Previous statement.* Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and K.S.A. 60-237, and amendments thereto, applies to the award of expenses. A previous statement is either:

(i) A written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical or other recording, or a transcription of it, that recites substantially verbatim the person's oral statement.

(5) Trial preparation; experts.

(A) *Deposition of an expert who may testify.* A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a disclosure is required under subsection (b)(6), the deposition may be conducted only after the disclosure is provided.

(B) *Trial-preparation protection for draft disclosures.* Subsections (b)(4)(A) and (b)(4)(B) protect drafts of any disclosure required under subsection (b)(6), and drafts of a disclosure by an expert witness provided in lieu of the disclosure required by subsection (b)(6), regardless of the form in which the draft is recorded.

(C) *Trial-preparation protection for communications between a party's attorney and expert witnesses.* Subsections (b)(4)(A) and (b)(4)(B) protect communications between the party's attorney and any witness about whom disclosure is required under subsection (b)(6), regardless of the form of the communications, except to the extent that the communications:

(i) Relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

~~(B)(D)~~ *Expert employed only for trial preparation.* Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) As provided in subsection (b) of K.S.A. 60-235, and amendments thereto; or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

~~(C)(E) Payment.~~ Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) Pay the expert a reasonable fee for time spent in responding to discovery under subsection (b)(5)(A) or ~~(b)(5)(B)(b)(5)(D)~~; and

(ii) for discovery under subsection ~~(b)(5)(B)(b)(5)(D)~~, also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(6) *Disclosure of expert testimony.* (A) ~~In general—Required disclosures.~~ A party must disclose to other parties the identity of any witness it may use at trial to present expert testimony. *The disclosure must state:*

(i) *The subject matter on which the expert is expected to testify; and*  
 (ii) *the substance of the facts and opinions to which the expert is expected to testify.*

(B) ~~Required disclosures—Witness who is retained or specially employed.~~ Unless otherwise stipulated or ordered by the court, if the witness is retained or specially employed to provide expert testimony in the case, or is one whose duties as the party's employee regularly involve giving expert testimony, the disclosure *under subsection (b)(6)(A) must also state:*

~~(i) The subject matter on which the expert is expected to testify;~~  
~~(ii) the substance of the facts and opinions to which the expert is expected to testify; and~~  
~~(iii) a summary of the grounds for each opinion.~~

(C) *Time to disclose expert testimony.* A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or court order, the disclosures must be made:

(i) At least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under subsection (b)(6)(B), within 30 days after the other party's disclosure.

(D) *Supplementing the disclosure.* The parties must supplement these disclosures when required under subsection (e).

(E) *Form of disclosures.* Unless otherwise ordered by the court, all disclosures under this subsection must be:

(i) In writing, signed and served; and  
 (ii) filed with the court in accordance with subsection (d) of K.S.A. 60-205, and amendments thereto.

(7) *Claiming privilege or protecting trial preparation materials.* (A) *Information withheld.* When a party withholds information otherwise dis-

coverable by claiming that the information is privileged or subject to protection as trial preparation material, the party must:

- (i) Expressly make the claim; and
- (ii) describe the nature of the documents, communications or things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) *Protective orders.* (1) *In general.* A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending, as an alternative on matters relating to a deposition, in the district court where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action and must describe the steps taken by all attorneys or unrepresented parties to resolve the issues in dispute. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

- (A) Forbidding the disclosure or discovery;
- (B) specifying terms, including time and place, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court orders.

(2) *Ordering discovery.* If a motion for a protective order is wholly

or partly denied the court may, on just terms, order that any party or person provide or permit discovery.

(3) *Awarding expenses.* The provisions of K.S.A. 60-237, and amendments thereto, apply to the award of expenses.

(d) *Sequence of discovery.* Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(1) Methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery.

(e) *Supplementing disclosures and responses.* (1) *In general.* A party who has made a disclosure under subsection (b)(6), or who has responded to an interrogatory, request for production or request for admission, must supplement or correct its disclosure or response:

(A) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) *Expert witness.* For an expert to whom the disclosure requirement in subsection (b)(6) applies, the party's duty to supplement extends both to information included in the disclosure and to information given during the expert's deposition. Any additions or changes to this information must be disclosed at least 30 days before trial, unless the court orders otherwise.

(f) *Signing disclosures and discovery requests, responses and objections.* (1) *Signature required; effect of signature.* Every disclosure under subsection (b)(6) and every discovery request, response or objection must be signed by at least one attorney of record in the attorney's own name, or by the party personally, if unrepresented, and must state the signor's address, e-mail address and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information and belief formed after a reasonable inquiry:

(A) With respect to a disclosure, it is complete and correct as of the time it is made;

(B) with respect to a discovery request, response or objection, it is:

(i) Consistent with the rules of civil procedure and warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive considering the needs of the case, prior discovery in the case, the amount in controversy and the importance of the issues at stake in the action.

(2) *Failure to sign.* Other parties have no duty to act on an unsigned

disclosure, request, response or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for improper certification.* If a certification violates this section without substantial justification, the court, on motion, or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

Sec. 3. K.S.A. 2011 Supp. 60-208 and 60-226 are hereby repealed.

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

Approved March 26, 2012.

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## CHAPTER 36

HOUSE BILL No. 2412°

AN ACT concerning cities; relating to dissolution, certain cities.

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

Section 1. Any city who has received public moneys in 2010 or 2011 from the United States environmental protection agency through the Kansas department of health and environment relating to the buyout and relocation of its residents and such residents have been relocated is hereby dissolved as a corporate body.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 28, 2012.

Published in the *Kansas Register* April 5, 2012.

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## CHAPTER 37

HOUSE BILL No. 2546°

AN ACT concerning the Kansas military board; relating to the conveyance of certain property.

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

Section 1. (a) The Kansas military board is hereby authorized and empowered to transfer and convey to the city of Horton, for no consideration all of the rights, title and interest in the following tract of real

estate and any improvement thereon: Beginning at a point on the South Line of the Southwest quarter (SW<sup>1</sup>/<sub>4</sub>) of Section 28, Township 4 South, Range 17 East, 1,177 feet East of the Southwest corner of said Southwest quarter (SW<sup>1</sup>/<sub>4</sub>), said point being 332 feet East of a fence line bearing North thence East along the South line of said Southwest quarter (SW<sup>1</sup>/<sub>4</sub>) a distance of 300 feet, thence North 400 feet, thence West on a line parallel with the South line of said Southwest quarter (SW<sup>1</sup>/<sub>4</sub>) a distance of 300 feet, thence South 400 feet to the point of beginning, and containing 2.75 acres more or less, and all of said property being located in the Southwest quarter (SW<sup>1</sup>/<sub>4</sub>) of Section 28, Township 4 South, Range 17 East, Brown county, Kansas.

(b) Conveyance of such rights, title and interest in such real estate, and any improvements thereon, shall be executed in the name of the Kansas military board by the adjutant general. The deed for such conveyance may be by warranty deed or by quitclaim deed as determined to be in the best interests of the state by the Kansas military board in consultation with the attorney general.

(c) No transfer and conveyance of real estate and improvements thereon as authorized by this section shall be made by the Kansas military board until the deeds and conveyances have been reviewed and approved by the attorney general and, if a warranty deed is to be the instrument of conveyance, a title review has been performed or title insurance has been obtained and the title opinion or the certificate of title insurance, as the case may be, has been approved by the attorney general.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 38

### SUBSTITUTE HOUSE BILL No. 2470

AN ACT concerning scrap metal dealers; relating to unlawful acts; fees; amending K.S.A. 2011 Supp. 50-6,111 and 50-6,112a and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 50-6,111 is hereby amended to read as follows: 50-6,111. (a) It shall be unlawful for any such scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which K.S.A. 2011 Supp. 50-6,110, and amendments thereto, requires information to be presented by the seller, without demanding and receiving from the seller that information. Every scrap metal dealer shall file and maintain a record of in-

formation obtained in compliance with the requirements in K.S.A. 2011 Supp. 50-6,110, and amendments thereto. All records kept in accordance with the provisions of this act shall be open at all times to peace or law enforcement officers and shall be kept for two years. If the required information is maintained in electronic format, the scrap metal dealer shall provide a printout of the information to peace or law enforcement officers upon request.

(b) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which K.S.A. 2011 Supp. 50-6,110, and amendments thereto, requires information to be presented by the seller, without obtaining from the seller a signed statement that: (1) Each item is the seller's own personal property, is free of encumbrances and is not stolen; or (2) that the seller is acting for the owner and has permission to sell each item.

(c) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any junk vehicle in a transaction for which K.S.A. 2011 Supp. 50-6,110, and amendments thereto, requires information to be presented by the seller, without: (1) Inspecting the vehicle offered for sale and recording the vehicle identification number; and (2) obtaining an appropriate vehicle title or bill of sale issued by a governmentally operated vehicle impound facility if the vehicle purchased has been impounded by such facility or agency.

(d) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase or receive any regulated scrap metal from a minor unless such minor is accompanied by a parent or guardian or such minor is a licensed scrap metal dealer.

(e) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any of the following items of regulated scrap metal property without obtaining proof that the seller is an employee, agent or person who is authorized to sell the item of regulated scrap metal property on behalf of the governmental entity, utility provider, railroad, cemetery, civic organization or scrap metal dealer:

- (1) Utility access cover;
- (2) street light poles or fixtures;
- (3) road or bridge guard rails;
- (4) highway or street sign;
- (5) water meter cover;
- (6) traffic directional or traffic control signs;
- (7) traffic light signals;
- (8) any metal marked with any form of the name or initials of a governmental entity;
- (9) property owned and marked by a telephone, cable, electric, water or other utility provider or any such wire or cable that has had the sheathing removed, making ownership identification impossible;

- (10) property owned and marked by a railroad;
- (11) funeral markers or vases;
- (12) historical markers;
- (13) bales of regulated metal;
- (14) beer kegs;
- (15) manhole covers;
- (16) fire hydrants or fire hydrant caps;
- (17) junk vehicles with missing or altered vehicle identification numbers;
- (18) real estate signs;
- (19) bleachers or risers, in whole or in part; and
- (20) twisted pair copper telecommunications wiring of 25 pair or greater existing in 19, 22, 24 or 26 gauge.

(f) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or destroy any regulated scrap metal, junk vehicle or vehicle part upon notice from any law enforcement agency, or any of their agents or employees, that they have cause to believe an item has been stolen. A scrap metal dealer shall hold any of the items that are designated by or on behalf of the law enforcement agency for 30 days, exclusive of weekends and holidays.

Sec. 2. K.S.A. 2011 Supp. 50-6,112a is hereby amended to read as follows: 50-6,112a. (a) ~~On or after January 1, 2012,~~ No business shall purchase any regulated scrap metal without having first registered each place of business as herein provided. In case such place of business is located within the corporate limits of a city, the registration shall be made to the governing body of such city. In all other cases, the registration shall be made to the board of county commissioners in the county in which such place of business is to be located.

(b) A board of county commissioners shall provide the clerk of the township with written notice of the filing of a registration by a scrap metal dealer within 10 days of registration or renewal.

(c) The governing body of any city and the board of county commissioners shall provide the sheriff, chief of police or director of all law enforcement agencies in the county written notice of the filing of registration by a scrap metal dealer within 10 days of registration or renewal.

(d) A registration for a scrap metal dealer shall be verified and upon a form approved by the attorney general and contain:

- (1) The name and residence of the applicant;
- (2) the length of time that the applicant has resided within the state of Kansas and a list of all residences outside the state of Kansas during the previous 10 years;
- (3) the particular place of business for which a registration is desired;

(4) the name of the owner of the premises upon which the place of business is located; and

(5) the applicant shall disclose any prior convictions within 10 years immediately preceding the date of making the registration for theft, as defined in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2011 Supp. 21-5801, *and amendments thereto*, theft of property lost, mislaid or delivered by mistake, as defined in K.S.A. 21-3703, prior to its repeal, or K.S.A. 2011 Supp. 21-5802, *and amendments thereto*, theft of services, as defined in K.S.A. 21-3704, prior to its repeal, criminal deprivation of property, as defined in K.S.A. 21-3705, prior to its repeal, or K.S.A. 2011 Supp. 21-5803, *and amendments thereto*, or any other crime involving possession of stolen property.

(e) Each registration for a scrap metal dealer to purchase regulated scrap metal shall be accompanied by a fee of not less than \$100 nor more than \$400, as prescribed by the board of county commissioners or the governing body of the city, as the case may be.

(f) The board of county commissioners or the governing body of a city shall accept a registration for a scrap metal dealer as otherwise provided for herein, from any scrap metal dealer engaged in business in such county or city and qualified to file such registration, to purchase regulated scrap metals. Such registration shall be issued for a period of 10 years.

(g) If an original registration is accepted, the governing body of the city or the board of county commissioners shall grant and issue renewals thereof upon application of the registration holder, if the registration holder is qualified to receive the same and the registration has not been revoked as provided by law. The registration fee for such renewal, ~~which shall be in addition to the fee provided by subsection (e)~~, shall be not less than \$25 nor more than \$50.

(h) No registration issued under this act shall be transferable.

(i) Violation of subsection (a) is a class A nonperson misdemeanor.

(j) This section shall not apply to a business licensed under the provisions of K.S.A. 8-2404, and amendments thereto, unless such business buys or recycles regulated scrap metal that are not motor vehicle components.

Sec. 3. K.S.A. 2011 Supp. 50-6,111 and 50-6,112a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 28, 2012.

Published in the *Kansas Register* April 5, 2012.

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## CHAPTER 39

## HOUSE BILL No. 2600

AN ACT concerning mental health information; relating to access by law enforcement officers; amending K.S.A. 2011 Supp. 65-5603 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 65-5603 is hereby amended to read as follows: 65-5603. (a) The privilege established by K.S.A. 65-5602, and amendments thereto, shall not extend to:

(1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209, and amendments thereto;

(8) any information to the patient or former patient, except that the

head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to the state protection and advocacy system which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;

(11) any information relevant to the collection of a bill for professional services rendered by a treatment facility;~~or~~

(12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties;

(13) any communication and information by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care by and between treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient;

(14) the name, date of birth, date of death, name of any next of kin and place of residence of a deceased former patient when that information is sought as part of a genealogical study;

(15) any information concerning a patient or former patient who is a juvenile offender in the custody of the juvenile justice authority when the commissioner of juvenile justice, or the commissioner's designee, requests such information; or

(16)~~(a)~~ information limited to whether a person is or has been a patient of any treatment facility; within the last six months, such person having been lawfully ~~arrested~~ *detained* by a law enforcement officer *upon reasonable suspicion that such person is committing, has committed or is about to commit a misdemeanor or felony*, if such law enforcement officer

has reasonable suspicion that such person is suffering from mental illness and such law enforcement officer has a reasonable belief that such person may benefit from treatment at a treatment facility rather than being placed in a correctional institution, jail, juvenile correctional facility or juvenile detention facility. Any communication and information obtained by any law enforcement officer regarding such person from such treatment facility shall not be disclosed except as provided by this section.

(b) As used in this subsection:

(1) "Correctional institution" means the same as prescribed in K.S.A. 75-5202, and amendments thereto;

(2) "jail" means the same as prescribed in K.S.A. 2011 Supp. 38-3202, and amendments thereto;

(3) "juvenile correctional facility" means the same as prescribed in K.S.A. 2011 Supp. 38-3202, and amendments thereto;

(4) "juvenile detention facility" means the same as prescribed in K.S.A. 2011 Supp. 38-3202, and amendments thereto;

(5) "law enforcement officer" means the same as prescribed in K.S.A. 22-2202, and amendments thereto; and

(6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others or the welfare of the community.

(c) The treatment personnel shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient has made such patient's condition an issue of the patient's claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.

Sec. 2. K.S.A. 2011 Supp. 65-5603 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 40

### HOUSE BILL No. 2468

AN ACT concerning criminal procedure; relating to discovery and production requirements of defense attorneys; amending K.S.A. 2011 Supp. 22-3212 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 22-3212 is hereby amended to read as follows: 22-3212. (a) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph the following, if relevant:

(1) Written or recorded statements or confessions made by the defendant, or copies thereof, which are or have been in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (3) recorded testimony of the defendant before a grand jury or at an inquisition; and (4) memoranda of any oral confession made by the defendant and a list of the witnesses to such confession, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney.

(b) (1) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution.

(2) Except as provided in subsections (a)(2) and (a)(4), *and as otherwise provided by law*, this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses; other than the defendant, ~~except as may be provided by law.~~

(3) Except as provided in subsection (e), this section does not require the prosecuting attorney to provide unredacted vehicle identification numbers or personal identifiers of persons mentioned in such books, papers or documents.

(4) As used in this subsection, personal identifiers include, but are not limited to, birthdates, social security numbers, taxpayer identification numbers, drivers license numbers, account numbers of active financial accounts, home addresses and personal telephone numbers of any victims or material witnesses.

(5) If the prosecuting attorney does provide the defendant's counsel with unredacted vehicle identification numbers or personal identifiers, the defendant's counsel shall not further disclose the unredacted numbers or identifiers to the defendant or any other person, directly or indirectly, except as authorized by order of the court.

(6) If the prosecuting attorney provides books, papers or documents to the defendant's counsel with vehicle identification numbers or personal identifiers redacted by the prosecuting attorney, the prosecuting attorney shall provide notice to the defendant's counsel that such books, papers

or documents had such numbers or identifiers redacted by the prosecuting attorney.

(7) Any redaction of vehicle identification numbers or personal identifiers by the prosecuting attorney shall be by alteration or truncation of such numbers or identifiers and shall not be by removal.

(c) If the defendant seeks discovery and inspection under subsection (a)(2) or subsection (b), the defendant shall:

(1) Permit the attorney for the prosecution to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at any hearing, ~~and which~~ are material to the case and will not place an unreasonable burden on the defense; *and*

(2) *provide for the attorney for the prosecution, no less than 30 days prior to trial, a summary or written report of what any expert witness intends to testify, including the witness' qualifications, the witness' opinions and the bases and reasons for such opinions.*

(d) Except as to scientific or medical reports, ~~this~~ subsection (c) does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agents or attorneys.

(e) *All disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, such disclosures shall be made as provided in this section.*

~~(d)~~(f) The prosecuting attorney and the defendant shall cooperate in discovery and reach agreement on the time, place and manner of making the discovery and inspection permitted, so as to avoid the necessity for court intervention.

~~(e)~~(g) Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, enlarged or deferred or make such other order as is appropriate. Upon motion, the court may permit either party to make such showing, in whole or in part, in the form of a written statement to be inspected privately by the court. If the court enters an order granting relief following such a private showing, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

~~(f)~~(h) Discovery under this section must be completed no later than 21 days after arraignment or at such reasonable later time as the court may permit.

~~(g)~~(i) If, subsequent to compliance with an order issued pursuant to this section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or

inspection under this section, the party shall promptly notify the other party or the party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this section or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

~~(h)~~(j) For crimes committed on or after July 1, 1993, the prosecuting attorney shall provide all prior convictions of the defendant known to the prosecuting attorney that would affect the determination of the defendant's criminal history for purposes of sentencing under a presumptive sentencing guidelines system as provided in K.S.A. 21-4701 *et seq.*, prior to their repeal, or the revised Kansas sentencing guidelines act, article 68 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

~~(i)~~(k) The prosecuting attorney and defendant shall be permitted to inspect and copy any juvenile files and records of the defendant for the purpose of discovering and verifying the criminal history of the defendant.

Sec. 2. K.S.A. 2011 Supp. 22-3212 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 41

### HOUSE BILL No. 2420

AN ACT concerning cities; relating to bonded debt limits; amending and repealing the existing section; amending K.S.A. 2011 Supp. 10-308 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 10-308 is hereby amended to read as follows: 10-308. (a) Except as provided in this section and K.S.A. 10-309, and amendments thereto, and in any other statute which specifically exempts bonds from the statutory limitations on bonded indebtedness, the limitation on bonded indebtedness of cities shall be governed by this section. The authorized and outstanding bonded indebtedness of any city shall not exceed 30% of the assessed valuation of the city.

(b) (1) The authorized and outstanding bonded indebtedness of the city of Junction City shall not exceed 40% of the assessed valuation of such city. The provisions of this paragraph shall expire on June 30, 2011.

(2) On and after July 1, 2011, the authorized and outstanding bonded

indebtedness of the city of Junction City shall not exceed 37% of the assessed valuation of such city. The provisions of this paragraph shall expire on June 30, ~~2013~~2016.

(3) On and after July 1, ~~2013~~2016, the authorized and outstanding bonded indebtedness of the city of Junction City shall not exceed 34% of the assessed valuation of such city. The provisions of this paragraph shall expire on June 30, ~~2015~~2020.

(c) For the purpose of this section, assessed valuation means the value of all taxable tangible property as certified to the county clerk on the preceding August 25 which includes the assessed valuation of motor vehicles as provided by K.S.A. 10-310, and amendments thereto.

Sec. 2. K.S.A. 2011 Supp. 10-308 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 42

HOUSE BILL No. 2672

AN ACT repealing K.S.A. 19-825; concerning the vacating and reinstating of a sheriff for failing to perform certain duties.

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

Section 1. K.S.A. 19-825 is hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 43

HOUSE BILL No. 2666

AN ACT concerning experience requirements for certain contractors; amending K.S.A. 2011 Supp. 12-1509, 12-1526 and 12-1542 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 12-1509 is hereby amended to read as follows: 12-1509. (a) Any county or city requiring the licensure of plumbers practicing within the county or city may conduct examinations designated by K.S.A. 12-1508, and amendments thereto, for the purpose of determining the competency of applicants for such licensure and shall

not be allowed to ask further questions not designated on such examination. The board of county commissioners of such county or the governing body of such city shall adopt rules and regulations: (1) Governing the conduct and grading of such examinations; (2) prescribing a minimum score of 75% for passage of examinations; (3) fixing a uniform fee to be charged all applicants taking each such examination; and (4) requiring all persons receiving such license annually to obtain not less than 12 hours biennially or six hours annually of continuing education approved by such local governing body. Not less than six hours biennially or three hours annually shall consist of code education. Continuing education may be provided by the local governing body, a nationally recognized trade association, community college, technical school, technical college or other provider approved by the local governing body. All hours of education shall consist of training relative to construction, maintenance and code update training. Neither the county commission nor the governing body of such city shall impose any restriction on the number of providers of such continuing education.

(b) The certificate of competency received by any person who *completes the experience requirements specified in subsections (e) and (f) and who* successfully passes an examination designated by K.S.A. 12-1508, and amendments thereto, shall be valid proof of competency for licensure, without additional examination, in any county or city of the state which requires licensure of plumbers practicing within such county or city. The county or city shall issue the appropriate ~~license certificate~~ to any applicant therefor who presents such a certificate of competency *and who demonstrates that such applicant has met the experience requirements specified in subsections (e) and (f)*. The county or city shall fix a uniform fee to be charged all such applicants for licensure.

(c) All new licenses issued by a county or city upon the basis of successful passage of an examination designated by K.S.A. 12-1508, and amendments thereto, shall bear a distinctive notation identifying the testing agency and the specific test by name. All such licenses renewed upon the basis of completed continuing education as provided by subsection (a) shall bear a distinctive notation to verify such completion. All such licenses shall be valid in any other county or city which requires examination and licensure of plumbers for practice in such county or city.

(d) No person who was certified or licensed prior to July 1, 1989, upon the basis of passage of a standard examination designated as such under the provisions of article 15 of chapter 12 of Kansas Statutes Annotated, *and amendments thereto*, and whose certificate or license was issued by a political subdivision which prescribed a minimum score of not less than 70% for passage of such examination, shall be required to be reexamined for renewal of certification or licensure.

(e) ~~Before sitting for the standard examination designated by K.S.A. 12-1508, and amendments thereto, an applicant for a journeyman certifi-~~

~~icate shall demonstrate~~ *issuing a journeyman certificate, the issuing jurisdiction shall verify the validity of the applicant's* documented proof of a minimum of two years field experience. "Field experience" means working under the direct supervision of a person having a valid journeyman certificate or master certificate or attending trade related schooling. No more than one year of the requirement may be satisfied by trade related schooling. Schooling shall consist of a minimum of 240 hours classroom training.

~~(f) Before sitting for the standard examination designated by K.S.A. 12-1508, and amendments thereto, an applicant for a master certificate shall demonstrate~~ *issuing a master certificate, the issuing jurisdiction shall verify the validity of the applicant's* documented proof of having a valid journeyman certificate for a minimum of two years or having field experience for a minimum of four years.

(g) (1) No person shall install, improve, repair, maintain or inspect a medical gas piping system within a county or city unless such person: (A) Is licensed under the provisions of K.S.A. 12-1508 *et seq.*, and amendments thereto; and (B) is certified under the appropriate professional qualifications standard or standards of ASSE Series 6000. All installers shall obtain a proper permit from the county or city for which the medical gas is being installed, all inspections shall be done by a third party agency certified under the appropriate professional qualifications standard or standards of ASSE Series 6000 for medical gas systems inspectors and all documentation of the inspections and certifications of installers and inspectors shall be provided to the county or city prior to any occupancy of the building or unit of the building in which the medical gas piping has been installed until an occupancy permit is issued. This subsection shall not apply in counties or cities in which building codes require an inspector certified by a nationally-recognized code organization to inspect medical gas installation prior to an occupancy permit being issued or to limited maintenance on a medical gas piping system previously installed in a hospital when performed by hospital maintenance personnel.

(2) As used in this subsection (g):

(A) "Medical gas piping" means the piping used solely to transport gasses used for medical purposes at a health care facility or the place of business of a health care provider;

(B) "limited maintenance" means minor repair or replacement of incidental parts and any related inspection or testing; and

(C) "hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, long-term care facility, limited care residential facility and joint enterprises for the provision of health care services operated in connection with the operation of the medical care facility.

Sec. 2. K.S.A. 2011 Supp. 12-1526 is hereby amended to read as

follows: 12-1526. (a) Any county or city requiring the licensure of electricians practicing within the county or city may conduct examinations designated by K.S.A. 12-1525, and amendments thereto, for the purpose of determining the competency of applicants for such licensure and shall not be allowed to ask further questions not designated on such examination. The board of county commissioners of such county or the governing body of such city shall adopt rules and regulations: (1) Governing the conduct and grading of such examinations; (2) prescribing a minimum score of 75% for passage of examinations; (3) fixing a uniform fee to be charged all applicants taking each such examination; and (4) requiring all persons receiving such license to obtain not less than 12 hours biennially or six hours annually of continuing education approved by such local governing body. Not less than six hours biennially or three hours annually shall consist of code education. Continuing education may be provided by the local governing body, a nationally recognized trade association, community college, technical school, technical college or other provider approved by the local governing body. All hours of education shall consist of training relative to construction, maintenance and code update training. Neither the county commission nor the governing body of such city shall impose any restriction on the number of providers of such continuing education.

(b) The certificate of competency received by any person who *completes the experience requirements specified in subsections (e) and (f) and who successfully passes an examination designated by K.S.A. 12-1525, and amendments thereto*, shall be valid proof of competency for licensure, without additional examination, in any county or city of the state which requires licensure of electricians practicing within such county or city. The county or city shall issue the appropriate ~~license~~ *certificate* to any applicant therefor who presents such a certificate of competency *and who demonstrates that such applicant has met the experience requirements specified in subsections (e) and (f)*. The county or city shall fix a uniform fee to be charged all such applicants for licensure.

(c) All new licenses issued by a county or city upon the basis of successful passage of an examination designated by K.S.A. 12-1525, and amendments thereto, shall bear a distinctive notation identifying the testing agency and the specific test by name. All licenses renewed upon the basis of completed continuing education as provided by subsection (a) shall bear a distinctive notation to verify such completion. All such licenses shall be valid in any other county or city which requires examination and licensure of electricians for practice in such county or city.

(d) No person who was certified or licensed prior to July 1, 1989, upon the basis of passage of a standard examination designated as such under the provisions of article 15 of chapter 12 of Kansas Statutes Annotated, *and amendments thereto*, and whose certificate or license was issued by a political subdivision which prescribed a minimum score of not

less than 70% for passage of such examination, shall be required to be reexamined for renewal of certification or licensure.

(e) ~~Before sitting for the standard examination designated by K.S.A. 12-1525, and amendments thereto, an applicant for a journeyman or residential certificate shall demonstrate~~ *issuing a journeyman or residential certificate, the issuing jurisdiction shall verify the validity of the applicant's* documented proof of a minimum of two years field experience. "Field experience" means working under the direct supervision of a person having a valid journeyman certificate, residential certificate or master certificate or attending trade related schooling. No more than one year of the requirement may be satisfied by trade related schooling. Schooling shall consist of a minimum of 240 hours classroom training.

(f) ~~Before sitting for the standard examination designated by K.S.A. 12-1525, and amendments thereto, an applicant for a master certificate shall demonstrate~~ *issuing a master certificate, the issuing jurisdiction shall verify the validity of the applicant's* documented proof of having a valid journeyman certificate for a minimum of two years.

Sec. 3. K.S.A. 2011 Supp. 12-1542 is hereby amended to read as follows: 12-1542. (a) Any county or city requiring the licensure of mechanical heating, ventilation and air conditioning contractors and master and journeyman heating, ventilation and air conditioning mechanics practicing within the county or city may conduct examinations designated by K.S.A. 12-1541, *and amendments thereto*, for the purpose of determining the competency of applicants for such licensure and shall not be allowed to ask further questions not designated on such examination. The board of county commissioners of such county or the governing body of such city shall adopt rules and regulations: (1) Governing the conduct and grading of such examinations; (2) prescribing a minimum score of 75% for passage of examinations; (3) fixing a uniform fee to be charged all applicants taking each such examination; and (4) requiring all persons receiving such license annually to obtain not less than 12 hours biennially or six hours annually of continuing education approved by such local governing body. Not less than six hours biennially or three hours annually shall consist of code education. Continuing education may be provided by the local governing body, a nationally recognized trade association, community college, technical school, technical college or other provider approved by the local governing body. All hours of education shall consist of training relative to construction, maintenance and code update training. Neither the county commission nor the governing body of such city shall impose any restriction on the number of providers of such continuing education.

(b) The certificate of competency received by any person who *completes the experience requirements specified in subsections (e) and (f) and who* successfully passes an examination designated by K.S.A. 12-1541,

and amendments thereto, shall be valid proof of competency for licensure, without additional examination, in any county or city of the state which requires licensure of mechanical heating, ventilation and air conditioning ~~contractors and master and journeyman heating, ventilation and air conditioning~~ mechanics practicing within such county or city. The county or city shall issue the appropriate ~~license~~ *certificate* to any applicant therefor who presents such a certificate of competency *and who demonstrates that such applicant has met the experience requirements specified in subsections (e) and (f)*. The county or city shall fix a uniform fee to be charged all such applicants for licensure.

(c) All new licenses issued by a county or city upon the basis of successful passage of an examination designated by K.S.A. 12-1541, and amendments thereto, shall bear a distinctive notation identifying the testing agency and the specific test by name. All licenses renewed upon the basis of completed continuing education as provided by subsection (a) shall bear a distinctive notation to verify such completion. All such licenses shall be valid in any other county or city which requires examination and licensure of mechanical heating, ventilation and air conditioning contractors and master and journeyman heating, ventilation and air conditioning mechanics for practice in such county or city.

(d) No person who was certified or licensed prior to July 1, 1989, upon the basis of passage of a standard examination designated by the political subdivision and whose certificate or license was issued by such political subdivision which prescribed a minimum score of not less than 70% for passage of such examination, shall be required to be reexamined for renewal of certification or licensure.

(e) ~~Before sitting for the standard examination designated by K.S.A. 12-1541, and amendments thereto, an applicant for a journeyman heating, ventilation and air conditioning mechanic certificate shall demonstrate~~ *issuing a journeyman heating, ventilation and air conditioning mechanic certificate, the issuing jurisdiction shall verify the validity of the applicant's* documented proof of a minimum of two years field experience. "Field experience" means working under the direct supervision of a person having a valid journeyman certificate or master certificate or attending trade related schooling. No more than one year of the requirement may be satisfied by trade related schooling. Schooling shall consist of minimum of 240 hours classroom training.

(f) ~~Before sitting for the standard examination designated by K.S.A. 12-1541, and amendments thereto, an applicant for a master heating, ventilation and air conditioning mechanic certificate shall demonstrate~~ *issuing a master heating, ventilation and air conditioning certificate, the issuing jurisdiction shall verify the validity of the applicant's* documented proof of having a valid journeyman certificate for a minimum of two years or having field experience for a minimum of four years.

Sec. 4. K.S.A. 2011 Supp. 12-1509, 12-1526 and 12-1542 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 44

### HOUSE BILL No. 2618

AN ACT concerning the portable electronics insurance act; amending K.S.A. 2011 Supp. 40-5603, 40-5605 and 40-5607 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 40-5603 is hereby amended to read as follows: 40-5603. (a) A vendor shall be required to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance. To hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance, a vendor shall meet all the requirements to be a producer including:

- (1) Paying all fees to be an insurance producer;
- (2) complying with all the same terms and conditions that are specified for an insurance producer license; and
- (3) submitting to the commissioner any additional information or documentation that the commissioner requires, including any information or documentation needed to determine the professional competence, good character and trustworthiness of the vendor.

(b) ~~In connection with a vendor's application for licensure, and quarterly thereafter, the vendor shall provide a list to the commissioner of all locations in this state at which it offers coverage.~~ *The supervising entity shall maintain a registry of vendor locations which are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the commissioner and with 10 days notice to the supervising entity, the registry shall be provided to the commissioner.*

(c) Notwithstanding any other provision of law, any license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage in those activities that are permitted in this act.

Sec. 2. K.S.A. 2011 Supp. 40-5605 is hereby amended to read as follows: 40-5605. (a) The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers at each location at which the vendor engages in portable electronics trans-

actions and shall not be subject to licensure as an insurance producer under K.S.A. 40-4901 *et seq.*, and amendments thereto, if:

(1) The vendor has a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to this section;

(2) the insurer complies with all statutes and regulations applicable to limited lines insurers;

(3) the insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the program including development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision shall comply with the following:

(A) The training shall be delivered to employees and authorized representatives of a vendor who is directly engaged in the activity of selling or offering portable electronics insurance.

(B) The training may be provided in electronic form. However, if conducted in an electronic form, the supervising entity shall implement a program of in-person training conducted by licensed employees of the supervising entity to supplement the electronic training supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising entity.

(C) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under K.S.A. 2011 Supp. 40-5604, and amendments thereto.

(4) No employee or authorized representative of a vendor of portable electronics devices shall advertise, represent or otherwise hold one's self out as a nonlimited lines licensed insurance producer.

(b) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics devices. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics devices or related services shall be separately itemized on the customer's bill. If the portable electronic insurance coverage is included in the cost associated with the purchase or lease of portable electronics devices or related services, the vendor shall clearly and conspicuously disclose to the customer that the portable electronics insurance coverage is included with the portable electronics or related services. Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within 60 days of receipt. All funds received by a vendor from a customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for

the benefit of the insurer. Vendors may receive compensation for billing and collection services.

Sec. 3. K.S.A. 2011 Supp. 40-5607 is hereby amended to read as follows: 40-5607. Notwithstanding any other provision of law:

(a) An insurer may not change the terms and conditions of a policy of portable electronics insurance more than once in any six-month period.

(b) An insurer may not terminate an individually enrolled customer based solely upon the age of such enrolled customer's covered portable electronic device.

(c) If the insurer changes the terms and conditions of a policy, the insurer shall provide the policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes 30 days prior to the end of the term of the policy.

(d) Notwithstanding subsection (a), an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days notice for:

(1) Fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder; or

(2) nonpayment of premium;

(e) notwithstanding subsection (a), an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy immediately if:

(1) The enrolled customer ceases to have an active service with the vendor of portable electronics; or

(2) an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the customer within 30 calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(f) Whenever notice is required pursuant to this section, it shall be in writing and may be mailed or delivered to the vendor of portable electronics devices at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer. The insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service. Alternatively, an insurer or vendor policyholder may comply with any notice required by this section by providing electronic notice to a vendor or its affected enrolled customers, as the case may be, by electronic means. If notice is accomplished through electronic means, the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the

notice was sent. Additionally, if an insurer or vendor policyholder provides electronic notice to an affected enrolled customer and such delivery by electronic means is not available or fails, the insurer or vendor policyholder shall provide written notice to the enrolled customer by mail in accordance with this section.

(g) *Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as the case may be, by the supervising entity appointed by the insurer.*

(h) Regardless of whether the insurer or the enrolled customer terminates the policy the insurer shall return any unearned premium to the customer without requiring the consumer to request it. The unearned premium shall be calculated on a pro rata basis such that the enrolled customer pays for the actual number of days of coverage. No penalty for early termination may be charged. *A return or refund of any applicable unearned premium may be accomplished by crediting the billing mechanism used to pay the premium so long as there is a balance for which to apply the credit.*

Sec. 4. K.S.A. 2011 Supp. 40-5603, 40-5605 and 40-5607 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 45

### HOUSE BILL No. 2599

AN ACT concerning motor vehicles; relating to certain antique license plates; providing for registration decals; amending K.S.A. 2011 Supp. 8-172 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 8-172 is hereby amended to read as follows: 8-172. (a) Except as provided in subsection (c), license plates issued for antique vehicles shall be distinctive and shall contain the words “Kansas” and “antique” and there shall be no year date thereon. The numbering system shall consist of combinations of not more than seven letters of the alphabet or numerals or a combination of such letters and numerals. The combinations of such letters and numerals shall be at the direction of the director of vehicles, except that any person owning an antique vehicle, other than an antique motorcycle, may make application for a special combination of letters and numerals not exceeding seven. Antique motorcycle license plates shall be the same as other antique vehicle license plates, except the numbering system shall consist of not more

than five letters of the alphabet or numerals or a combination of letters and numerals. Such application shall be made in a manner prescribed by the director of vehicles and shall be accompanied by a special combination fee of \$40. Unless the combination of letters or numerals designated by the applicant have been assigned to another antique vehicle registered in this state, or unless the combination of letters or numerals designated by the applicant have a profane, vulgar, lewd or indecent meaning or connotation, as determined by the director, the division shall assign such combination of letters to the applicant's vehicle.

(b) In addition to the fees required under subsection (b) of K.S.A. 8-167, and amendments thereto, and subsection (a) or (c) of this section, the registration fee for any antique vehicle shall be \$40 and once paid shall not be required to be renewed.

(c) In lieu of the license plate issued under subsection (a), a person who owns an antique vehicle who wants to display a model year license plate on the vehicle shall make application in a manner prescribed by the director of vehicles, including the execution of an affidavit setting forth that the model year license plate the person wants to display on the person's antique vehicle is a legible and serviceable license plate that originally was issued by this state or a license plate originally issued by a Kansas city or a reproduction of such city issued license plate. Except for license plates issued prior to 1921, such license plate shall be inscribed with the date of the year corresponding to the model year when the vehicle was manufactured. For license plates issued prior to 1921, such license plate shall be the license plate issued by the state or a Kansas city or a reproduction of such city issued license plate corresponding to the model year when the vehicle was manufactured. Duplicate numbers for any year shall not be allowed for any model year license plate under the provisions of this subsection. Upon application to display a reproduction of a city issued license plate, the division of vehicles shall issue a number to be used for such reproduction license plate. The model year license plate fee shall be \$40.

(d) In addition to the license plates authorized under subsection (a) or (c), a person who owns an antique vehicle may display a model year license plate originally issued by the state of Kansas or a Kansas city or a reproduction of such city issued license plate on the front of an antique vehicle. Except for license plates issued prior to 1921, such license plate shall be inscribed with the date of the year corresponding to the model year when the vehicle was manufactured. For license plates issued prior to 1921, such license plate shall be the license plate issued by the state or a Kansas city or a reproduction of such city issued license plate corresponding to the model year when the vehicle was manufactured.

(e) *For a model year license plate issued during calendar year 1976 or thereafter, and which is displayed on an antique vehicle pursuant to subsection (c), the owner may display a decal of the type described in*

*K.S.A. 8-132, and amendments thereto, for the year of the vehicle so long as such decal is legible. Otherwise, on and after January 1, 2013, the owner may obtain a replacement decal from the county treasurer which displays the year of the vehicle.*

Sec. 2. K.S.A. 2011 Supp. 8-172 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 46

### SUBSTITUTE FOR HOUSE BILL No. 2166

AN ACT concerning cities; relating to the publication of certain ordinances; amending K.S.A. 12-3001 and 12-3007 and repealing the existing sections.

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

Section 1. K.S.A. 12-3001 is hereby amended to read as follows: 12-3001. All ordinances of a city shall be considered at a public meeting of the governing body except as otherwise herein provided or where a statute provides a different procedure for an ordinance for a specific purpose. ~~Provided, That in commission cities of the first class no ordinance other than one providing for the appropriation of funds, shall be passed finally on the day it is introduced, except in the case of public emergencies, and then only when requested by the mayor in writing, but no ordinance granting a franchise or special privilege shall ever be passed as an emergency measure.~~

Sec. 2. K.S.A. 12-3007 is hereby amended to read as follows: 12-3007. (a) The city clerk shall cause all ordinances, except appropriation ordinances, as soon as practicable after they have been passed and signed, passed over the mayor's veto or will take effect without signature, to be published once in the official city newspaper, unless a statute requires more publications. Ordinances shall take effect the day of publication unless a different and later day is stated in the ordinance or otherwise specified by statute: *Provided*, That appropriation ordinances shall take effect upon passage. The publisher shall print in a line preceding the number of the ordinance a statement in parentheses as follows: (Published \_\_\_\_\_, 1920\_\_\_\_), giving the month, day and year. The manner of publication and effective date of codifications shall be as herein-after provided.

(b) *In lieu of full publication of an ordinance pursuant to this section, a city may opt to publish a summary of the ordinance so long as:*

(1) *The publication is identified as a "summary" and contains notice*

*that the complete text of the ordinance may be obtained or viewed free of charge at the office of the city clerk;*

*(2) the city attorney certifies the summary of the ordinance prior to publication to ensure that the summary is legally accurate and sufficient; and*

*(3) the publication contains the city's official website address where a reproduction of the original ordinance is available for a minimum of one week following the summary publication in the newspaper.*

*If an ordinance is subject to petition pursuant to state law, then the summary shall contain a statement that the ordinance is subject to petition.*

Sec. 3. K.S.A. 12-3001 and 12-3007 are hereby repealed.

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

Approved March 28, 2012.

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## CHAPTER 47

SENATE BILL No. 316  
(Amended by Chapters 154 and 166)

AN ACT concerning the Kansas department of wildlife, parks and tourism; relating to updating references and corresponding changes due to transfer of powers and duties from the department of commerce; amending K.S.A. 2-2473, 19-2803b, 19-2803d, 19-2817, 19-2822, 19-2835, 19-2836, 19-2839, 19-2844, 19-2844a, 19-2855, 19-2868, 19-2873, 19-2894, 19-3543, 32-802, 32-806, 32-807, 32-809, 32-832, 32-839, 32-840, 32-845, 32-846, 32-869, 32-874, 32-874c, 32-886, 32-887, 32-888, 32-976, 32-1040, 32-1041, 32-1049, 32-1051, 32-1052, 32-1053, 32-1203, 49-408, 58-3221, 58-3225, 65-189e, 68-406, 74-134, 74-3322, 74-5032, 74-5032a, 74-5090, 74-6614, 74-7901, 75-3339, 75-3907, 75-3908, 75-3910, 76-463, 79-3221e, 79-32,203, 82a-209 and 82a-326 and K.S.A. 2011 Supp. 2-1334, 21-5810, 21-6416, 32-701, 32-801, 32-805, 32-833, 32-844, 32-873, 32-874a, 32-874b, 32-874d, 32-874e, 32-906, 32-918, 32-930, 32-932, 32-938, 32-966, 32-996, 32-997, 32-998, 32-999, 32-1001, 32-1004, 32-1005, 32-1031, 32-1032, 32-1049a, 32-1050, 32-1054, 32-1062, 32-1063, 32-1064, 32-1066, 32-1102, 32-1112, 32-1174, 32-1306, 32-1308, 32-1310, 47-2101, 65-3424b, 65-3483, 65-5703, 74-5,133, 74-2622, 74-4722, 74-4911f, 74-5005, 74-5089, 74-5091, 74-50,167, 74-50,168, 74-50,173, 74-5602, 74-9001, 74-9002, 74-9003, 74-9004, 74-9201, 75-1253, 75-2720, 75-2935, 75-37,121, 77-415, 77-421, 79-201a, 79-3221h, 79-3234, 79-3234b, 79-5212, 82a-220, 82a-903, 82a-1501, 82a-2001 and 82a-2204 and repealing the existing sections; also repealing K.S.A. 73-2101, 73-2102, 73-2103 and 73-2104 and K.S.A. 2011 Supp. 74-9005.

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

New Section 1. The secretary of wildlife, parks and tourism is hereby authorized to negotiate and enter into contracts for promotional advertising services for the performance of the powers, duties and functions of the Kansas department of wildlife, parks and tourism. All such contracts

shall be exempt from the competitive bidding requirements of K.S.A. 75-3739, and amendments thereto.

Sec. 2. K.S.A. 2011 Supp. 2-1334 is hereby amended to read as follows: 2-1334. (a) The purpose of this act is to provide for the coordination, enhancement and continuation of federal, state and local efforts as well as public and private efforts to develop an effective and affordable method of controlling or eradicating sericea lespedeza and to encourage communication of information about sericea control methods to landowners and land managers.

(b) The secretary of agriculture in cooperation with the secretary of wildlife ~~and parks~~, *parks and tourism* shall designate an appropriate parcel of land as a research area to study and demonstrate methods of controlling or eradicating sericea lespedeza. Such site shall be designated on land managed by the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* at Toronto lake and shall be utilized to provide a focal point for activities that further the purposes of this act.

(c) The research and demonstration efforts conducted on the site designated as provided in subsection (b) shall include a variety of methods used to control or eradicate sericea lespedeza and shall include utilization of experiment and demonstration plots and development of field days and workshops to demonstrate methods of control or eradication of sericea lespedeza.

(d) The secretary of agriculture and the secretary of wildlife ~~and parks~~, *parks and tourism* shall have authority to request assistance from any federal, state or local authority, from any public or private university or other research institution, from any business organization, or from any individual in furthering the purposes of this act. All such entities are hereby requested to cooperate with the secretary of agriculture and the secretary of wildlife ~~and parks~~, *parks and tourism* in furthering the purposes of this act.

Sec. 3. K.S.A. 2-2473 is hereby amended to read as follows: 2-2473. (a) The pesticide management areas shall be developed by examination of the following factors:

- (1) Precipitation;
- (2) topography;
- (3) soil type;
- (4) depth to the watertable; and
- (5) other factors as the secretary deems relevant.

The areas shall be designated as permitted, modified or prohibited for the use of certain types of pesticides as determined by the pesticide management plan for the management area. The order of the secretary designating such pesticide management area shall define specifically the boundaries of the pesticide management area and shall indicate specifically the pesticide management plan for the area. Pesticide management

plans may include provisions for the handling or release of pesticides, including but not limited to the application, mixing, loading, storage, disposal or transportation and guidelines for the best management practices.

(b) When considering whether to establish such pesticide management areas, the secretary shall consult with a pesticide management area technical advisory committee composed of a representative or representatives of each of the following: (1) Kansas department of health and environment appointed by the secretary of health and environment; (2) Kansas department of wildlife ~~and parks~~, *parks and tourism* appointed by the secretary of wildlife ~~and parks~~, *parks and tourism*; (3) Kansas state university appointed by the president of Kansas state university; (4) Kansas water authority appointed by the chairperson of the Kansas water authority; (5) conservation commission appointed by the chairperson of the state conservation commission; (6) Kansas geological survey appointed by the state geologist; and (7) other persons the secretary determines to have beneficial information to the establishment of such areas as appointed by the secretary. This technical advisory committee shall assist the secretary in the development of the proposed boundaries of the pesticide management area and the proposed plan for the pesticide management area.

Sec. 4. K.S.A. 19-2803b is hereby amended to read as follows: 19-2803b. The board of commissioners of any county which has ~~heretofore~~ *previously* acquired real estate under ~~the provisions of a statute now appearing as section 19-2801 of the General Statutes of 1949~~ *K.S.A. 19-2801, and amendments thereto, or its predecessors*, and which has not constructed and completed a lake or park facility thereon, is hereby authorized, without an election, to convey the fee simple title to such real estate to the Kansas department of wildlife ~~and parks~~, *parks and tourism* by a proper deed of conveyance.

Sec. 5. K.S.A. 19-2803d is hereby amended to read as follows: 19-2803d. The board of county commissioners may receive donations and bequests of either money or property for the purpose of establishing and maintaining such lake and recreational grounds. The board shall make all regulations necessary for the supervision and conduct of such lake and recreational grounds, subject to the rules and regulations of the secretary of wildlife ~~and parks~~, *parks and tourism*, and may employ a supervisor and such other assistants as may be necessary to properly care for and manage the same.

Sec. 6. K.S.A. 19-2817 is hereby amended to read as follows: 19-2817. The board of county commissioners of any county to which this act applies and the secretary of wildlife ~~and parks~~, *parks and tourism* are each authorized and empowered to enter into an agreement to provide for the building and construction of one or more reservoirs, lakes, dams or embankments for impounding water on lands in the park and recreational

grounds of any such county and to provide for the use, control and maintenance of such park and recreational grounds. Nothing in such agreement shall be construed to prohibit the secretary of wildlife ~~and parks,~~ *parks and tourism* or the Kansas department of wildlife ~~and parks,~~ *parks and tourism* from the right to exercise the same functions, rights and authority as though the lands for such park and recreational grounds had been acquired for the department, and the agreement between any such county and the secretary shall expressly provide that, notwithstanding the title to such lands shall be vested in such county, all rights therein or thereon, waters and water rights, and for keeping, improving and maintaining them for the use and benefit of the department shall be unimpaired and shall likewise be public park and recreational grounds for the use and enjoyment of the public.

Sec. 7. K.S.A. 19-2822 is hereby amended to read as follows: 19-2822. The board of county commissioners of any county to which this act applies and the secretary of wildlife ~~and parks,~~ *parks and tourism* are each authorized and empowered to enter into an agreement to provide for the building and construction of one or more reservoirs, lakes, dams or embankments for impounding water on lands in the park and recreational grounds of any such county and to provide for the use, control and maintenance of such park and recreational grounds. Nothing in such agreement shall be construed to prohibit the secretary of wildlife ~~and parks,~~ *parks and tourism* or the Kansas department of wildlife ~~and parks,~~ *parks and tourism* from the right to exercise the same functions, rights and authority as though the lands for such park and recreational grounds had been acquired by the department, and the agreement between any such county and the secretary shall expressly provide that, notwithstanding the title to such lands shall be vested in such county, all rights therein or thereon, waters and water rights, and for keeping, improving and maintaining them for the use and benefit of the department shall be unimpaired and shall likewise be public park and recreational grounds for the use and enjoyment of the public.

Sec. 8. K.S.A. 19-2835 is hereby amended to read as follows: 19-2835. The board of county commissioners of any such county shall have the right to aid, assist, furnish and pay for a part or the whole of any real estate or property or constructing the whole or a part of any dam or construction work deemed by them necessary or proper in the aiding or assisting the Kansas department of wildlife ~~and parks,~~ *parks and tourism* in the acquisition of a lake, park and recreational site or sites and in the construction of dams, lakes and reservoirs or construction work thereon, so as to insure the completion of a lake, park or recreational grounds in such county. The control and direction of the construction work shall be as determined by the board of county commissioners and the department should the department be in whole or in part interested in such project

as such. The title to such real estate or part of such real estate as may be paid for exclusively by such board of county commissioners shall be taken in the name of the county or in the name of the state of Kansas, as the board of county commissioners and the department may agree, but the real estate paid for exclusively by the county shall revert to the county should such project ever be abandoned as a park or recreational project.

Sec. 9. K.S.A. 19-2836 is hereby amended to read as follows: 19-2836. Before any board of county commissioners is authorized to proceed under this act, there shall be filed with such board under the certificate of the engineer for the Kansas department of wildlife ~~and parks~~, *parks and tourism*, or the county engineer of such county, maps, plans and specifications showing: (1) The description or outline of the land to be in such project; (2) the portion of such land, if any, owned by the state of Kansas or the department; (3) the portion of the land to be purchased by the county, if any; (4) the probable acre surface area of water to be impounded, estimating such acreage at low-water time; (5) a brief outline of the proposed plan of construction and of estimated cost thereof, including the estimated part of the cost, if any, to be borne by the county, the part of the cost, if any, to be borne by the department and the part of the cost, if any, to be borne by any other state or federal agencies or individuals. The cost of such maps, plans, specifications and preliminary work may be paid for by the county out of its general fund.

Sec. 10. K.S.A. 19-2839 is hereby amended to read as follows: 19-2839. The construction work may be let by contract or done by day labor, as the board of county commissioners and the secretary of wildlife ~~and parks~~, *parks and tourism* may agree upon, and such board and such secretary are hereby authorized to accept funds from the state or any federal agencies or donations or bequests from any individuals in the promotion and completion of such work.

Sec. 11. K.S.A. 19-2844 is hereby amended to read as follows: 19-2844. The boards of county commissioners of any counties to which this act applies and the secretary of wildlife ~~and parks~~, *parks and tourism* are authorized and empowered to enter into an agreement to provide for the building and construction of one or more reservoirs, lakes, dams or embankments for impounding water on lands in the park and recreational grounds of any such counties and to provide for the use, control and maintenance of such park and recreational grounds. Nothing in such agreement shall be construed to prohibit the secretary of wildlife ~~and parks~~, *parks and tourism* or the Kansas department of wildlife ~~and parks~~, *parks and tourism* from the right to exercise the same functions, rights and authority as though the lands for such park and recreational grounds had been acquired for the department, and the agreement between any such counties and the secretary shall expressly provide that, notwithstanding the title to such lands shall be vested in such counties, all rights therein

or thereon, waters and water rights, and for keeping, improving and maintaining them for the use and benefit of the department shall be unimpaired and shall likewise be public park and recreational grounds for the use and enjoyment of the public.

Sec. 12. K.S.A. 19-2844a is hereby amended to read as follows: 19-2844a. Whenever a lake is being constructed by the Kansas department of wildlife ~~and parks~~, *parks and tourism* in any county within three miles of the county line of an adjoining county, the board of county commissioners of such adjoining county is hereby authorized to construct or aid in the construction of roads and bridges around such lake in the county in which such lake is situated and access roads thereto. The board of county commissioners of such adjoining county shall, by resolution, find that the lake is of public benefit to its county and fix the amount of money from its road and bridge fund to be expended for such purpose. Such board is authorized to enter into such agreements as may be necessary with the board of county commissioners of the county in which the lake is situated for the separate or joint construction and maintenance of such roads and bridges. Any roads so constructed shall have access to roads in such adjoining county.

Sec. 13. K.S.A. 19-2855 is hereby amended to read as follows: 19-2855. The county board of park commissioners shall be vested with all the power, authority and control ~~heretofore~~ *previously* vested in the board of county commissioners relating to county parks, parkways and recreational areas, county lakes, roads and park drives, including all buildings, grounds and other structures located within such county parks, parkways and recreational areas. It shall have power to make bylaws, rules and regulations for the orderly transaction and management of its business. It is further empowered to enter into agreements with the secretary of wildlife ~~and parks~~, *parks and tourism*, by and with the consent of the board of county commissioners, for the building and construction of one or more reservoirs, lakes, dams or embankments for impounding water on lands in the park and recreational grounds of the county. Nothing in such agreements shall be construed to prohibit the secretary and the Kansas department of wildlife ~~and parks~~, *parks and tourism* from the right to exercise the same functions, rights and authority as though the lands for such park and recreational grounds had been acquired by the department, and any agreement between any such county board of park commissioners and the secretary shall expressly provide that, notwithstanding the title to such lands shall be vested in such county, all rights therein or thereon, waters and water rights, and for keeping, improving and maintaining them for the use and benefit of the department shall be unimpaired and shall likewise be public park and recreational grounds for the use and enjoyment of the public. All bonds required or authorized by law to be issued relating to parks, parkways and recreational areas, and

all taxes levied for the maintenance or improvement thereof, shall be issued and levied by the board of county commissioners, and for the purpose of creating such county park and recreational fund, hereinafter referred to, and for the purpose of enlarging existing park areas or acquiring additional park and recreational grounds or sites and for the making of permanent improvements to and for maintaining such park, recreational grounds or sites now owned or hereafter acquired by such county and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, the board of county commissioners is hereby authorized to levy an annual tax on all taxable tangible property in the county.

Such new or additional grounds or sites for park and recreational purposes may be acquired by the board of county commissioners of such county by purchase, donation, long term leases or easements or the exercise of the right of eminent domain, as provided for in chapter 26 of the Kansas Statutes Annotated and amendments thereto. Following the acquisition of such grounds or sites, the county board of park commissioners shall improve, maintain and supervise all such park and recreational areas in the manner now provided by law. The board of county commissioners of any such county, ~~by and~~ with the consent of the board of park commissioners of any such county, may convey title to such portion or portions of the new park and recreational areas so acquired under the provisions of this act to any federal nonprofit corporation or foundation created under the laws of the United States, for the purpose of establishing and maintaining any national shrine, park or memorial upon any land in such county, which adjoins, abuts or is adjacent to the new park and recreational areas so acquired by any such county under the provisions of this act. The board of county commissioners shall have *the* power, ~~and it shall be its~~ *and* duty, upon recommendation of the county board of park commissioners, to adopt resolutions from time to time for the regulation and orderly government of parks, parkways, recreational areas, county lakes, roads, park drives and public grounds, and to prescribe fines and penalties for the violation of the provisions of such resolutions.

Sec. 14. K.S.A. 19-2868 is hereby amended to read as follows: 19-2868. The board shall have power *to*:

- (a) ~~To~~ Finance, operate, improve and maintain the parks and playgrounds of the district as provided in this act;
- (b) ~~to~~ accept by gift or devise, ~~to~~ purchase, lease and ~~to~~ condemn real estate for use as parks and playgrounds for the district, ~~and to~~ sell any improvements of any real estate so acquired not usable for park purposes or ~~to~~ take down such improvements and use or dispose of the salvage and use any of the proceeds thereof for park purposes without

regard to budget limitations; ~~To~~; and contract with school boards for joint use and improvement of school lands for park and playground purposes;

(c) ~~to~~ improve the parks and playgrounds for the recreation, amusement and enjoyment of the inhabitants of the district;

(d) ~~to~~ levy taxes for the acquisition of lands and improvements and operation, improvement and maintenance of the parks and playgrounds as authorized and limited by this act;

(e) ~~to~~ issue bonds of the district for acquiring real estate and the improvement thereof for park and playground purposes upon authorization of the qualified electors of the district by election and within the limitations provided by this act;

(f) ~~to~~ appoint park and recreation supervisory personnel and employ such other employees, servants, police and agents as may be necessary for the proper and adequate operation, improvement and maintenance of the park and recreation district, and may appoint, employ or retain attorneys, engineers, landscape architects, surveyors and other professional or technical persons or firms for a period or for specified projects and pay the necessary compensation therefor;

(g) ~~to~~ adopt, promulgate and enforce reasonable rules and regulations for the operation and use of the parks and playgrounds and the conduct of persons using such parks and playgrounds as provided by this act;

(h) ~~to~~ sell or salvage equipment found to be worn out or beyond repair or dangerous to use or to trade it in as part payment on new equipment, and the proceeds when resold or the trade-in value shall not be charged against the budget but may be in addition to the amount authorized for expenditure by the budget;

(i) ~~to~~ sell and convey real estate acquired by purchase, condemnation, gift or devise when it appears such property is no longer needed for park, playground or recreational purposes, or is poorly situated for such purposes, or is poorly suited for such purposes, with the proceeds of such sale to be deposited in the land acquisition fund authorized by K.S.A. 19-2873b, and amendments thereto. No such sale shall be made except upon authorization of the majority of the votes cast by the qualified electors of the district at an election called and held for such purpose as provided by this act. If the instrument of gift or devise vests fee title in the district or authorizes the district to sell the real property, such property may be sold by the procedure herein provided. The board, when in its judgment deemed advisable and to the best interests of the district, by proper conveyances, may exchange any tract of land for lands similar in value, or exchange money and land for other land suitable for park or recreation purposes, or exchange land for land and money totaling the value of the land conveyed, provided that the money involved does not exceed 25% of the total value of the land involved, without vote of the qualified electors of the park district, subject to a public hearing having first been held with respect to such proposed exchange of lands, after notice of the time,

place and purpose thereof, including a legal description of said lands, published once each week for two consecutive weeks prior thereto, in the official county paper, and subject further to final approval of such proposed exchange of lands, by the board of county commissioners of Johnson county, Kansas. The board may by proper conveyance exchange, transfer, sell, or lease any tract of district land with or without improvements to the state of Kansas, a political subdivision thereof, or an agency of the United States government, if the board determines that such property can properly be maintained and operated as park, playground, or recreational facilities by such governmental agency, or that such property may be utilized in whole or part in a contract with said governmental agencies in, on, or around other property of such governmental units, all or any part of which is located within boundaries of such district;

(j) ~~to~~ adopt, change and modify a seal for the district and to use such seal in attestations by the secretary and in all other cases where a seal is required or advisable;

(k) ~~to~~ cooperate with the Kansas department of wildlife ~~and parks, parks and tourism~~ and with Miami county in the operation, improvement and maintenance of Hillsdale state park and to enforce rules and regulations for the operation of such park land; and

(l) ~~to do and perform~~ do all other things provided by this act ~~or, and~~ amendments thereto ~~and to~~, have all the powers prescribed by this act; and ~~to~~ carry out and exercise the powers of the district as its governing body.

Sec. 15. K.S.A. 19-2873 is hereby amended to read as follows: 19-2873. The board may by resolution adopt rules and regulations for the operation of the park and recreation district and rules and regulations applying to any particular park or playground and prescribe penalties for violation of any rules and regulations relating to the conduct of persons in the parks and playgrounds or park or playgrounds. Such penalties *shall* not ~~to~~ exceed imprisonment in the county jail for not to exceed three months or ~~by a fine of~~ not to exceed \$100; or both ~~such fine and imprisonment~~. Any rules and regulations for the conduct of persons, applying to all parks or any park and providing penalties, shall be published once in the official county paper and copies of the rules and regulations shall be posted and kept posted in all parks to which they are applicable, and the violation of any penal rule or regulation when so published and posted shall constitute a misdemeanor.

No charge shall be made for entrance into any park and no admission charge shall be made for use of any of the facilities of any park. The board may lease sites for food, soft drinks, boat rentals, amusements and other concessions as in its judgment may be deemed appropriate and lawful for the comfort, convenience and enjoyment of the public, and may limit purchase and use charges to be made by concessionaires in operating the

same. The board may establish and operate food, soft drinks, boat rentals, amusements and other lawful and appropriate conveniences as may in its judgment be necessary or appeal to the public comfort and enjoyment, all in accordance with K.S.A. 19-2873a, and amendments thereto. A reasonable fee may be charged for recreational activities and the board may regulate and control all fishing and boating within the boundaries of park property, including daily and possession limits of fish caught and time limits when fishing may be restricted, subject to law and rules and regulations of the secretary of wildlife and parks, *parks and tourism* with respect to such fishing and boating; and may require a park permit for fishing and boating for which a reasonable fee may be charged all persons so engaged.

A separate schedule of fees may be established for nonresidents. The board may enter into long term leases for such authorized concessions, not to exceed 50 years, under the terms of which the concessionaires (lessees), shall at their own expense, construct and install the facilities and improvements to be occupied and used under such lease, upon such terms, conditions and control as the park and recreation district may require and subject in all such long term leases to unconditional reversion of title to such facilities and improvements so constructed by the concessionaire to the district upon the expiration of the term of such lease or upon abandonment or forfeiture thereof by the concessionaire prior to its expiration.

Sec. 16. K.S.A. 19-2894 is hereby amended to read as follows: 19-2894. The park board may by resolution adopt rules and regulations for the operation of the park district and prescribe penalties for violation of any rules and regulations relating to the conduct of persons in the area where improvements are established; Such penalties *shall not to exceed* imprisonment in the county jail for not to exceed three months or *by a* fine of not to exceed \$100; or both ~~such fine and imprisonment~~. Any rules and regulations for the conduct of persons and providing penalties shall be published once in the official county paper and copies of the rules and regulations shall be posted and kept posted in all areas to which they are applicable, and the violation of any penal rule or regulation when so published and posted shall constitute a misdemeanor.

No charge shall be made for entrance into any improved area and no admission charge shall be made for use of any of the facilities, except that the park board may lease sites for food, soft drinks, boat rentals, amusements and other concessions as in its judgment may be deemed appropriate and lawful for the comfort, convenience and enjoyment of the public, and may limit purchase and use charges to be made by concessionaires in operating them. The park board may regulate and control all fishing and boating within the boundaries of park property, including daily and possession limits of fish caught and time limits when fishing may be

restricted, subject to law and rules and regulations of the secretary of wildlife ~~and parks~~, *parks and tourism*, and may require a park permit for fishing and boating for which a reasonable fee may be charged all persons so engaged.

Sec. 17. K.S.A. 19-3543 is hereby amended to read as follows: 19-3543. The board shall have power to construct and maintain water lines through, under, across or along any public highway. The board is hereby authorized to enter into contracts with the secretary of wildlife ~~and parks~~, *parks and tourism* for the purchase of water for use by the district and for the sale of the same for domestic or other uses.

Sec. 18. K.S.A. 2011 Supp. 21-5810 is hereby amended to read as follows: 21-5810. (a) Criminal hunting is knowingly hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing:

(1) Upon any land or nonnavigable body of water of another, without having first obtained permission of the owner or person in possession of such premises;

(2) upon or from any public road, public road right-of-way or railroad right-of-way that adjoins occupied or improved premises, without having first obtained permission of the owner or person in possession of such premises; or

(3) upon any land or nonnavigable body of water of another by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(B) such premises or property are posted in a manner consistent with K.S.A. 32-1013, and amendments thereto.

(b) Criminal hunting as defined in:

(1) Subsection (a)(1) or (a)(2) is a class C misdemeanor. Upon the first conviction of subsection (a)(1) or (a)(2), in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or, in any case where such person has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from hunting, fishing or fur harvesting, or all, for up to one year from the date of such conviction. Upon a second or subsequent conviction of subsection (a)(1) or (a)(2), in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or, in any case where such person has a combination license, the court shall require the forfeiture of a part or all of such license and the court shall order such person to refrain from hunting, fishing or fur

harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner thereof or other authorized person. For the purpose of determining whether a conviction is a first, second or subsequent conviction of subsection (a)(1) or (a)(2), "conviction" or "convicted" includes being convicted of a violation of subsection (a) of K.S.A. 21-3728, prior to its repeal, or subsection (a)(1) or (a)(2); and

(2) subsection (a)(3) is a class B misdemeanor. Upon the first conviction or a diversion agreement of subsection (a)(3), in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of subsection (a)(3), in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of subsection (a)(3), in addition to any authorized sentence imposed by the court, such court shall require forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for five years. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction of subsection (a)(3), "conviction" or "convicted" includes being convicted of a violation of subsection (b) of K.S.A. 21-3728, prior to its repeal, or subsection (a)(3).

(c) The court shall notify the *Kansas* department of wildlife and parks, *parks and tourism* of any conviction or diversion for a violation of this section.

Sec. 19. K.S.A. 2011 Supp. 21-6416 is hereby amended to read as follows: 21-6416. (a) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is knowingly, and without lawful cause or justification poisoning, inflicting great bodily harm, permanent disability or death, upon a police dog, arson dog, assistance dog, game warden dog or search and rescue dog.

(b) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is a nonperson felony. Upon conviction of this subsection, a person shall be sentenced to not less than 30 days or more than one year's imprisonment and be

fined not less than \$500 nor more than \$5,000. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. During the mandatory 30 days imprisonment, such offender shall have a psychological evaluation prepared for the court to assist the court in determining conditions of probation. Such conditions shall include, but not be limited to, the completion of an anger management program.

(c) As used in this section:

(1) “Arson dog” means any dog which is owned, or the service of which is employed, by the state fire marshal or a fire department for the principal purpose of aiding in the detection of liquid accelerants in the investigation of fires;

(2) “assistance dog” has the meaning provided by K.S.A. 2011 Supp. 39-1113, and amendments thereto;

(3) “fire department” means a public fire department under the control of the governing body of a city, township, county, fire district or benefit district or a private fire department operated by a nonprofit corporation providing fire protection services for a city, township, county, fire district or benefit district under contract with the governing body of the city, township, county or district;

(4) “game warden dog” means any dog which is owned, or the service of which is employed, by the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* for the purpose of aiding in detection of criminal activity, enforcement of laws, apprehension of offenders or location of persons or wildlife;

(5) “police dog” means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders; and

(6) “search and rescue dog” means any dog which is owned or the service of which is employed, by a law enforcement or emergency response agency for the purpose of aiding in the location of persons missing in disasters or other times of need.

Sec. 20. K.S.A. 2011 Supp. 32-701 is hereby amended to read as follows: 32-701. As used in the wildlife ~~and parks~~, *parks and tourism* laws of this state, unless the context otherwise requires or specifically defined otherwise:

(a) “Big game animal” means any antelope, deer or elk.

(b) “Commission” means the Kansas wildlife ~~and parks~~, *parks and tourism* commission created by K.S.A. 32-805, and amendments thereto.

(c) “Department” means the Kansas department of wildlife ~~and parks~~, *parks and tourism*.

(d) “Fish,” as a verb, means take, in any manner, any fish.

(e) “Furbearing animal” means any badger, beaver, bobcat, grey fox, lynx, marten, mink, muskrat, opossum, otter, raccoon, red fox, spotted skunk, striped skunk, swift fox or weasel.

(f) “Furharvest” means:

(1) Take, in any manner, any furbearing animal; or

(2) trap or attempt to trap any coyote.

(g) “Game animal” means any big game animal, wild turkey or small game animal.

(h) “Game bird” means any grouse, partridge, pheasant, prairie chicken or quail.

(i) “Hunt” means:

(1) Take, in any manner, any wildlife other than a fish, bullfrog, furbearing animal or coyote; or

(2) take, in any manner other than by trapping, any coyote.

(j) “Motor vehicle” means a vehicle, other than a motorized wheelchair, which is self-propelled.

(k) “Motorized wheelchair” means any self-propelled vehicle designed specifically for use by a physically disabled person that is incapable of a speed in excess of 15 miles per hour.

(l) “Nonresident” means any person who has not been a bona fide resident of this state for the immediately preceding 60 days.

(m) “On a commercial basis” means for valuable consideration.

(n) “Person” means any individual or any unincorporated association, trust, partnership, public or private corporation or governmental entity, including foreign governments, or any officer, employee, agent or agency thereof.

(o) “Private water fishing impoundment” means one or more water impoundments:

(1) Constructed by man rather than natural, located wholly within the boundary of the lands owned or leased by the person operating the private water impoundments; and

(2) entirely isolated from other surface water so that the impoundment does not have any connection either continuously or at intervals, except during periods of floods, with streams or other bodies of water so as to permit the fish to move between streams or other bodies of water and the private water impoundments, except that the private water impoundments may be connected with a stream or other body of water by a pipe or conduit if fish will be prevented at all times from moving between streams or other bodies of water and the private water impoundment by screening the flow or by other means.

(p) “Resident” means any person who has maintained the person’s place of permanent abode in this state for a period of 60 days immediately preceding the person’s application for any license, permit, stamp or other issue of the department. Domiciliary intent is required to establish that a person is maintaining the person’s place or permanent abode in this

state. Mere ownership of property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitation, the location where the person votes, pays personal income taxes or obtains a driver's license.

(q) "Secretary" means the secretary of wildlife ~~and parks~~, *parks and tourism*.

(r) "Small game" means any game bird, hare, rabbit or squirrel.

(s) "Species" includes any subspecies of wildlife and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

(t) "Take" means harass, harm, pursue, shoot, wound, kill, molest, trap, capture, collect, catch, possess or otherwise take, or attempt to engage in any such conduct.

(u) "Wildlife" means any member of the animal kingdom, including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg or offspring thereof, or the dead body or parts thereof. Wildlife does not include agricultural livestock (cattle, swine, sheep, goats, horses, mules and other equines) and poultry (domestic chickens, turkeys and guinea fowl).

Sec. 21. K.S.A. 2011 Supp. 32-801 is hereby amended to read as follows: 32-801. (a) In order to reorganize the administration, planning and regulation of the state's parks, wildlife and other natural resources, there is hereby established within the executive branch of government the Kansas department of wildlife ~~and parks~~, *parks and tourism*, which shall be administered under the direction and supervision of a secretary of wildlife ~~and parks~~, *parks and tourism* who shall be appointed by the governor, with the consent of the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed as secretary shall exercise any power, duty or function as secretary until confirmed by the senate.

(b) The secretary shall be fully qualified by education, training and experience in wildlife, parks or natural resources, or a related field, and shall have a demonstrated executive and administrative ability to discharge the duties of the office of secretary. The secretary shall serve at the pleasure of the governor. The secretary shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary to be fixed by the governor.

(c) The provisions of the Kansas governmental operations accountability law apply to the Kansas department of wildlife ~~and parks~~, *parks and tourism*, and the department is subject to audit, review and evaluation under such law.

Sec. 22. K.S.A. 32-802 is hereby amended to read as follows: 32-802.

(a) The secretary shall appoint an assistant secretary for administration

~~and~~, an assistant secretary for ~~operations-wildlife, fisheries and boating~~ *and an assistant secretary for parks and tourism*. The assistant secretary for administration shall be fully qualified by education, training and experience in administration. The assistant secretary for ~~operations wildlife, fisheries and boating~~ shall be fully qualified by education, training and experience in wildlife, ~~parks or~~ natural resources; or a related field. *The assistant secretary for parks and tourism shall be fully qualified by education, training and experience in parks, tourism or related field.* ~~Both~~ All assistant secretaries shall have a demonstrated executive and administrative ability to discharge the duties of the office of assistant secretary. The assistant secretaries shall serve at the pleasure of the secretary. The assistant secretaries shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary with the approval of the governor. The secretary also may appoint such other staff assistants and employees as are necessary to enable the secretary to carry out the duties of the office. Except as otherwise provided in this section, K.S.A. 75-2935 and 32-801, and amendments thereto, such staff assistants and employees shall be within the classified service under the Kansas civil service act.

(b) The assistant secretaries and such other staff assistants and employees shall have such powers, duties and functions as are assigned to them by the secretary or are prescribed by law. The assistant secretaries, staff assistants and employees shall act for and exercise the powers of the secretary to the extent authority to do so is delegated by the secretary.

(c) The assistant secretary for administration shall maintain an office in Shawnee county, Kansas. The assistant secretary for ~~operations wildlife, fisheries and boating~~ shall maintain an office in Pratt county, Kansas. *The assistant secretary for parks and tourism shall maintain an office in Shawnee county, Kansas.* The secretary may maintain offices and facilities to carry out the functions of the department in other locations in this state.

(d) The secretary shall supervise the wildtrust program which shall be responsible for the receipt and expenditure of moneys through gifts and donations.

Sec. 23. K.S.A. 2011 Supp. 32-805 is hereby amended to read as follows: 32-805. (a) There is hereby created within and as a part of the department the Kansas wildlife ~~and parks, parks and tourism~~ commission which shall be composed of seven members. The governor shall appoint residents of this state to be members of the commission. One member of the commission shall be chosen from each fish and wildlife administration region as established by the department. In the appointment of members of the commission, the governor shall give consideration to the appointment of licensed hunters, fishermen and furharvesters, park users and to nonconsumptive users of wildlife and park resources. No more than a majority of the members shall be of the same political party. Each

member of the commission shall hold office for a term of four years and until a successor is appointed and qualified, except that in appointing the original commission members, the governor shall designate one member for a term ending July 1, 1988, one member for a term ending July 1, 1989, and two members for terms ending July 1, 1990. The governor shall fill any vacancy on the commission prior to the expiration of a term by appointment for the unexpired term.

(b) Each member of the commission shall take and subscribe an oath or affirmation as required by law before taking office.

(c) The governor may remove a commissioner after opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act. If the commissioner is removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner and the governor's findings thereon, together with a complete record of the proceedings.

(d) The commission shall have such powers, duties and functions as prescribed by law. Other than rules and regulations pertaining to personnel matters of the department, the secretary shall submit to the commission all proposed rules and regulations. The commission shall either approve, modify and approve, or reject such proposed rules and regulations. The secretary shall adopt such rules and regulations so approved or so modified and approved. Fees established for licenses, permits, stamps and other issues of the department shall be subject to the approval of the commission. It also shall be the duty of the commission to serve in an advisory capacity to the governor and the secretary in the formulation of policies and plans relating to the department.

(e) The governor shall designate one commission member to serve as chairperson of the commission. Members of the commission attending meetings of the commission, or attending a subcommittee meeting thereof authorized by the commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. A majority of the members of the commission shall constitute a quorum for the transaction of business. Meetings may be called by the chairperson and shall be called on the request of a majority of the members of the commission.

Sec. 24. K.S.A. 32-806 is hereby amended to read as follows: 32-806. The secretary of wildlife ~~and parks~~, *parks and tourism* may organize the Kansas department of wildlife ~~and parks~~, *parks and tourism* in the manner the secretary deems most efficient, so long as the same is not in conflict with the provisions of this order or with the provisions of law, and the secretary may establish policies governing the transaction of business of the department and the administration of the department. The secretary shall cause any compensation received by the *Kansas* department of wildlife ~~and parks~~, *parks and tourism*, whether monetary, in-kind or other-

wise, from leases of real property under the control and jurisdiction of the secretary to be accounted for and reflected in the budget of the *Kansas* department of wildlife ~~and parks~~, *parks and tourism*.

Sec. 25. K.S.A. 32-807 is hereby amended to read as follows: 32-807. The secretary shall have the power to:

(a) Adopt, in accordance with K.S.A. 32-805, and amendments thereto, such rules and regulations as necessary to implement, administer and enforce the provisions of the wildlife ~~and parks~~, *parks and tourism* laws of this state;

(b) enter into such contracts and agreements as necessary or incidental to the performance of the powers and duties of the secretary;

(c) employ or contract for, and fix the compensation of, consulting engineers, attorneys, accountants and construction and financial experts, all of whom shall be in the unclassified service under the Kansas civil service act;

(d) designate an official seal and alter it at the secretary's pleasure;

(e) sue, be sued, plead and be impleaded in the name of the department;

(f) purchase, lease, accept gifts or grants of or otherwise acquire in the name of the state such water, water rights, easements, facilities, equipment, moneys and other real and personal property, and interests therein, including any property abandoned on department lands and waters, and maintain, improve, extend, consolidate, exchange and dispose of such property, as the secretary deems appropriate to carry out the intent and purposes of the wildlife ~~and parks~~, *parks and tourism* laws of this state;

(g) acquire, establish, develop, construct, maintain and improve state parks, state lakes, recreational grounds, wildlife areas and sanctuaries, fish hatcheries, natural areas, physical structures, dams, lakes, reservoirs, embankments for impounding water, roads, landscaping, habitats, vegetation and other property, improvements and facilities for the purposes of wildlife management, preservation of natural areas and historic sites and providing recreational or cultural opportunities and facilities to the public and for such other purposes as suitable to carry out the intent and purposes of wildlife ~~and parks~~, *parks and tourism* laws of this state;

(h) operate and regulate the use of state parks, state lakes, recreational grounds, wildlife areas and sanctuaries, fish hatcheries, natural areas, historic sites and other lands, waters and facilities under the jurisdiction and control of the secretary, so as to promote the public health, safety and decency and the purposes for which such lands, waters and facilities are maintained and operated and to protect and safeguard such lands, waters and facilities, including but not limited to:

(1) Regulating the demeanor, actions and activities of persons using or within such lands, waters and facilities;

(2) providing for the inspection of boats, the issuance of permits for

operation of watercraft of all kinds and the charging and collection of fees for the inspection and operation of such craft;

(3) prescribing the type, style, location and equipment of all wharves, docks, anchorages, pavilions, restaurants and other structures or buildings which may be constructed along the shores or upon the water of any body of water or land controlled by the department, and providing for the licensing, inspection and supervision of such structures or buildings;

(4) granting and imposing charges for permits and for all commercial uses or purposes for which any of the properties of the department may be used;

(5) charging fees to use special facilities provided for the public or giving written authorization to lessees of the department to charge such fees; and

(6) operating, renting or leasing any such lands, waters and facilities which in the judgment of the secretary are necessary or desirable for the use and pleasure of visitors or for management of such lands, waters and facilities and fixing and collecting reasonable fees, tolls, rentals and charges for the use or operation thereof. All contracts or leases for the exercise of any concession shall be entered into only upon the basis of sealed proposals which shall be made and let by the secretary except that: (A) Where a concessionaire has an existing lease with the secretary or any agency of the federal government which the secretary desires to renew, renegotiate or acquire and sublease, such lease or sublease may be negotiated directly in accordance with rules and regulations of the secretary and without compliance with the requirements hereinbefore specified; (B) any such contract or lease for a term of 30 days or less may be made by the secretary directly in accordance with rules and regulations of the secretary; and (C) the secretary shall have authority to reject any or all proposals;

(i) have exclusive administrative control over state parks, state lakes, recreational areas, wildlife areas and sanctuaries, fish hatcheries, natural areas and other lands, waters and facilities under the jurisdiction of the secretary;

(j) provide for protection against fire and storm damage to the lands, waters and facilities under the jurisdiction of the secretary;

(k) contract with the federal government pursuant to public law 89-72 in order to acquire land by purchase, lease, agreement or otherwise on El Dorado and Hillsdale reservoir project lands;

(l) apply for, receive and accept from any federal agency any federal grants available for the purposes of the wildlife ~~and parks~~, *parks and tourism* laws of this state;

(m) have authority, control and jurisdiction over all matters relating to the development and conservation of wildlife and recreation resources of the state insofar as it pertains to forests, woodlands, public lands, sub-marginal lands, prevention of soil erosion, habitats and the control and

utilization of waters, including all lakes, streams, reservoirs and dams, except that this subsection shall not prohibit any political subdivision of the state or private corporation from having full control of any lake now constructed and owned by it;

(n) conduct research in matters relating to the purposes of the wildlife ~~and parks~~, *parks and tourism* laws of this state and disseminate information relating thereto for the public use and benefit;

(o) publicize to the citizens of this and other states the natural resources and facilities existing in Kansas and encourage people to visit Kansas by disseminating available information as to the natural resources and recreational advantages of the state;

(p) develop public recreation as related to natural resources and implement a state recreational plan which may include, but shall not be limited to, the general location, character and extent of state lands, waters and facilities for public recreational purposes and methods for better use of lands, waters and facilities which are within the scope of the plan or the purpose of the wildlife ~~and parks~~, *parks and tourism* laws of this state but, before implementation of such plan or any part thereof, the secretary shall submit it to any state agency affected thereby for such agency's advice and recommendations;

(q) provide for the preservation, protection, introduction, distribution, restocking and restoration of wildlife, and the public use thereof, in this state, including, but not limited to:

(1) Establishing, by rules and regulations adopted in accordance with K.S.A. 32-805, and amendments thereto, open seasons when wildlife may be taken or transported in the state of Kansas, or in any part or area of the state designated by counties, major streams, federal impoundments or federal, state or county highways, or by other recognizable boundaries, which open seasons may be established for a specified time in one year only or for a specified time in an indefinite number of years and which open seasons on migratory birds shall not extend beyond or exceed those in effect under federal laws and regulations;

(2) establishing, by rules and regulations adopted in accordance with K.S.A. 32-805, and amendments thereto, the number of wildlife which may be taken by a person, as the legal limit for any one calendar day and for the open season, which limit on migratory fowl shall not extend beyond or exceed those limits in effect under federal laws and regulations;

(3) establishing, by rules and regulations adopted in accordance with K.S.A. 32-805, and amendments thereto, the legal size limits of fish or frogs which may be taken;

(4) establishing, by rules and regulations adopted in accordance with K.S.A. 32-805, and amendments thereto, the conditions, procedure and rules under which any person may sell, purchase, buy, deal or trade in wildlife in the state of Kansas; and

(5) capturing, propagating, transporting, selling, exchanging, giving or

distributing any species of wildlife, by any means or manner, needed for stocking or restocking any lands or waters in this state, except that the power to capture any species of wildlife for any purpose shall not apply to private property except by permission of the owners of the property or in the case of an emergency threatening the public health or welfare;

(r) establish, by rules and regulations adopted in accordance with K.S.A. 32-805, and amendments thereto, the period of time that a license, permit, stamp or other issue of the department shall be in effect, unless such period is otherwise established by law, and provisions for acceptance of any issue of the department before its effective date as a valid issue if the secretary determines such acceptance best serves the public good; and

(s) do such other acts and things as necessary and proper to carry out the intent and purpose of the wildlife ~~and parks~~, *parks and tourism* laws of this state and to better protect, conserve, control, use, increase, develop and provide for the enjoyment of the natural resources of this state.

Sec. 26. K.S.A. 32-809 is hereby amended to read as follows: 32-809.

(a) Unless otherwise provided by law, all moneys received from agricultural production on state-owned property under the control and jurisdiction of the secretary of wildlife ~~and parks~~, *parks and tourism* shall be remitted in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and credit it to the state agricultural production fund, which is hereby created in the state treasury.

(b) The *Kansas* department of wildlife ~~and parks~~, *parks and tourism* shall establish separate accounts of the state agricultural production fund for each state-owned property under the control and jurisdiction of the secretary of wildlife ~~and parks~~, *parks and tourism*. Such accounts shall be used for costs and expenses associated with management practices as determined for each property.

(c) All expenditures from the state agricultural production fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of wildlife ~~and parks~~, *parks and tourism*.

Sec. 27. K.S.A. 32-832 is hereby amended to read as follows: 32-832.

(a) The *Kansas* department of wildlife ~~and parks~~, *parks and tourism* is authorized to cooperate with and assist citizen-support organizations. For the purposes of this act, the term "citizen-support organization" means an organization which:

(1) Is a *bona fide* ~~not-for-profit~~ *not-for-profit* organization exempt from the payment of federal income taxes pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as in effect on January 1, 1990;

(2) does not engage in, and has no officer, director or member who

engages in, any prohibited transaction, as defined by section 503(b) of the internal revenue code of 1986, as in effect on January 1, 1990;

(3) is domiciled in this state;

(4) the secretary determines its activities are conducted in a manner consistent with the goals, objectives and programs of the department and state policies as established by K.S.A. 32-702, and amendments thereto; and

(5) provide equal employment and membership opportunities to all persons regardless of race, color, national origin, religion, sex or age.

(b) The secretary may assist organizers of a citizen-support organization with its creation. The secretary may authorize any citizen-support organization to use under such conditions as the secretary may prescribe, department property, facilities or personnel to pursue the goals, objectives and purposes of the department.

(c) A citizen-support organization which uses department property, facilities or personnel shall provide for and disclose to the secretary an annual audit of its financial records and accounts in such manner and at such times as may be required by the secretary.

(d) A citizen-support organization which receives funding from the department shall not use such funding for purposes of lobbying as defined by K.S.A. 46-225, and amendments thereto.

Sec. 28. K.S.A. 2011 Supp. 32-833 is hereby amended to read as follows: 32-833. (a) (1) Notwithstanding the provisions of subsection (f) of K.S.A. 32-807, and amendments thereto, or any other provisions of law to the contrary, the secretary of wildlife ~~and parks~~, *parks and tourism* shall not purchase any land unless:

(A) The secretary of wildlife ~~and parks~~, *parks and tourism* has certified that the land proposed to be purchased is in compliance with the provisions of article 13 of chapter 2 of the Kansas Statutes Annotated, and amendments thereto, concerning control and management of noxious weeds after consultation with the county weed supervisor and has developed a written plan for controlling and managing noxious weeds on the land to be purchased;

(B) the secretary of wildlife ~~and parks~~, *parks and tourism* shall agree to make payment of moneys in lieu of taxes comparable to the ad valorem tax payments of surrounding lands for any land purchased which is exempt from the payment of ad valorem taxes under the laws of the state of Kansas; and

(C) the secretary of wildlife ~~and parks~~, *parks and tourism* has developed a management plan for the property proposed to be purchased.

(2) In addition to the requirements prescribed by this section and otherwise by law, any proposed purchase of a tract or tracts of land which are greater than 320 acres in the aggregate shall be subject to approval by act of the legislature, either as a provision in an appropriation act

pertaining to the specific property to be purchased or by any other act of the legislature that approves the acquisition of the specific property proposed to be purchased, or by approval by the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto.

(3) The provisions of this subsection shall not apply to any purchase of land by the secretary, which is less than 640 acres in the aggregate and owned by a private individual, if the purchase price is an amount less than such land's appraised valuation.

(b) (1) Notwithstanding the provisions of subsection (f) of K.S.A. 32-807, and amendments thereto, or any other provisions of law to the contrary, the secretary of wildlife ~~and parks~~, *parks and tourism* shall adopt guidelines and procedures prescribing public notice requirements that the secretary shall comply with before the selling of any land which shall include, but not be limited to, the following:

(A) A written notice shall be posted in a conspicuous location on such land stating the time and date of the sale, or the date after which the land will be offered for sale, and a name and telephone number of a person who may be contacted concerning the sale of such land;

(B) the secretary shall cause to be published in a newspaper of general circulation in the county the land is located once a week for three consecutive weeks, the secretary's intent to sell the land which shall include a legal description of the land to be sold, the time and date of the sale or the date after which the land will be offered for sale, the general terms and conditions of such sale, and a name and telephone number of a person who may be contacted concerning the sale of such land; and

(C) the secretary shall publish in the Kansas register public notice of the secretary's intent to sell the land which shall include a legal description of the land to be sold, the time and date of the sale or the date after which the land will be offered for sale, the place of the sale, the general terms and conditions of such sale, and a name and telephone number of a person who may be contacted concerning the sale of such land.

(2) The secretary shall have the land appraised by three disinterested persons. In no case shall such land be sold for less than the average of its appraised value as determined by such disinterested persons.

(3) The secretary shall list such land with a real estate agent who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act, and who shall publicly advertise that such land is for sale.

(4) Prior to closing the transaction on a contract for the sale of such land, the secretary shall cause a survey to be conducted by a licensed land surveyor. Such survey shall establish the precise legal description of such land and shall be a condition precedent to the final closing on such sale.

(c) Any disposition of land by the secretary shall be in the best interest of the state.

Sec. 29. K.S.A. 32-839 is hereby amended to read as follows: 32-839. The Cane creek area within stage 1 of the Milford lake wetlands wildlife habitat restoration project, in Clay county, near the city of Wakefield, is hereby designated as the Steve Lloyd\* wetlands. The secretary of wildlife ~~and parks~~, *parks and tourism* shall cause placement of suitable signs and an observation deck to indicate the area is the Steve Lloyd wetlands. The secretary may accept and administer gifts and donations for the purpose of obtaining and installing such signs and observation deck.

Sec. 30. K.S.A. 32-840 is hereby amended to read as follows: 32-840. (a) The secretary, in the name of the state of Kansas, may exercise the right of eminent domain in accordance with the eminent domain procedure act (K.S.A. 26-501 *et seq.*, and amendments thereto) for the purpose of acquiring lands, water and water rights necessary to:

(1) Carry out the provisions of the wildlife ~~and parks~~, *parks and tourism* laws of this state and the purposes for which the department is created; or

(2) protect, add to and improve state parks, state lakes, recreational areas, wildlife areas and sanctuaries, natural areas, fish hatcheries and other lands, waters and facilities provided for by K.S.A. 32-807, *and amendments thereto*.

(b) The taking, using and appropriating of property as authorized by subsection (a)(2) for the purposes of protecting lands, waters and facilities and their environs and preserving the view, appearance, light, air, health and usefulness thereof by reselling such property with such restrictions in the deeds of resale as will protect the property taken for such purposes is hereby declared to be taking, using and appropriating of such property for public use. The proceeds arising from the resale of any property so taken shall be used by the secretary for the purpose of improving lands, waters and facilities under the jurisdiction and control of the secretary.

(c) Upon request of the secretary, the attorney general shall proceed by proper action to acquire by condemnation all lands, or rights therein or thereon, and all water or water rights required by the department pursuant to this section.

Sec. 31. K.S.A. 2011 Supp. 32-844 is hereby amended to read as follows: 32-844. (a) The secretary of wildlife ~~and parks~~, *parks and tourism* shall submit a report to the legislature at the beginning of each regular session detailing all real estate transactions which are proposed or agreements which have been entered into between the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* and any other party, other than another state agency, which relate to any acquisition or disposition of any real estate, or interest in real estate, by the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* or any such contracting party.

(b) (1) With regard to executed agreements, the report required by this section shall include for each such acquisition to be reported: (A) The legal description of the real estate or interest acquired; (B) the purchase price; (C) if appropriation of state moneys is required for the acquisition, the appraised value of the real estate or interest acquired; and (D) if the real estate or interest therein will remain subject to ad valorem property taxation.

(2) With regard to proposed real estate transactions, the report required by this section shall include for each such proposed transaction to be reported: (A) The legal description of the real estate or interest acquired; (B) if appropriation of state moneys is required for the proposed transaction, the appraised value of the real estate or interest proposed to be acquired; and (C) if the real estate or interest therein will remain subject to ad valorem property taxation.

(c) The reporting requirements of this section shall not apply to real estate or interest therein acquired under the wildtrust program until such time as the deeds are filed for record.

(d) Agreements which have been entered into and are required to be reported pursuant to this section shall be published in the Kansas register within 30 days of the execution of any such agreement.

Sec. 32. K.S.A. 32-845 is hereby amended to read as follows: 32-845. (a) Neither the *Kansas* department of wildlife ~~and parks~~, *parks and tourism*, nor any officer or employee of the state on behalf of the department, shall enter into any contract for the acquisition or lease of real estate with the corps of engineers or the bureau of reclamation which will require any future appropriation unless the contract is first approved by the legislature as provided by subsection (b).

(b) A contract subject to the provisions of subsection (a) shall be approved by the legislature by:

(1) Law or concurrent resolution; or

(2) approval of the contract by the legislative coordinating council.

(c) Any contract entered into without approval of the legislature when required by this section is null and void.

(d) The provisions of this section shall not apply to contracts requiring future appropriations of only: (1) Moneys that are received from the corps of engineers or the bureau of reclamation or from a private source; or (2) moneys to be expended in response to a major disaster declared by the president of the United States. In addition, the provisions of this section shall not apply to lease renewals with the corps of engineers or bureau of reclamation, except the department shall notify the chairperson, vice-chairperson and ranking minority member of both the house and senate energy and natural resources committees on or before the first day of a legislative session of any such lease renewals pending for that calendar year.

(e) As used in this section, “future appropriation” means an appropriation for a fiscal year commencing more than one year after the date the contract is entered.

Sec. 33. K.S.A. 32-846 is hereby amended to read as follows: 32-846.

(a) Pursuant to K.S.A. 32-845, and amendments thereto, ~~the legislature hereby approves the~~ *Kansas* department of wildlife and parks ~~entering,~~ *parks and tourism is hereby authorized to enter* into a project cooperative agreement and related lease with the U.S. department of the army to modify and restore approximately 2,550 acres of permanent and seasonal wetland habitat located on the Republican River floodplain within the flood control pool of Milford Lake subject to the following: The proposed project shall be developed in the following three stages and moneys to pay the nonfederal share of project costs for each stage shall be secured before commencement of such stage: (1) Stage 1, in the areas of Lower Refuge, Cane Creek, Mall Creek and Smith Bottoms, totaling approximately 1,030 acres; (2) stage 2, in the areas of Quimby Creek, Smith Bottoms addition, Beichter Bottoms, East Broughton 1 and 3 and West Broughton 1 and 2, totaling approximately 895 acres; and (3) stage 3, in the areas of West Broughton 3 and 4, Martin, East Broughton 2 and 4 and Sugar Bowl, totaling approximately 415 acres.

(b) ~~The~~ *Kansas* department of wildlife ~~and parks,~~ *parks and tourism* is hereby authorized to assume costs associated with the operation, maintenance, repair, replacement and rehabilitation of the area in each stage of the Milford Lake wetlands wildlife habitat restoration project after completion of such stage by the U.S. department of the army. Such costs shall be paid from wildlife-related fee funds of the department and from any nonstate moneys available for that purpose.

Sec. 34. K.S.A. 32-869 is hereby amended to read as follows: 32-869. The Kansas development finance authority is hereby authorized to issue, pursuant to K.S.A. 32-857 through 32-864, and amendments thereto, revenue bonds in an amount or amounts not to exceed \$30,000,000 for any one resort. The proceeds from the sale of such bonds shall be used, together with any other funds available for such purpose, to construct and equip a resort on state-owned or leased property under the jurisdiction of the *Kansas* department of wildlife ~~and parks,~~ *parks and tourism*. The bonds, and interest thereon, issued pursuant to this section shall be payable by the private sector developer from revenues to include, but not limited to, resort charges, rentals and fees, such payment to be in lieu of lease payments and shall never be deemed to be an obligation or indebtedness of the state within the meaning of ~~section 6 of article 11 of the constitution of the state of Kansas~~ *article 11, section 6 of the Kansas constitution*.

Sec. 35. K.S.A. 2011 Supp. 32-873 is hereby amended to read as follows: 32-873. Notwithstanding the provisions of K.S.A. 32-867 through

32-872, the selection of any site by the secretary of wildlife ~~and parks, parks and tourism~~ and secretary of commerce pursuant to K.S.A. 32-874d, and amendments thereto, shall not become final, nor shall any revenue bonds be issued for the resort development, until the site so selected and the amount of the bonds proposed to be issued have been approved by the legislature or the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto.

Sec. 36. K.S.A. 32-874 is hereby amended to read as follows: 32-874.

(a) The secretary ~~of the Kansas department~~ of commerce ~~and housing~~ and the secretary of wildlife ~~and parks, parks and tourism~~, together, shall direct and implement a feasibility study regarding the potential of developing lake resorts in Kansas. The study shall consider ready access from nearby interstate and interstate connected controlled access highways, public transportation systems, facilities and any other factors that may affect tourism to a given site. The study shall consider only sites at existing state parks or lakes.

(b) The feasibility study shall be completed by January 1, 1998, with a joint report on the study's results and recommendations derived therefrom to be presented to the legislature, house committee on tourism, senate committee on transportation and tourism and to the governor during the 1998 legislative session.

Sec. 37. K.S.A. 2011 Supp. 32-874a is hereby amended to read as follows: 32-874a. The feasibility study required under K.S.A. 32-874, and amendments thereto, being completed, the secretary of commerce, the secretary of wildlife ~~and parks, parks and tourism~~ and the secretary of transportation will develop an incentive plan outlining the state of Kansas' commitment toward building a lake resort which shall include, but not limited to, infrastructure improvements, utility improvements and tax incentives to be offered for sites at, including, but not limited to the six state parks selected in the feasibility study reported to the 1998 legislature: Cheney, Clinton, El Dorado, Hillsdale, Perry and Milford.

Sec. 38. K.S.A. 2011 Supp. 32-874b is hereby amended to read as follows: 32-874b. Once the state incentive packages are agreed upon, the secretary of wildlife ~~and parks, parks and tourism~~, under K.S.A. 32-807, 32-830 and 32-831, and amendments thereto, and the secretary of commerce under K.S.A. 74-5005, and amendments thereto, will take the incentive package for each lake resort site to communities adjacent to each state park, revealing what the state is willing to commit to the development of a lake resort near each lake resort community and negotiate and determine what each community is willing to offer as an incentive to have the lake resort develop near its community.

Sec. 39. K.S.A. 32-874c is hereby amended to read as follows: 32-

874c. The secretary of wildlife ~~and parks~~, *parks and tourism*, if necessary, shall negotiate and contract with the United States corps of engineers, bureau of reclamation, or other federal agency under K.S.A. 32-824, 32-825, 32-826 and 32-845, and amendments thereto, regarding a selected site and seek the necessary legislative approval under K.S.A. 32-843, and amendments thereto.

Sec. 40. K.S.A. 2011 Supp. 32-874d is hereby amended to read as follows: 32-874d. (a) When the incentive packages for each of the lake resorts is determined, the secretary of wildlife ~~and parks~~, *parks and tourism* and the secretary of commerce shall develop requests for proposals which include the incentive packages for each site. The proposals received from developers under subsection (h)(6) of K.S.A. 32-807, and amendments thereto, shall be sealed.

(b) The *Kansas* department of wildlife ~~and parks~~, *parks and tourism* and the department of commerce shall advertise for proposal plans with bids for development of sites selected under K.S.A. 32-867, 32-868, 32-871 and 32-872, and amendments thereto. Advertisements for proposals with bids shall be published in the Kansas register and once each week for two consecutive weeks in a newspaper having general circulation in the community at least 60 days before the time for receiving the proposals with bids. The advertisement shall also be posted on readily accessible bulletin boards in all offices of the two departments and on the information network of Kansas. The advertisement shall identify the area to be developed, the purpose of the development and shall state that such further information as is available may be obtained from either departments' office in Topeka.

The two secretaries shall consider all proposals with bids submitted, the financial and legal ability of the private sector developers making such proposals with bids to carry them out and may negotiate with any private sector developer for a proposal with bid. The secretaries may accept such proposal with bid as it deems to be in the public interest and in furtherance of the purposes of this act.

(c) Once proposals are received from developers wishing to contract for building the resort, the secretary of wildlife ~~and parks~~, *parks and tourism* utilizing powers and authority granted under K.S.A. 32-807, 32-862, 32-863 and 32-867 through 32-872, and amendments thereto, and the secretary of commerce under K.S.A. 74-5005, and amendments thereto, shall select, negotiate and contract for the construction of a lake resort which shall be operated as a private concession and developed with private funding to include, but not limited to, the issuance of revenue bonds under K.S.A. 32-857 through 32-864, and amendments thereto.

(d) The secretary of wildlife ~~and parks~~, *parks and tourism* and the secretary of commerce may engage a private consultant to assist in the development of a contract for the selected site. Consistent with the pow-

ers and authority granted to the secretary of wildlife ~~and parks~~, *parks and tourism*, the secretary may waive any relevant park fees, obtain revenue from the resort and resort facilities and include penalty provisions in the contract regarding nonperformance by the operator and developer of the resort.

(e) The secretary of wildlife ~~and parks~~, *parks and tourism* and the secretary of commerce shall not seek approval under K.S.A. 32-873, and amendments thereto, until the requirements of subsections (a) through (d) are satisfied.

Sec. 41. K.S.A. 2011 Supp. 32-874e is hereby amended to read as follows: 32-874e. The secretary of wildlife ~~and parks~~, *parks and tourism* and the secretary of commerce shall present a joint report concerning negotiations, site selection, and status of the resort to the legislature, house committee on tourism, senate committee on transportation and tourism and to the governor during the 1999 legislative session.

Sec. 42. K.S.A. 32-886 is hereby amended to read as follows: 32-886. (a) Contingent upon a favorable response from federal agencies regarding development of shared resources, the secretary of ~~the department of wildlife and parks~~ *wildlife, parks and tourism* shall identify and select sites suitable for the development of commercial, family oriented lodging areas at the following state parks: Clinton, Hillsdale, Kanopolis, El Dorado, Cheney, Wilson, Milford, Tuttle Creek, Pomona and such other state parks as the secretary deems appropriate.

(b) Such identification and selection of the sites shall take into consideration the mission of the facility, the environmental considerations and the availability of needed utilities.

(c) Family oriented lodging shall not include the development of lake resorts.

Sec. 43. K.S.A. 32-887 is hereby amended to read as follows: 32-887. The secretary of ~~the department of wildlife and parks~~ *wildlife, parks and tourism* is then authorized to negotiate for a long-term lease with a private sector developer for improvement and development of any selected state park site. All such leases shall be on such terms as the secretary prescribes and adhere to the purposes and considerations of K.S.A. 32-886, and amendments thereto.

Sec. 44. K.S.A. 32-888 is hereby amended to read as follows: 32-888. The *Kansas* department of wildlife ~~and parks~~, *parks and tourism* shall advertise for proposal plans with bids for development of sites selected under K.S.A. 32-886, and amendments thereto. Advertisements for proposals with bids shall be published once each week for two consecutive weeks in a newspaper having general circulation in the community at least 60 days before the time for receiving the proposals with bids. The advertisement shall also be posted on readily accessible bulletin boards in all offices of the department. The advertisement shall identify the area to be

developed, the purpose of the development and shall state that such further information as is available may be obtained from the department's office in Topeka.

The secretary shall consider all proposals with bids submitted, the financial and legal ability of the private sector developers making such proposals with bids to carry them out and may negotiate with any private sector developer for a proposal with bid. The secretary may accept such proposal with bid as it deems to be in the public interest and in furtherance of the purposes of this act.

Sec. 45. K.S.A. 2011 Supp. 32-906 is hereby amended to read as follows: 32-906. (a) Except as otherwise provided by law or rules and regulations of the secretary, a valid Kansas fishing license is required to fish or to take any bullfrog in this state.

(b) The provisions of subsection (a) do not apply to fishing by:

(1) A person, or a member of a person's immediate family domiciled with such person, on land owned by such person or on land leased or rented by such person for agricultural purposes;

(2) a resident of this state who is less than 16 years of age or who is 65 or more years of age;

(3) a nonresident who is less than 16 years of age;

(4) a person fishing in a private water fishing impoundment unless waived pursuant to K.S.A. 32-975, and amendments thereto;

(5) a resident of an adult care home, as defined by K.S.A. 39-923, and amendments thereto, licensed by the secretary of aging;

(6) an inmate in an honor camp operated by the secretary of corrections, pursuant to an agreement between the secretary of corrections and the secretary of wildlife ~~and parks~~, *parks and tourism*;

(7) a person on dates designated pursuant to subsection (f);

(8) a person fishing under a valid institutional group fishing license issued pursuant to subsection (g); or

(9) a participant in a fishing clinic sponsored or cosponsored by the department, during the period of time that the fishing clinic is being conducted.

(c) The fee for a fishing license shall be the amount prescribed pursuant to K.S.A. 32-988, and amendments thereto.

(d) Unless otherwise provided by law or rules and regulations of the secretary, a fishing license is valid throughout the state.

(e) Unless otherwise provided by law or rules and regulations of the secretary, a fishing license is valid from the date of issuance and expires on December 31 following its issuance, except that the secretary may issue a:

(1) Permanent license pursuant to K.S.A. 32-929, and amendments thereto;

(2) lifetime license pursuant to K.S.A. 32-930, and amendments thereto;

(3) nonresident fishing license valid for a period of five days; and

(4) resident or nonresident fishing license valid for a period of 24 hours.

(f) The secretary may designate by resolution two days each calendar year during which persons may fish by legal means without having a valid fishing license.

(g) The secretary shall issue an annual institutional group fishing license to each facility operating under the jurisdiction of or licensed by the secretary of social and rehabilitation services and to any veterans administration medical center in the state of Kansas upon application by such facility or center to the secretary of wildlife ~~and parks~~, *parks and tourism* for such license.

All applications for facilities under the jurisdiction of the secretary of social and rehabilitation services shall be made with the approval of the secretary of social and rehabilitation services and shall provide such information as the secretary of wildlife ~~and parks~~, *parks and tourism* requires. All applications for any veterans administration medical center shall be made with the approval of the director of such facility and shall provide such information as the secretary of wildlife ~~and parks~~, *parks and tourism* requires. Persons who have been admitted to and are currently residing at the facility or center, not to exceed 20 at any one time, may fish under an institutional group fishing license within the state while on a group trip, group outing or other group activity which is supervised by the facility or center. Persons fishing under an institutional group fishing license shall not be required to obtain a fishing license but shall be subject to all other laws and to all rules and regulations relating to fishing.

The staff personnel of the facility or center supervising the group trip, group outing or other group activity shall have in their possession the institutional license when engaged in supervising any activity requiring the license. Such staff personnel may assist group members in all aspects of their fishing activity.

(h) The secretary may issue a special nonprofit group fishing license to any community, civic or charitable organization which is organized as a not-for-profit corporation, for use by such community, civic or charitable organization for the sole purpose of conducting group fishing activities for handicapped or developmentally disabled individuals. All applications for a special nonprofit group fishing license shall be made to the secretary or the secretary's designee and shall provide such information as required by the secretary.

Handicapped or developmentally disabled individuals, not to exceed 20 at any one time, may fish under a special nonprofit group fishing license while on a group trip, outing or activity which is supervised by the community, civic or charitable organization. Individuals fishing under a

special nonprofit group fishing license shall not be required to obtain a fishing license but shall be subject to all other laws and rules and regulations relating to fishing.

The staff personnel of the community, civic or charitable organization supervising the group trip, outing or activity shall have in their possession the special nonprofit group fishing license when engaged in supervising any activity requiring the special nonprofit group fishing license. Such staff personnel may assist group members in all aspects of their fishing activity.

Sec. 46. K.S.A. 2011 Supp. 32-918 is hereby amended to read as follows: 32-918. (a) Upon request of the secretary of social and rehabilitation services, the secretary of wildlife ~~and parks, parks and tourism~~ shall not allow any license, permit, stamp, tag or other issue of the *Kansas* department of wildlife ~~and parks, parks and tourism~~ to be purchased by any applicant except as provided in this section. The secretary of social and rehabilitation services may make such a request by providing the secretary of wildlife ~~and parks, parks and tourism~~, on a quarterly basis, a listing of names and other information sufficient to allow the secretary of wildlife ~~and parks, parks and tourism~~ to match applicants against the list with reasonable accuracy. The secretary of social and rehabilitation services may include an individual on the listing if, at the time the listing is compiled, the individual owes arrearages under a support order in a title IV-D case or has failed, after appropriate notice, to comply with an outstanding warrant or subpoena directed to the individual in a title IV-D case. The secretary of social and rehabilitation services shall include an individual on the listing if, at the time the listing is compiled, the individual owes arrearages under a support order, as reported to the secretary of social and rehabilitation services by the court trustee or has failed, after appropriate notice, to comply with a subpoena directed to the individual by the court trustee and as reported to the secretary of social and rehabilitation services by the court trustee.

(b) If any applicant for a license, permit, stamp, tag or other issue of the *Kansas* department of wildlife ~~and parks, parks and tourism~~ is not allowed to complete a purchase pursuant to this section, the vendor of the license, permit, stamp, tag or other issue of the *Kansas* department of wildlife ~~and parks, parks and tourism~~ shall immediately deliver to the applicant a written notice, furnished by the state of Kansas, stating the basis for the action and how the applicant may dispute the action or request other relief. Such notice shall inform the applicant who owes arrearages in an IV-D case to contact social and rehabilitation services and in a non-IV-D case to contact the court trustee.

(c) Immediately upon receiving a release executed by an authorized agent of the secretary of social and rehabilitation services or the court trustee, the secretary of wildlife ~~and parks, parks and tourism~~ may allow

the applicant to purchase any license, permit, stamp, tag or other issue of the *Kansas* department of wildlife ~~and parks, parks and tourism~~. The applicant shall have the burden of obtaining and delivering the release. The secretary of social and rehabilitation services or the court trustee may limit the duration of the release.

(d) Upon request the secretary of social and rehabilitation services shall issue a release if, as appropriate:

(1) The arrearages are paid in full or a tribunal of competent jurisdiction has determined that no arrearages are owed;

(2) an income withholding order in the case has been served upon the applicant's current employer or payor;

(3) an agreement has been completed or an order has been entered setting minimum payments to defray the arrearages, together with receipt of the first minimum payment;

(4) the applicant has complied with the warrant or subpoena or the warrant or subpoena has been quashed or withdrawn; or

(5) the court trustee notifies the secretary of social and rehabilitation services that the applicant has paid the arrearages in full or has complied with the subpoena or the subpoena has been quashed or withdrawn.

(e) Individuals previously included in a quarterly listing may be omitted from any subsequent listing by the secretary of social and rehabilitation services. When a new listing takes effect, the secretary of wildlife ~~and parks, parks and tourism~~ may allow any individual not included in the new listing to purchase any license, permit, stamp, tag or other issue of the *Kansas* department of wildlife ~~and parks, parks and tourism~~, whether or not the applicant had been included in a previous listing.

(f) Nothing in this section shall be construed to require or permit the secretary of wildlife ~~and parks, parks and tourism~~ to determine any issue related to a child support order or related to the title IV-D case, including questions of mistaken identity or the adequacy of any notice provided pursuant to this section. In a title IV-D case, the secretary of social and rehabilitation services shall provide an opportunity for fair hearing pursuant to K.S.A. 75-3306, and amendments thereto, to any person who has been denied any license, permit, stamp, tag or other issue of the *Kansas* department of wildlife ~~and parks, parks and tourism~~ pursuant to this section, provided that the person complies with the requirements of the secretary of social and rehabilitation services for requesting such fair hearing. In a non-IV-D case, the applicant shall contact the court trustee.

(g) The term "title IV-D" has the meaning ascribed thereto in K.S.A. 32-930, and amendments thereto.

(h) The secretary of social and rehabilitation services and the secretary of wildlife and parks may enter into an agreement for administering the provisions of this section.

(i) The secretary of social and rehabilitation services and the secretary

of wildlife ~~and parks~~, *parks and tourism* may each adopt rules and regulations necessary to carry out the provisions of this section.

(j) Upon receipt of such list, the secretary of wildlife ~~and parks~~, *parks and tourism* shall send by first class mail, a letter to any new individual on the listing who has a current license, permit, stamp, tag or other issue of the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* informing such individual of the provisions of this section.

Sec. 47. K.S.A. 2011 Supp. 32-930 is hereby amended to read as follows: 32-930. (a) Except as provided in subsection (c), the secretary or the secretary's designee is authorized to issue to any Kansas resident a lifetime fishing, hunting or furharvester or combination hunting and fishing license upon proper application made therefor to the secretary or the secretary's designee and payment of a license fee as follows: (1) A total payment made at the time of purchase in the amount prescribed pursuant to K.S.A. 32-988, and amendments thereto; or (2) payment may be made over a two-year period in eight quarter-annual installments in the amount prescribed pursuant to K.S.A. 32-988, and amendments thereto. If payment is in installments, the license shall not be issued until the final installment has been paid. A person making installment payments shall not be required to obtain the appropriate annual license, and each installment payment shall be deemed to be such an annual license for a period of one year following the date of the last installment payment made. If an installment payment is not received within 30 days after it is due and owing, the secretary may consider the payments in default and may retain any payments previously received. Any lifetime license issued to a Kansas resident shall not be made invalid by reason of the holder thereof subsequently residing outside the state of Kansas. Any nonresident holder of a Kansas lifetime hunting or combination hunting and fishing license shall be eligible under the same conditions as a Kansas resident for a big game or wild turkey permit upon proper application to the secretary. Any nonresident holder of a lifetime fishing license issued before July 1, 1989, shall be eligible under the same conditions as a Kansas resident for a big game or wild turkey permit upon proper application to the secretary.

(b) For the purposes of subsection (a), the term "resident" shall have the meaning defined in K.S.A. 32-701, and amendments thereto, except that a person shall have maintained that person's place of permanent abode in this state for a period of not less than one year immediately preceding the person's application for a lifetime fishing, hunting or furharvester or combination hunting and fishing license.

(c) (1) Upon request of the secretary of social and rehabilitation services, the secretary of wildlife ~~and parks~~, *parks and tourism* shall not issue a lifetime fishing, hunting or furharvester or combination hunting and fishing license to an applicant except as provided in this subsection. The

secretary of social and rehabilitation services may make such a request if, at the time of the request, the applicant:

(A) Owed arrearages under a support order in a title IV-D case being administered by the secretary of social and rehabilitation services;

(B) had outstanding a warrant or subpoena, directed to the applicant, in a title IV-D case being administered by the secretary of social and rehabilitation services;

(C) owes arrearages under a support order, as reported to the secretary of social and rehabilitation services by the court trustee; or

(D) has failed, after appropriate notice, to comply with a subpoena directed to the individual by the court trustee as reported to the secretary of social and rehabilitation services by the court trustee.

(2) Upon receiving a release from an authorized agent of the secretary of social and rehabilitation services or the court trustee, the secretary of wildlife ~~and parks~~, *parks and tourism* may issue the lifetime fishing, hunting or furharvester or combination hunting and fishing license. The applicant shall have the burden of obtaining and delivering the release.

(3) The secretary of social and rehabilitation services shall issue a release upon request if, as appropriate:

(A) The arrearages are paid in full or a tribunal of competent jurisdiction has determined that no arrearages are owed;

(B) an income withholding order has been served upon the applicant's current employer or payor;

(C) an agreement has been completed or an order has been entered setting minimum payments to defray the arrearages, together with receipt of the first minimum payment;

(D) the applicant has complied with the warrant or subpoena or the warrant or subpoena has been quashed or withdrawn; or

(E) the court trustee notifies the secretary of social and rehabilitation services that the applicant has paid the arrearages in full or has complied with the subpoena or the subpoena has been quashed or withdrawn.

(d)(1) Upon request of the secretary of social and rehabilitation services, the secretary of wildlife ~~and parks~~, *parks and tourism* shall suspend a lifetime fishing, hunting or furharvester or combination hunting and fishing license to a licensee as provided in this subsection. The secretary of social and rehabilitation services may make such a request if, at the time of the request, the applicant owed arrearages under a support order or had outstanding a warrant or subpoena as stated in subsection (c)(1).

(2) Upon receiving a release from an authorized agent of the secretary of social and rehabilitation services or the court trustee, the secretary of wildlife ~~and parks~~, *parks and tourism* may reinstate the lifetime fishing, hunting or furharvester or combination hunting and fishing license. The licensee shall have the burden of obtaining and delivering the release.

(3) The secretary of social and rehabilitation services shall issue a release upon request if the requirements of subsection (c)(3) are met.

(e) Nothing in subsection (c) or (d) shall be construed to require or permit the secretary of wildlife ~~and parks~~, *parks and tourism* to determine any issue related to a child support order or related to the title IV-D case including to resolve questions of mistaken identity or determine the adequacy of any notice relating to subsection (c) or (d) that the secretary of wildlife ~~and parks~~, *parks and tourism* provides to the applicant.

(f) "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*), and amendments thereto, as in effect on December 31, 2001, relating to child support enforcement services.

(g) The secretary, in accordance with K.S.A. 32-805, and amendments thereto, may adopt rules and regulations necessary to carry out the provisions of this section.

Sec. 48. K.S.A. 2011 Supp. 32-932 is hereby amended to read as follows: 32-932. (a) Any person having a permanent disability to the extent that such person cannot physically use a conventional long bow or compound bow, as certified by a person licensed to practice the healing arts in any state, shall be authorized to hunt and take deer, antelope, elk or wild turkey with a crossbow.

(b) The secretary of wildlife ~~and parks~~, *parks and tourism* shall adopt, in accordance with K.S.A. 32-805, and amendments thereto, rules and regulations requiring permits to hunt deer, antelope, elk or wild turkey pursuant to subsection (a) and providing for the approval of applicants for such permits and the issuance thereof. In addition, the secretary may adopt rules and regulations limiting the times and areas for hunting and taking deer, antelope, elk and wild turkey and limiting the number of deer, antelope, elk and wild turkey which may be taken pursuant to subsection (a).

(c) Falsely obtaining or using a permit authorized by this section is a class C misdemeanor.

Sec. 49. K.S.A. 2011 Supp. 32-938 is hereby amended to read as follows: 32-938. The *Kansas* department of wildlife ~~and parks~~, *parks and tourism* may reissue big game or wild turkey limited draw permits to military personnel forced to forfeit their limited draw permit due to deployment in the event of armed conflict or war upon application and payment of the prescribed fee to the department and sufficient proof of such deployment. The permit, if reissued, shall be the same type, season and species permit that was forfeited and shall be valid during the next available hunting season upon return from the armed conflict or war by the applicant provided that the secretary may defer the reissuance of a permit to a future hunting season if the overall demand for reissued permits exceeds the anticipated annual sustainable harvest for that species. The reissuance of a permit shall be based on a first come, first served basis.

Sec. 50. K.S.A. 2011 Supp. 32-966 is hereby amended to read as

follows: 32-966. The secretary of wildlife ~~and parks~~, *parks and tourism* and the secretary of transportation shall cooperate in developing a management plan to address reduction of motor vehicle accidents involving deer in those areas of the state experiencing high numbers of such accidents. The management plan shall include methods to identify those areas and methods to inform and communicate with landowners and tenants in those areas regarding measures to reduce local deer populations.

Sec. 51. K.S.A. 32-976 is hereby amended to read as follows: 32-976. Except for research, scientific or demonstration purposes, the secretary of wildlife ~~and parks~~, *parks and tourism* shall not stock or restock fish in any private water impoundment constructed by man and located wholly within lands owned or leased by the individual maintaining such impoundment unless the fish are secured from a private fish grower. These private waters do not include any impoundment constructed, owned, leased or operated by a federal, state or local governmental agency or by a person who has entered into an agreement with a federal, state or local governmental agency that such impoundment will be open to public access and use.

Sec. 52. K.S.A. 2011 Supp. 32-996 is hereby amended to read as follows: 32-996. (a) All federal moneys received pursuant to federal assistance, federal-aid funds and federal-aid grant reimbursements related to the wildlife conservation fund under the control, authorities and duties of the *Kansas* department of wildlife ~~and parks~~, *parks and tourism*, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the wildlife conservation ~~fund-federal fund—federal~~, which is hereby created. *The wildlife conservation fund—federal is hereby redesignated as the wildlife restoration fund.*

(b) No moneys derived from sources described in subsection (a) or (c) shall be used for any purpose other than the administration of matters which relate to purposes authorized in K.S.A. 32-992, and amendments thereto, and which are under the control, authorities and duties of the secretary of wildlife ~~and parks~~, *parks and tourism* and the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* as provided by law.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the ~~wildlife conservation fund-federal~~ *wildlife restoration fund* interest earnings based on:

(1) The average daily balance of moneys in the ~~wildlife conservation fund-federal~~ *wildlife restoration fund*, for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the ~~wildlife conservation fund-federal~~ *wild-*

*life restoration fund*, shall be made in accordance with the appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of wildlife and parks, *parks and tourism*.

Sec. 53. K.S.A. 2011 Supp. 32-997 is hereby amended to read as follows: 32-997. (a) All federal moneys received pursuant to federal assistance, federal-aid funds and federal-aid grant reimbursements related to the wildlife fee fund, under the control, authorities and duties of the *Kansas* department of wildlife and parks, *parks and tourism* shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, to the state treasurer. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the wildlife fund—~~federal fund~~—*federal*, which is hereby created. *The wildlife fund—federal is hereby redesignated as the sport fish restoration fund.*

(b) No moneys derived from sources described in subsection (a) or (c) shall be used for any purpose other than the administration of matters which relate to purposes authorized under K.S.A. 32-990, and amendments thereto, and which are under the control, authorities and duties of the secretary of wildlife and parks, *parks and tourism* and the *Kansas* department of wildlife and parks, *parks and tourism* as provided by law.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the ~~wildlife fee fund—federal~~ *sport fish restoration fund* interest earnings based on:

(1) The average daily balance of moneys in the ~~wildlife fund—federal~~ *sport fish restoration fund*, for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the ~~wildlife fund—federal~~ *sport fish restoration fund* shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of wildlife and parks, *parks and tourism*.

Sec. 54. K.S.A. 2011 Supp. 32-998 is hereby amended to read as follows: 32-998. (a) All moneys received by the *Kansas* department of wildlife and parks, *parks and tourism* from sources other than those identified and restricted in K.S.A. 32-990, 32-991, 32-992, 32-993, 32-994 and 32-1173, and amendments thereto, or identified and allocated to a restricted fund by any appropriation act, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. The state treasurer shall deposit the entire amount of the remittance in the state treasury and credit it to the wildlife and parks nonrestricted fund, which is hereby created. *The wildlife and parks nonrestricted fund is hereby redesignated as the wildlife, parks and tourism nonrestricted fund.*

(b) All expenditures from the wildlife ~~and parks~~, *parks and tourism* nonrestricted fund may be for federal aid eligible expenditures at the discretion of the secretary.

(c) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the wildlife ~~and parks~~, *parks and tourism* nonrestricted fund interest earnings based on:

- (1) The average daily balance of moneys in the wildlife ~~and parks~~, *parks and tourism* nonrestricted fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the wildlife ~~and parks~~, *parks and tourism* nonrestricted fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

Sec. 55. K.S.A. 2011 Supp. 32-999 is hereby amended to read as follows: 32-999. (a) The secretary of the ~~department of wildlife and parks~~ *wildlife, parks and tourism* is authorized, with the approval of the Kansas wildlife ~~and parks~~, *parks and tourism* commission, to establish fees for the public use of cabins owned or operated by the department. At a public meeting, the secretary, with consideration by the commission, shall set an amount for each fee that encourages use of such cabins and that enables the department to maintain and operate such cabins.

(b) Such fees as described in subsection (a) shall not exceed:

- (1) A maximum of \$250 per night;
- (2) a maximum of \$1,500 per week; and
- (3) a maximum of \$5,000 per month.

(c) Fees for the use of cabins owned and operated by the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* shall be exempt from the provisions of K.S.A. 77-415 through 77-437, and amendments thereto.

Sec. 56. K.S.A. 2011 Supp. 32-1001 is hereby amended to read as follows: 32-1001. (a) It is unlawful for any person to:

(1) Participate or engage in any activity for which such person is required to have obtained a license, permit, stamp or other issue of the *Kansas* department under the wildlife ~~and parks~~, *parks and tourism* laws of this state or under rules and regulations of the secretary unless such person has obtained a currently valid such license, permit, stamp or other issue issued to such person;

(2) fail to carry in such person's possession a currently valid license, permit, stamp or other issue of the department, issued to such person, while participating or engaging in any activity for which such person is required to have obtained such license, permit, stamp or other issue under the wildlife ~~and parks~~, *parks and tourism* laws of this state or under rules and regulations of the secretary;

(3) refuse to allow examination of any license, permit, stamp or other

issue of the department while participating or engaging in any activity for which such person is required to have obtained such license, permit, stamp or other issue under the ~~wildlife and parks~~, *parks and tourism* laws of this state or under rules and regulations of the secretary, upon demand by any officer or employee of the department or any officer authorized to enforce the laws of this state or rules and regulations of the secretary;

(4) while participating or engaging in fishing or hunting: (A) Fail to carry in such person's possession a card or other evidence which such person is required to carry pursuant to K.S.A. 32-980, and amendments thereto; or (B) refuse to allow inspection of such card or other evidence upon demand of any officer or employee of the department or any officer authorized to enforce the laws of this state or rules and regulations of the secretary; or

(5) make any false representation to secure any license, permit, stamp or other issue of the department, or duplicate thereof, or to make any alteration in any such license, permit, stamp or other issue.

(b) No person charged with violating subsection (a)(1) for failure to obtain a vehicle or camping permit for use of any state park, or any portion thereof or facility therein, or any other area or facility for which a vehicle or camping permit is required pursuant to rules and regulations of the secretary shall be convicted thereof unless such person refuses to purchase such permit after receiving a permit violation notice, which notice shall require the procurement of: (1) The proper daily permit or permits and payment, within 24 hours, of a late payment fee of \$15; or (2) an annual vehicle or camping permit, as the case may be, if such permit has been established by rule and regulation and adopted by the secretary.

(c) (1) In any prosecution charging a violation of subsection (a)(1) for failure to obtain a permit required by K.S.A. 32-901, and amendments thereto, proof that the particular vehicle described in the complaint was in violation, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of such vehicle, shall constitute in evidence a *prima facie* presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the time when and place where the violation occurred.

(2) Proof of a written lease of, or rental agreement for, a particular vehicle described in the complaint, on the date and at the time of the violation, which lease or rental agreement includes the name and address of the person to whom the vehicle was leased or rented at the time of the violation, shall rebut the *prima facie* evidence that the registered owner was the person who parked or placed the vehicle at the time when and place where the violation occurred.

(d) No person who is a resident of this state and charged with violating subsection (a)(1) or (a)(2) shall be convicted thereof if such person produces in court or the office of the arresting officer the appropriate

license, permit, stamp or other issue of the department, lawfully issued to such person and valid at the time of such person's arrest.

(e) any person convicted of violating provisions of this section shall be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 57. K.S.A. 2011 Supp. 32-1004 is hereby amended to read as follows: 32-1004. (a) It is unlawful for any person to:

(1) Possess a carcass of a big game animal, taken within this state, unless a carcass tag, issued by the secretary, is attached to it in accordance with rules and regulations adopted by the secretary;

(2) possess a carcass of a wild turkey, taken in this state, unless a carcass tag, if required and issued by the secretary, is attached to it, in accordance with rules and regulations adopted by the secretary;

(3) possess a carcass of a big game animal or wild turkey, taken within the state, unless a check station tag, if required and issued by the secretary, is attached to it, in accordance with rules and regulations adopted by the secretary;

(4) possess any wildlife unlawfully killed or otherwise unlawfully taken outside this state;

(5) cause to be shipped within, from or into this state any illegally taken or possessed wildlife;

(6) intentionally import into this state, or possess or release in this state, any species of wildlife prohibited pursuant to K.S.A. 32-956, and amendments thereto;

(7) refuse to allow any conservation officer or deputy conservation officer or any law enforcement officer to inspect and count any wildlife in such person's possession; or

(8) refuse to allow any conservation officer or deputy conservation officer or any law enforcement officer to inspect any devices or facilities of such person which are used in taking, possessing, transporting, storing or processing any wildlife subject to the wildlife ~~and parks~~, *parks and tourism* laws of this state or rules and regulations of the secretary.

(b) The provisions of subsection (a)(1), (a)(2) and (a)(3) do not apply to animals sold in surplus property disposal sales of department exhibit herds or animals legally taken outside this state.

(c) Any person convicted of violating provisions of this section shall be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 58. K.S.A. 2011 Supp. 32-1005 is hereby amended to read as follows: 32-1005. (a) Commercialization of wildlife is knowingly committing any of the following, except as permitted by statute or rules and regulations:

(1) Capturing, killing or possessing, for profit or commercial purposes, all or any part of any wildlife protected by this section;

(2) selling, bartering, purchasing or offering to sell, barter or purchase, for profit or commercial purposes, all or any part of any wildlife protected by this section;

(3) shipping, exporting, importing, transporting or carrying; causing to be shipped, exported, imported, transported or carried; or delivering or receiving for shipping, exporting, importing, transporting or carrying all or any part of any wildlife protected by this section, for profit or commercial purposes; or

(4) purchasing, for personal use or consumption, all or any part of any wildlife protected by this section.

(b) The wildlife protected by this section and the minimum value thereof are as follows:

(1) Eagles, \$1,000;

(2) deer or antelope, \$1,000;

(3) elk or buffalo, \$1,500;

(4) furbearing animals, except bobcats, \$25;

(5) bobcats, \$200;

(6) wild turkey, \$200;

(7) owls, hawks, falcons, kites, harriers or ospreys, \$500;

(8) game birds, migratory game birds, resident and migratory non-game birds, game animals and nongame animals, \$50 unless a higher amount is specified above;

(9) fish and mussels, the value for which shall be no less than the value listed for the appropriate fish or mussels species in the monetary values of freshwater fish or mussels and fish kill counting guidelines of the American fisheries society, special publication number 30;

(10) turtles, \$25 each for unprocessed turtles or \$16 per pound or fraction of a pound for processed turtle parts;

(11) bullfrogs, \$4, whether dressed or not dressed;

(12) any wildlife classified as threatened or endangered, \$500 unless a higher amount is specified above; and

(13) any other wildlife not listed above, \$25.

(c) Possession of wildlife, in whole or in part, captured or killed in violation of law and having an aggregate value of \$1,000 or more, as specified in subsection (b), is *prima facie* evidence of possession for profit or commercial purposes.

(d) Commercialization of wildlife having an aggregate value of \$1,000 or more, as specified in subsection (b), is a severity level 10, nonperson felony. Commercialization of wildlife having an aggregate value of less than \$1,000, as specified in subsection (b), is a class A nonperson misdemeanor.

(e) In addition to any other penalty provided by law, a court convicting a person of the crime of commercialization of wildlife may:

(1) Confiscate all equipment used in the commission of the crime and may revoke for a period of up to 10 years all licenses and permits issued to the convicted person by the Kansas department of wildlife ~~and parks~~, *parks and tourism*; and

(2) order restitution to be paid to the Kansas department of wildlife ~~and parks~~, *parks and tourism* for the wildlife taken, which restitution shall be in an amount not less than the aggregate value of the wildlife, as specified in subsection (b).

(f) The provisions of this section shall apply only to wildlife illegally harvested and possessed by any person having actual knowledge that such wildlife was illegally harvested.

Sec. 59. K.S.A. 2011 Supp. 32-1031 is hereby amended to read as follows: 32-1031. ~~(a)~~ Unless otherwise provided by law or rules and regulations of the secretary, violation of any provision of the wildlife ~~and parks~~, *parks and tourism* laws of this state or rules and regulations adopted thereunder is a class C misdemeanor.

(1) Upon a second conviction of a wildlife violation that is a class C misdemeanor, a fine of not less than \$250 shall be imposed.

(2) Upon a third conviction of a wildlife violation that is a class C misdemeanor, a fine of not less than \$300 shall be imposed.

(3) Upon a fourth and any subsequent convictions of a wildlife violation that is a class C misdemeanor, a fine of not less than \$400 shall be imposed and a minimum of not less than 7 days in the county jail shall be served.

(b) Any conviction for a wildlife violation that is a class C misdemeanor that occurs before July 1, 2005, shall not be considered for purposes of this section.

Sec. 60. K.S.A. 2011 Supp. 32-1032 is hereby amended to read as follows: 32-1032. (a) Violation of any provision of the wildlife ~~and parks~~, *parks and tourism* laws of this state or rules and regulations of the secretary relating to big game or wild turkey permits and game tags, taking big game or wild turkey during a closed season, taking big game or wild turkey in violation of subsections (a)(1), (2) or (7) of K.S.A. 32-1003, and amendments thereto, or taking big game or wild turkey in violation of subsection (a)(2) or (3) of K.S.A. 32-1004, and amendments thereto, or taking big game or wild turkey in violation of K.S.A. 32-1013, and amendments thereto, is a misdemeanor, subject to the provisions of subsection (b), punishable by a fine or by imprisonment in the county jail, or by both.

(1) Upon a first or second conviction for a violation of the wildlife ~~and parks~~, *parks and tourism* laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$500 nor more than \$1,000 or be imprisoned in the county jail for not more than six months, or both.

(2) Upon a third conviction for a violation of the wildlife ~~and parks~~,

*parks and tourism* laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 30 days. A third conviction shall be a class B nonperson misdemeanor.

(3) Upon a fourth conviction for a violation of the ~~wildlife and parks,~~ *parks and tourism* laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 60 days. A fourth conviction shall be a class A nonperson misdemeanor.

(4) Upon the fifth or subsequent convictions for a violation of the ~~wildlife and parks,~~ *parks and tourism* laws of the state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 90 days. A fifth or subsequent conviction shall be a class A nonperson misdemeanor.

Any conviction for a wildlife violation that occurs before July 1, 2005, shall not be considered for purposes of this subsection.

(b) (1) In addition to any other penalty prescribed by law, the unlawful intentional taking of a trophy big game animal shall be punishable by a fine of \$5,000.

(2) A trophy big game animal shall include any animal meeting the following criteria:

(A) An antlered whitetail deer having an inside spread measurement of at least 17 inches;

(B) an antlered mule deer having an inside spread measurement of at least 22 inches;

(C) an antlered elk having at least six points on one antler; or

(D) an antelope having at least one horn greater than 14 inches in length.

(3) The secretary may adopt, in accordance with K.S.A. 32-805, and amendments thereto, such rules and regulations that the secretary deems necessary to implement and define the terms of this section.

(c) In addition to any other penalty imposed by the convicting court, if a person is convicted of a violation of K.S.A. 32-1001, 32-1002, 32-1003, 32-1004 or 32-1013, and amendments thereto, that involves taking of a big game animal or wild turkey, or if a person is convicted of a violation of K.S.A. 32-1005, and amendments thereto, that involves commercialization of a big game animal or wild turkey:

(1) Upon the first such conviction, the court may order forfeiture of the person's hunting privileges for one year from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for one year from the date of conviction.

(2) Upon the second such conviction, the court shall order forfeiture

of the person's hunting privileges for three years from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for three years from the date of conviction.

(3) Upon the third or a subsequent such conviction, the court shall order forfeiture of the person's hunting privileges for five years from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for five years from the date of conviction.

(d) If a person convicted of a violation described in subsection (c) has been issued a combination hunting and fishing license or a combination lifetime license, only the hunting portion of such license shall be revoked or suspended pursuant to subsection (c).

(e) Nothing in this section shall be construed to prevent a convicting court from suspending a person's hunting privileges or ordering the forfeiture or suspension of the person's license, permit, stamp or other issue of the department for a period longer than provided in this section, if such forfeiture or suspension is otherwise provided for by law.

Sec. 61. K.S.A. 32-1040 is hereby amended to read as follows: 32-1040. The court hearing the prosecution of any child 16 or 17 years of age who is charged with a violation of any provision of the wildlife ~~and parks~~, *parks and tourism* laws of this state or rules and regulations adopted thereunder may impose any fine authorized by law for the offense or may order that the child be placed in a juvenile detention facility.

Sec. 62. K.S.A. 32-1041 is hereby amended to read as follows: 32-1041. (a) (1) Upon the first conviction of violating any provision of the wildlife ~~and parks~~, *parks and tourism* laws of this state or rules and regulations of the secretary, and in addition to any authorized sentence imposed by the convicting court, such court may: (A) Order such person to refrain from engaging in any activity, legal or illegal, the activity for which convicted for up to one year from the date of conviction, and (B) order the forfeiture of any license, permit, stamp or other issue of the department, other than a lifetime license, which is held by the convicted person and pertains to the activity for which the person was convicted for up to one year from the date of conviction.

(2) Upon any subsequent conviction of violating any provision of the wildlife ~~and parks~~, *parks and tourism* laws of this state, or rules and regulations adopted thereunder, and in addition to any authorized sentence imposed by the convicting court, such court shall: (A) Order such person to refrain from any activity, legal or illegal, related to the activity for which convicted for one year from the date of conviction; and (B) order the forfeiture of any license, permit, stamp or other issue of the department,

other than a lifetime license, which is held by the convicted person and pertains to the activity for which the person was convicted for one year from the date of conviction.

(b)(1) Upon the first conviction of violating any provision of the wildlife ~~and parks~~, *parks and tourism* laws of this state, or rules and regulations adopted thereunder, by a person who has been issued a lifetime hunting or fishing license or a combination thereof, and in addition to any authorized sentence imposed by the convicting court, such court may order the suspension of such license for up to one year from the date of conviction.

(2) Upon any subsequent conviction of violating any provision of the wildlife ~~and parks~~, *parks and tourism* laws of this state, or rules and regulations adopted thereunder, by a person who has been issued a lifetime hunting or fishing license or a combination thereof, and in addition to any authorized sentence imposed by the convicting court, such court shall order the suspension of such license for one year from the date of conviction.

(c) If a convicted person has been issued a combination hunting and fishing license or a combination lifetime license, only that portion of such license which pertains to the activity for which such person is convicted shall be subject to forfeiture or suspension pursuant to this section. In such case, the order of conviction shall indicate that part of the license which is forfeited or suspended, and such order shall become a temporary license under which the offender may either hunt or fish as the order indicates.

(d) Whenever a judge orders forfeiture or suspension of a license, permit, stamp or other issue of the department pursuant to this section, such license, permit, stamp or other issue shall be surrendered to the court and the judge shall forward it, along with a copy of the conviction order, to the department.

(e) A person whose license, permit, stamp or other issue of the department has been forfeited or suspended pursuant to subsection (a)(1) or (b)(1) shall not be eligible to purchase another such issue within 30 days of the conviction. A person whose license, permit, stamp or other issue of the department has been forfeited or suspended pursuant to subsection (a)(2) or (b)(2) shall not be eligible to purchase another such issue within one year from the date of conviction.

(f) A judge, upon a finding of multiple, repeated or otherwise aggravated violations by a defendant, may order forfeiture or suspension of the defendant's license, permit, stamp or other issue of the department for a period longer than otherwise provided by this section and may order the defendant to refrain from any activity, legal or illegal, related to the activity for which convicted for a period longer than otherwise provided by this section.

Sec. 63. K.S.A. 32-1049 is hereby amended to read as follows: 32-1049. (a) Whenever a person is charged for any violation of any of the wildlife ~~and parks~~, *parks and tourism* laws of this state or the provisions of article 11 of chapter 32 of the Kansas Statutes Annotated or rules and regulations adopted thereunder punishable as a misdemeanor and is not immediately taken before a judge of the district court as required or permitted pursuant to K.S.A. 32-1048 and 32-1178, and amendments thereto, the officer shall prepare a written citation containing a notice to appear in court, the name and address of the person, the offense charged, the time and place when and where the person shall appear in court and such other pertinent information as may be necessary.

(b) The time specified in the citation must be at least five days after the alleged violation unless the person charged with the violation shall demand an earlier hearing.

(c) The place specified in the citation must be before a judge of the district court within the county in which the offense is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the alleged violation occurred.

(d) The person charged with the violation may give a written promise to appear in court by signing at least one copy of the written citation prepared by the officer, in which event the officer shall deliver a copy of the citation to the person, and thereupon the officer shall not take the person into physical custody for the violation.

(e) Any officer violating any provisions of this section is guilty of misconduct in office and shall be subject to removal from office.

(f) In the event the form of citation provided for in this section includes information required by law and is signed by the officer preparing the same, such citation when filed with a court having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution under law.

Sec. 64. K.S.A. 2011 Supp. 32-1049a is hereby amended to read as follows: 32-1049a. (a) Failure to comply with a wildlife ~~and parks~~, *parks and tourism* citation means failure to:

(1) Appear before any district court in response to a wildlife ~~and parks~~, *parks and tourism* citation and pay in full any fine, court costs, assessments or fees imposed;

(2) fully pay or satisfy all fines, court costs, assessments or fees imposed as a part of the sentence of any district court for violation of the wildlife ~~and parks~~, *parks and tourism* laws of this state; or

(3) otherwise comply with a wildlife and parks citation as provided in K.S.A. 32-1049, and amendments thereto.

Failure to comply with a wildlife ~~and parks~~, *parks and tourism* citation

is a class C misdemeanor, regardless of the disposition of the charge for which such citation, complaint or charge was originally issued.

(b) The term “citation” means any complaint, summons, notice to appear, ticket, warrant, penalty assessment or other official document issued for the prosecution of the wildlife ~~and parks~~, *parks and tourism* laws or rules and regulations of this state.

(c) In addition to penalties of law applicable under subsection (a) when a person fails to comply with a wildlife ~~and parks~~, *parks and tourism* citation or sentence for a violation of wildlife ~~and parks~~, *parks and tourism* laws or rules and regulations, the district court in which the person should have complied shall mail a notice to the person that if the person does not appear in the district court or pay all fines, court costs, assessments or fees, and any penalties imposed within 30 days from the date of mailing, the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* shall be notified to forfeit or suspend any license, permit, stamp or other issue of the department. Upon receipt of a report of a failure to comply with a wildlife ~~and parks~~, *parks and tourism* citation under this section, and amendments thereto, the department shall notify the violator and suspend or forfeit the license, permit, stamp or other issue of the department held by the violator until satisfactory evidence of compliance with the wildlife ~~and parks~~, *parks and tourism* citation or sentence of the district court for violation of the wildlife ~~and parks~~, *parks and tourism* laws or rules and regulations of this state are furnished to the informing court. Upon receipt of notification of such compliance from the informing court, the department shall terminate the suspension action, unless the violator is otherwise suspended.

(d) Except as provided in subsection (e), when the district court notifies the department of a failure to comply with a wildlife ~~and parks~~, *parks and tourism* citation or failure to comply with a sentence of the district court imposed on violation of a wildlife ~~and parks~~, *parks and tourism* law or rule and regulation, the court shall assess a reinstatement fee of \$50 for each charge or sentence on which the person failed to make satisfaction, regardless of the disposition of the charge for which such citation was originally issued. Such reinstatement fee shall be in addition to any fine, court costs and other assessments, fees or penalties. The court shall remit all reinstatement fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit such moneys to the state general fund.

(e) The district court shall waive the reinstatement fee provided for in subsection (d), if the failure to comply with a wildlife ~~and parks~~, *parks and tourism* citation was the result of such person enlisting in or being drafted into the armed services of the United States of America, being called into service as a member of a reserve component of the military service of the United States of America, or volunteering for such active

duty or being called into service as a member of the Kansas national guard or volunteering for such active duty and being absent from Kansas because of such military service. The state treasurer and the director of accounts and reports shall prescribe procedures for all such reimbursement payments and shall create appropriate accounts, make appropriate accounting entries and issue such appropriate vouchers and warrants as may be required to make such reimbursement payments.

Sec. 65. K.S.A. 2011 Supp. 32-1050 is hereby amended to read as follows: 32-1050. (a) Whenever any person is issued a citation by a conservation officer or deputy conservation officer of the wildlife and parks conservation service or by any law enforcement officer for any of the violations described in subsection (b), the officer may require such person to give bond in the amount specified in subsection (b) for the offense for which the person was charged, which bond shall be subject to forfeiture if the person does not appear at the court at the time specified in the written citation. The bond shall be a cash bond and shall be payable using cash or legal tender identified as travelers checks, certified checks, cashiers checks, personal checks and postal money orders. The cash bond shall be taken in the following manner: The officer shall furnish the person charged with a stamped envelope addressed to the judge or clerk of the court named in the written citation and the person shall place in such envelope the amount of the bond, and in the presence of the officer shall deposit the same in the United States mail. After having complied with these requirements, the person charged need not sign the citation, but the officer shall note the amount of the bond mailed on the citation and shall give a copy of such citation to the person.

(b) The offenses for which a cash bond may be required as provided in subsection (a) and the amounts thereof shall be as follows, subject to increase at the discretion of the court:

Engaging in any activity without a required valid license or permit, other than a big game or wild turkey permit or a license or permit for commercial activity .....	\$100
Engaging in any activity without a required stamp or other issue of the department.....	75
Engaging in any commercial activity without a required valid license or permit.....	500
Engaging in any big game or wild turkey hunting without a required valid big game or wild turkey permit.....	500
Making misrepresentation to secure license, permit, stamp or other issue of the department.....	250
Taking wildlife, except big game or wild turkey, unlawfully (including but not limited to taking wildlife before or after legal taking hours, during closed season, or using unlawful equipment, means or method).....	100

Carrying unplugged shotgun ..... 75

Exceeding bag or possession limit, except big game or wild turkey - \$25 for each animal in excess of the bag or possession limit, plus..... 75

Exceeding big game or wild turkey bag or possession limit - \$100 for each animal in excess of the bag or possession limit, plus ..... 250

Unlawful transporting of wildlife..... 150

Taking big game or wild turkey unlawfully (including but not limited to taking big game or wild turkey before or after legal taking hours, during closed season, or using unlawful equipment, means or method)..... 500

Failing to wear and properly display required clothing during a big game hunting season ..... 75

Taking wildlife when operating an amount of equipment in excess of that legally authorized ..... 75

Exceeding creel or possession limit—\$25 for each animal in excess of the creel or possession limit, plus..... 75

Operating vessel without a certificate of number or registration ..... 50

Operating vessel without proper display of required identification number..... 50

Failing to properly display required lights on vessel between sunset and sunrise ..... 50

Operating vessel without correct number or approved types of adult personal flotation devices—\$25 for each adult personal flotation device violation, plus..... 50

Operating vessel without correct number or approved types of child personal flotation devices—\$50 for each child personal flotation device violation, plus ..... 100

Operating vessel without required number of personal flotation devices readily accessible and in good and serviceable condition—\$25 for each personal flotation device violation, plus ..... 50

Operating vessel without required number or approved types of fire extinguishers ..... 50

Operating vessel in restricted area ..... 50

Operating vessel without required observer or rearview mirror on vessel ..... 50

Operating vessel without required equipment or in excess of capacity plate limitations..... 50

Unlawful altering, destroying or removing of capacity plate ..... 100

(c) For any violation of the wildlife and park, parks and tourism laws

of this state or rules and regulations adopted thereunder for which a cash bond is not specified in subsection (b), the court may establish a cash bond amount.

(d) There shall be added to the amount of cash bond required pursuant to subsections (b) and (c) the amount of the docket fee as prescribed by K.S.A. 28-172a, and amendments thereto, for crimes defined in chapter 32 of the Kansas Statutes Annotated, and amendments thereto.

(e) In the event of forfeiture of any of the bonds set forth in this section, the amount added by (d) to the amount of the cash bond shall be regarded as a docket fee.

Sec. 66. K.S.A. 32-1051 is hereby amended to read as follows: 32-1051. (a) It shall be the duty of all conservation officers and deputy conservation officers of the wildlife ~~and parks~~, *parks and tourism* conservation service and all law enforcement officers authorized to enforce the laws of this state to diligently inquire into and prosecute all violations of the wildlife ~~and parks~~, *parks and tourism* laws of this state and rules and regulations of the secretary. Any such officers having knowledge or notice of any such violation shall forthwith make complaint before a court of competent jurisdiction and venue. No such officer making complaint shall be liable for costs unless it is found by the court or jury that the complaint was filed for malicious purposes and without probable cause.

(b) Nothing in this section shall be construed to prevent the use of warnings or the issuance of warning tickets, in lieu of making a complaint, when circumstances warrant.

Sec. 67. K.S.A. 32-1052 is hereby amended to read as follows: 32-1052. In a prosecution of any person or persons for a violation of any of the wildlife ~~and parks~~, *parks and tourism* laws of this state or rules and regulations of the secretary, it shall not be necessary to:

(a) State in the complaint the true or scientific name of the wildlife involved in the alleged violation; or

(b) state in the complaint or to prove at the trial that the taking or possessing of any wildlife involved in the alleged violation was not for the sole purpose of using or preserving it as a specimen for scientific purposes.

Sec. 68. K.S.A. 32-1053 is hereby amended to read as follows: 32-1053. It shall be the duty of each county or district attorney to prosecute any person or persons charged with a violation of any of the wildlife ~~and parks~~, *parks and tourism* laws of this state or rules and regulations of the secretary. The attorney so prosecuting shall receive the fee established by law or by the court having jurisdiction over the matter for each prosecution in a district court, and such fee shall be taxed to the defendant in every case where conviction shall be had.

Sec. 69. K.S.A. 2011 Supp. 32-1054 is hereby amended to read as follows: 32-1054. It shall be the duty of every judge or clerk of the court

before whom any prosecution for a violation of the wildlife ~~and parks,~~ *parks and tourism* laws of this state or rules and regulations of the secretary is commenced or goes on appeal, within 20 days after disposition thereof or the occurrence of a failure to comply with a wildlife ~~and parks,~~ *parks and tourism* citation, to report in writing to the department the result thereof. The report of any disposition or failure to comply with a wildlife ~~and parks,~~ *parks and tourism* citation shall include the sentence of the court, the nature of the conviction or charge upon which the prosecution is based, the fines, fees, assessments and other penalties imposed and the forfeiture or suspension of any license, permit, stamp or other issue of the *Kansas* department of wildlife ~~and parks,~~ *parks and tourism*, if any.

Sec. 70. K.S.A. 2011 Supp. 32-1062 is hereby amended to read as follows: 32-1062. The secretary of the *Kansas* department of wildlife ~~and parks,~~ *parks and tourism* shall make and publish such rules and regulations, not inconsistent with law, as deemed necessary to carry out the purposes of the wildlife violator compact.

Sec. 71. K.S.A. 2011 Supp. 32-1063 is hereby amended to read as follows: 32-1063. It shall be unlawful for any person whose license, privilege, or right to hunt, fish, trap, possess, or transport wildlife, having been suspended or revoked pursuant to the wildlife violator compact, to exercise that right or privilege within this state or to purchase or possess such a license which grants such right or privilege.

(a) Any person who knowingly hunts, fishes, traps, possesses, or transports any wildlife, or attempts to do any of the same, within this state in violation of such suspension or revocation pursuant to the wildlife violator compact shall be guilty of a class A nonperson misdemeanor and sentenced to the following:

- (1) A fine of not less than \$1,500 nor more than \$5,000; and
- (2) any privilege or right to hunt, fish, trap or otherwise take, possess or transport any wildlife in this state, or purchase or possess any license, permit, stamp or other issue of the *Kansas* department of wildlife ~~and parks,~~ *parks and tourism* shall be forfeited or suspended for a period of not less than two years nor more than five years in addition to and consecutive to the original revocation or suspension set forth by the provisions of the compact;
- (3) the sentencing judge may impose other sanctions pursuant to K.S.A. 2011 Supp. 21-6602 and 21-6604, and amendments thereto.

(b) Any person who knowingly purchases or possesses, or attempts to purchase or possess, a license to hunt, fish, trap, possess or transport wildlife in this state in violation of such suspension or revocation pursuant to the wildlife violator compact shall be guilty of a class A nonperson misdemeanor and sentenced to the following:

- (1) A fine of not less than \$750 nor more than \$2,500; and

(2) any privilege or right to hunt, fish, trap or otherwise take, possess or transport any wildlife in this state, or purchase or possess any license, permit, stamp or other issue of the Kansas department of wildlife ~~and parks~~, *parks and tourism* shall be forfeited or suspended for a period of not less than two years in addition to and consecutive to the original revocation or suspension set forth by the provisions of the compact;

(3) the sentencing judge may impose other sanctions pursuant to K.S.A. 2011 Supp. 21-6602 and 21-6604, and amendments thereto.

Sec. 72. K.S.A. 2011 Supp. 32-1064 is hereby amended to read as follows: 32-1064. As used in the compact, the term “licensing authority,” with reference to this state, means the Kansas department of wildlife ~~and parks~~, *parks and tourism*. The secretary of ~~the Kansas department of wildlife and parks~~ *wildlife, parks and tourism* shall furnish to the appropriate authorities of party states any information or documents reasonably necessary to facilitate the administration of the compact.

Sec. 73. K.S.A. 2011 Supp. 32-1066 is hereby amended to read as follows: 32-1066. The secretary of the Kansas department of wildlife ~~and parks~~, *parks and tourism* shall appoint the director or head administrator of the department’s law enforcement division or section to serve on the board of compact administrators as the compact administrator for this state as required by section 1 subsection (a) of article VII of the wildlife violator compact.

Sec. 74. K.S.A. 2011 Supp. 32-1102 is hereby amended to read as follows: 32-1102. As used in article 11 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, unless the context clearly requires a different meaning:

(a) “Vessel” means any watercraft designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water.

(b) “Motorboat” means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion.

(c) “Owner” means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(d) “Waters of this state” means any waters within the territorial limits of this state.

(e) “Person” means an individual, partnership, firm, corporation, association; or other entity.

(f) “Operate” means to navigate or otherwise use a motorboat or a vessel.

(g) “Department” means the Kansas department of wildlife ~~and parks~~, *parks and tourism*.

(h) “Secretary” means the secretary of wildlife ~~and parks~~, *parks and tourism*.

(i) “Length” means the length of the vessel measured from end to end over the deck excluding sheer.

(j) “Operator” means the person who operates or has charge of the navigation or use of a motorboat or a vessel.

(k) “Undocumented vessel” means a vessel which is not required to have, and does not have, a valid marine document issued by the United States coast guard or federal agency successor thereto.

(l) “Reportable boating accident” means an accident, collision or other casualty involving a vessel subject to this act which results in loss of life, injury sufficient to require first aid or medical attention, or actual physical damage to property, including a vessel, in excess of an amount established by rules and regulations adopted by the secretary in accordance with K.S.A. 32-805, and amendments thereto.

(m) “Marine sewage” means any substance that contains any of the waste products, excrement or other discharges from the bodies of human beings or animals, or foodstuffs or materials associated with foodstuffs intended for human consumption.

(n) “Marine toilet” means any latrine, head, lavatory or toilet which is intended to receive marine sewage and which is located on or in any vessel.

(o) “Passenger” means any individual who obtains passage or is carried in or on a vessel.

(p) “Sail board” means a surfboard using for propulsion a free sail system comprising one or more swivel-mounted rigs (mast, sail and booms) supported in an upright position by the crew and the wind.

(q) “Dealer” means any person who:

(1) For a commission or with an intent to make a profit or gain of money or other thing of value, sells, barter, exchanges, leases or rents with the option to purchase, offers, attempts to sell, or negotiates the sale of any vessel, whether or not the vessel is owned by such person;

(2) maintains an established place of business with sufficient space to display vessels at least equal in number to the number of dealer certificates of number the dealer has been assigned; and

(3) maintains signage easily visible from the street identifying the established place of business.

(r) “Demonstrate” means to operate a vessel on the waters of this state for the purpose of selling, trading, negotiating or attempting to negotiate the sale or exchange of interests in new or used vessels or for the purpose of testing the design or operation of a vessel.

(s) “Sailboat” means any vessel, other than a sail board, that is de-

signed to be propelled by wind action upon a sail for navigation on the water.

(t) “Boat livery” means any person offering a vessel or vessels of varying types for rent.

(u) “Cargo” means the items placed within or on a vessel and shall include any persons or objects towed on water skis, surfboards, tubes or similar devices behind the vessel.

(v) “State of principal use” means the state on the waters of which a vessel is used or to be used most during the calendar year.

(w) “Use” means to operate, navigate or employ.

(x) “Abandoned vessel” means any vessel on public waters or public or private land which remains unclaimed for a period of 15 consecutive days.

Sec. 75. K.S.A. 2011 Supp. 32-1112 is hereby amended to read as follows: 32-1112. (a) A licensed dealer demonstrating, displaying or exhibiting on the waters of this state any vessel of a type required to be numbered under the laws of this state may obtain from the department, in lieu of obtaining a certificate of number for each such vessel, dealer certificates of number for use in demonstrating, displaying or exhibiting any such vessel. No such dealer certificate of number shall be issued by the department except upon application to the secretary upon forms prescribed by the secretary and upon payment of the required fees. The dealer certificate of number must accompany the vessel and the number assigned by such dealer certificate must be temporarily placed on the vessel while it is being demonstrated, displayed or exhibited on the waters of this state. During the calendar year for which issued, such dealer certificate may be transferred from one such vessel to another owned or operated by such dealer. Such dealer certificate of number may be used in lieu of a regular certificate of number for the purposes of demonstrating, displaying or exhibiting vessels held in inventory of such dealer. Such dealer certificate of number may also be used on such dealer’s service vessel, or substitute vessels owned by the dealer but loaned to a customer when the dealer is repairing such customer’s vessel.

(b) No dealer in vessels of a type required to be numbered under the laws of this state shall cause or permit any such vessel owned by such dealer to be on the waters of this state unless the original dealer certificate of number accompanies the vessel and the number assigned by such dealer certificate is temporarily placed on the vessel as required by this section. A dealer who wishes to operate or allow operation of more than one vessel simultaneously on the waters of this state shall apply for additional dealer certificates as provided by the secretary.

(c) No dealer certificate of number shall be issued to any dealer unless such dealer at the time of making application therefor exhibits to the secretary or the secretary’s agent a receipt showing that the applicant has

paid all personal property taxes and sales tax levied against such dealer for the preceding year, including taxes assessed against vessels of such dealer which were assessed as stock in trade, or unless the dealer exhibits satisfactory evidence that the dealer had no taxable personal property for the preceding year. If application for registration is made before June 21, the receipt may show payment of only  $\frac{1}{2}$  of the preceding year's taxes.

(d) To determine the number of dealer certificates of number a dealer needs, the secretary may base the decision on the dealer's past sales, inventory and any other pertinent factors as the secretary may determine. After the end of the first year of licensure as a dealer, not more than one dealer certificate of number shall be issued to any dealer who has not reported to the secretary the sale of at least five vessels in the preceding year. There shall be no refund of fees for dealer certificates of number in the event of suspension, revocation or voluntary cancellation of such certificates of number.

(e) Any dealer of vessels may authorize use of dealer certificates of number assigned to such dealer by the following:

- (1) The licensed dealer and such dealer's spouse;
- (2) any employee of such dealer when the use thereof is directly connected to a particular business transaction of such dealer; and
- (3) the dealer's customer when operating a vessel in connection with negotiations to purchase such vessel or during a demonstration of such vessel, as stated in a written agreement between the dealership and the customer, with such required information as deemed necessary by the secretary.

(f) Except as hereinafter provided, every dealer of vessels shall:

(1) On or before the 20th day of the month following the end of a calendar quarter, file a report for such quarter report, on a form prescribed and furnished by the secretary, listing all sales or transfers, including the name and address of the purchaser or transferee, date of sale, the serial or identification number of the vessel, and such other information as the secretary may require. The *Kansas* department of wildlife and parks, *parks and tourism* shall make a copy of the report available to the department of revenue.

(2) Whenever a dealer sells or otherwise disposes of such dealer's business, or for any reason suspends or goes out of business as a dealer, such dealer shall notify the secretary and return the dealer's license and dealer certificates of number and, upon receipt of such notice, license and certificates of number, the secretary shall cancel the dealer's certificates of number, except that such dealer, upon payment of 50% of the annual dealer's license fee to the secretary, may have the license and dealer certificates of number assigned to the purchaser of the business.

(g) The secretary shall adopt, in accordance with K.S.A. 32-805, and amendments thereto, rules and regulations for the administration of provisions of this section, including but not limited to, dealer certificate of

number applications and renewals, temporary placement of numbers and possession of dealer certificates of number.

Sec. 76. K.S.A. 2011 Supp. 32-1174 is hereby amended to read as follows: 32-1174. (a) All federal moneys received pursuant to federal assistance, federal-aid funds or federal-aid grant reimbursements related to boating or boating programs under the control, authorities and duties of the ~~Kansas department of wildlife and parks~~, *parks and tourism* shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the boating ~~fund—federal fund—federal~~, which is hereby created, to be dedicated and used for the purposes authorized in K.S.A. 32-1173, and amendments thereto. *The boating fund—federal is hereby redesignated as the boating safety financial assistance fund.*

(b) *No moneys derived from sources described in subsection (a) or (c) shall be used for any purpose other than the administration of matters which are under the control, authorities and duties of the secretary of wildlife, parks and tourism and the Kansas department of wildlife, parks and tourism as provided by law.*

(c) *On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the boating safety financial assistance fund, interest earnings based on:*

(1) *The average daily balance of moneys in the boating safety financial assistance fund, for the preceding month; and*

(2) *the net earnings rate of the pooled money investment portfolio for the preceding month.*

(d) *All expenditures from the boating safety financial assistance fund, shall be made in accordance with the appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of wildlife, parks and tourism.*

Sec. 77. K.S.A. 32-1203 is hereby amended to read as follows: 32-1203. (a) In accordance with the provisions of this act, the secretary of wildlife ~~and parks~~, *parks and tourism* shall develop and administer a grant program to award grants to Kansas local governments for capital improvements for local government outdoor recreation facilities. The grants shall be awarded annually on a competitive basis in accordance with guidelines and criteria prescribed by rules and regulations adopted by the secretary of wildlife ~~and parks~~, *parks and tourism*. Each grant shall be matched by the local government receiving the grant on the basis of \$1 provided by the local government for each \$1 provided under the grant for the capital improvement.

(b) The secretary of wildlife ~~and parks~~, *parks and tourism* shall designate annually a portion of all moneys appropriated for local government outdoor recreation grants for renovations and repairs to provide safety

improvements and handicapped accessibility and other improvements, including improvements to attain compliance with the requirements imposed under the federal Americans with disabilities act.

Sec. 78. K.S.A. 2011 Supp. 32-1306 is hereby amended to read as follows: 32-1306. (a) All dangerous regulated animals shall be confined within a cage of sufficient strength and design for the purposes of maintaining and housing or transporting the animal. The requirements for sufficient caging shall be established by rules and regulations adopted by the secretary of wildlife ~~and parks~~, *parks and tourism*. Any cage or confinement structure shall be constructed in such a manner that prohibits physical contact with any person other than such persons listed in subsection (d).

(b) No dangerous regulated animal shall be allowed to be tethered, leashed or chained outdoors, or allowed to run at large.

(c) A dangerous regulated animal shall not be mistreated, neglected, abandoned or deprived of necessary food, water and sustenance.

(d) A dangerous regulated animal shall not be allowed to come into physical contact with any person other than the person possessing the animal, the registered designated handler or a veterinarian administering medical examination, treatment or care.

(e) A dangerous regulated animal shall not be brought to any public property or commercial or retail establishment, except to bring the animal to a licensed veterinarian or veterinarian clinic.

Sec. 79. K.S.A. 2011 Supp. 32-1308 is hereby amended to read as follows: 32-1308. Exemptions to the provisions set forth in this act are as follows:

(a) Institutions accredited by the American zoo and aquarium association or the zoological association of America shall be exempt from K.S.A. 2011 Supp. 32-1302 and 32-1303, and amendments thereto.

(b) A wildlife sanctuary registered with the local animal control authority shall be exempt from K.S.A. 2011 Supp. 32-1302, and amendments thereto.

(c) The Kansas department of wildlife ~~and parks~~, *parks and tourism*, or a person issued a permit by the secretary pursuant to K.S.A. 32-952, and amendments thereto, shall be exempt from this act.

(d) A licensed or accredited research or medical institution shall be exempt from K.S.A. 2011 Supp. 32-1302 and 32-1303, and amendments thereto.

(e) A United States department of agriculture licensed exhibitor of dangerous regulated animals while transporting or as part of a circus, carnival, rodeo or fair shall be exempt from this act.

Sec. 80. K.S.A. 2011 Supp. 32-1310 is hereby amended to read as follows: 32-1310. (a) Annually, on or before April 1, a local animal control authority shall report to the secretary of ~~the Kansas department of wildlife~~

~~and parks~~ *wildlife, parks and tourism* on dangerous regulated animals registered with the local animal control authority during the preceding calendar year. The report shall include all registration information submitted to the local animal control authority under subsection (b) of K.S.A. 2011 Supp. 32-1303, and amendments thereto, and information on enforcement actions taken under this act.

(b) It shall be a violation of this act for a person who does not own the dangerous regulated animal, to care for, have custody or control of such animal unless such person is a registered designated handler. Any such person applying for a designated handler registration shall file an application on a form prescribed by the local animal control authority. Application for such registration shall be accompanied by an application fee not exceeding \$25. If the local animal control authority finds the applicant to be qualified to be a registered designated handler after meeting the training, experience and ability requirements determined by the secretary of wildlife ~~and parks~~, *parks and tourism*, the local animal control authority shall issue a designated handler registration which shall expire at the end of the calendar year.

(c) The secretary of wildlife ~~and parks~~, *parks and tourism* shall provide educational training programs for the local animal control authority concerning the provisions of this act and the handling of dangerous regulated animals.

(d) The secretary of wildlife ~~and parks~~, *parks and tourism* shall adopt rules and regulations:

- (1) Establishing training, experience and ability requirements for registered designated handlers; and
- (2) to implement the provisions of this act.

Sec. 81. K.S.A. 2011 Supp. 47-2101 is hereby amended to read as follows: 47-2101. (a) It shall be unlawful for any person to engage in the business of raising domesticated deer unless such person has obtained from the livestock commissioner a domesticated deer permit. Application for such permit shall be made in writing on a form provided by the commissioner. The permit period shall be for the permit year ending on June 30 following the issuance date.

(b) Each application for issuance or renewal of a permit shall be accompanied by a fee of not more than \$150 as established by the commissioner in rules and regulations.

(c) The livestock commissioner shall adopt any rules and regulations necessary to enforce this section.

(d) Any person who fails to obtain a permit as prescribed in section (a) shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$150. Continued operation, after a conviction, shall constitute a separate offense for each day of operation.

(e) The commissioner may refuse to issue or renew or may suspend or revoke any permit for any one of the following reasons:

(1) Material misstatement in the application for the original permit or in the application for any renewal of a permit;

(2) the conviction of any crime, an essential element of which is misstatement, fraud or dishonesty, or relating to the theft of or cruelty to animals;

(3) substantial misrepresentation;

(4) the person who is issued a permit is found to be adding to such person's herd by poaching or illegally obtaining deer;

(5) willful disregard to any rule or regulation adopted under this section.

(f) Any refusal to issue or renew a permit and any suspension or revocation of a permit under this section shall be in accordance with the provisions of the Kansas administrative procedure act and shall be subject to review in accordance with the Kansas judicial review act.

(g) Domesticated deer shall be identified through implantation of microchips, ear tags, ear tattoos, ear notches or any other permanent identification on such deer as to identify such deer as domesticated deer. Any person who receives a permit issued pursuant to subsection (a) shall keep records of the deer herd pursuant to rules and regulations.

(h) The livestock commissioner shall inspect any premises where a domesticated deer herd has been issued a permit upon receipt of a written, signed complaint that such premises is not being operated, managed or maintained in accordance with rules and regulations.

(i) The livestock commissioner, on a quarterly basis, shall transmit to the secretary of wildlife ~~and parks~~, *parks and tourism* a current list of persons issued a permit pursuant to this section.

(j) All moneys received under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund.

(k) As used in this section:

(1) "Deer" means any member of the family cervidae.

(2) "Domesticated deer" means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

Sec. 82. K.S.A. 49-408 is hereby amended to read as follows: 49-408. All land affected by surface coal mining and reclamation operations, except as otherwise provided in this act, shall be reclaimed and all operations shall be conducted, in accordance with the requirements and specifications of the national surface mining control and reclamation act of

1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto. The secretary shall issue such regulations as may be required to conform to the requirements of the national act.

All waters in existence on mined land after reclamation is completed shall become public waters to the extent they may be stocked with fish from the state or federal hatcheries and shall be under the law enforcement jurisdiction of the Kansas department of wildlife ~~and parks~~, *parks and tourism*. The owner of the mined land containing such waters shall retain all other rights consistent with the ownership thereof.

Sec. 83. K.S.A. 58-3221 is hereby amended to read as follows: 58-3221. As used in this act:

(a) "Generally accepted operation practice" means those safety practices adopted, pursuant to rules and regulations, by the Kansas department of wildlife ~~and parks~~, *parks and tourism* and established by a nationally recognized nonprofit membership organization that provides voluntary firearms safety programs which include training individuals in the safe handling and use of firearms and which practices are developed with consideration of all information reasonably available regarding the operation of shooting ranges.

(b) "Local unit of government" means a county, city, township or any other political subdivision of the state, or any agency, authority, institution or instrumentality thereof.

(c) "Person" means an individual, proprietorship, partnership, corporation, club, governmental entity or other legal entity.

(d) "Sport shooting range" or "range" means an area designed and operated for the use of archery, rifles, shotguns, pistols, semiautomatic firearms, skeet, trap, black powder or any other similar sport shooting.

Sec. 84. K.S.A. 58-3225 is hereby amended to read as follows: 58-3225. The secretary of the Kansas department of wildlife ~~and parks~~ *wildlife, parks and tourism* is hereby authorized to adopt rules and regulations necessary to implement the provisions of this act. ~~Rules and regulations establishing generally accepted operation practices shall be adopted and be in effect on or before January 1, 2002.~~

Sec. 85. K.S.A. 65-189e is hereby amended to read as follows: 65-189e. The provisions of this act shall not apply to:

(a) Land used exclusively for agricultural purposes as defined in this act or to land under the control of the Kansas department of wildlife ~~and parks~~, *parks and tourism*, but the department shall not develop any land under its control without providing water, sewage disposal and refuse disposal facilities that are in conformity with these standards and have submitted plans therefor to the secretary of health and environment and obtained the secretary's approval;

(b) subdivisions platted and approved by the board of county commissioners prior to August 1, 1965, except that this exemption shall not

be extended to any construction other than a single family residence and shall not permit violation of any local ordinance or code or the creation of any condition that is detrimental to the health or property of an adjacent property owner; or

(c) land subject to a sanitary code or codes as defined in K.S.A. 19-3701 through 19-3708, and amendments thereto, which contain provisions for control of the subsurface disposal of sewage, supplying of water from on-lot wells and the disposal of refuse, if the county, city-county or multicounty health department enforcing such sanitary codes shall furnish to the secretary of health and environment such information as the secretary may require concerning the number and types of such sewage, water and refuse facilities installed in the sanitation zone.

Sec. 86. K.S.A. 2011 Supp. 65-3424b is hereby amended to read as follows: 65-3424b. (a) The secretary shall establish a system of permits for mobile waste tire processors, waste tire processing facilities, waste tire transporters and waste tire collection centers. Such permits shall be issued for a period of one year and shall require an application fee established by the secretary in an amount not exceeding \$250 per year.

(b) The secretary shall adopt rules and regulations establishing standards for mobile waste tire processors, waste tire processing facilities, waste tire collection centers and waste tire transporters. Such standards shall include a requirement that the permittee file with the secretary a bond or other financial assurance in an amount determined by the secretary to be sufficient to pay any costs which may be incurred by the state to process any waste tires or dispose of any waste tires or processed waste tires if the permittee ceases business or fails to comply with this act.

(c) Any person who contracts or arranges with another person to collect or transport waste tires for storage, processing or disposal shall so contract or arrange only with a person holding a permit from the secretary. Any person contracting or arranging with a person, permitted by the secretary, to collect or transport waste tires for storage, processing or disposal, transfers ownership of those waste tires to the permitted person and the person contracting or arranging with the person holding such permit to collect or transport such tires shall be released from liability therefor. Any person contracting or arranging with any person, for the collection, transportation, storage, processing, disposal or beneficial use of such tires shall maintain a record of such transaction for a period of not less than three years following the date of the transfer of such tires. Record-keeping requirements for beneficial use shall not apply when tire retailers allow customers to retain their old tires at the time of sale.

(d) The owner or operator of each site that contains a waste tire, used tire or new tire accumulation of any size must control mosquito breeding and other disease vectors.

(e) No person shall own or operate a waste tire processing facility or

waste tire collection center or act as a mobile waste tire processor or waste tire transporter unless such person holds a valid permit issued therefor pursuant to subsection (a), except that:

(1) A tire retreading business where fewer than 1,500 waste tires are kept on the business premises may operate a waste tire collection center on the premises;

(2) a business that, in the ordinary course of business, removes tires from motor vehicles where fewer than 1,500 of these tires are kept on the business premises may operate a waste tire collection center or a waste tire processing facility or both on the premises;

(3) a retail tire-selling business where fewer than 1,500 waste tires are kept on the business premises may operate a waste tire collection center or a waste tire processing facility or both on the premises;

(4) the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* may perform one or more of the following to facilitate a beneficial use of waste tires: (A) Operate a waste tire collection center on the premises of any state park, state wildlife area, or state fishing lake; (B) operate a waste tire processing facility on the premises of any state park, state wildlife area, or state fishing lake; or (C) act as a waste tire transporter to transport waste tires to any state park, state wildlife area, or state fishing lake;

(5) a person engaged in a farming or ranching activity, including the operation of a feedlot as defined by K.S.A. 47-1501, and amendments thereto, may perform one or more of the following to facilitate a beneficial use of waste tires: (A) Operate an on-site waste tire collection center; (B) operate an on-site waste tire processing facility; or (C) act as a waste tire transporter to transport waste tires to the farm, ranch or the feedlot;

(6) a watershed district may perform one or more of the following to facilitate a beneficial use of waste tires: (A) Operate a waste tire collection center on the premises of a watershed district project or work of improvement; (B) operate a waste tire processing facility on the district's property; or (C) act as a waste tire transporter to transport waste tires to the district's property;

(7) a person may operate a waste tire collection center if: (A) Fewer than 1,500 used tires are kept on the premises; or (B) 1,500 or more used tires are kept on the premises, if the owner demonstrates through sales and inventory records that such tires have value, as established in accordance with standards adopted by rules and regulations of the secretary;

(8) local units of government managing waste tires at solid waste processing facilities or solid waste disposal areas permitted by the secretary under the authority of K.S.A. 65-3407, and amendments thereto, may perform one or more of the following in accordance with the conditions of the solid waste permit: (A) Operate a waste tire collection center on the premises of the permitted facility; (B) operate a waste tire processing facility on the premises of the permitted facility; (C) act as a waste

tire transporter to transport waste tires to the permitted facility; or (D) act as a mobile waste tire processor;

(9) a person may act as a waste tire transporter to transport: (A) Waste tires mixed with other municipal solid waste; (B) fewer than five waste tires for lawful disposal; (C) waste tires generated by the business, farming activities of the person or the person's employer; (D) waste tires for a beneficial use approved by statute, rules and regulations, or by the secretary; (E) waste tires from an illegal waste tire accumulation to a person who has been issued a permit by the secretary pursuant to K.S.A. 65-3407 or 65-3424b, and amendments thereto, provided approval has been obtained from the secretary; or (F) five to 50 waste tires for lawful disposal, provided the transportation act is a one time occurrence to abate a legal accumulation of waste tires; or

(10) a tire retailer that in the ordinary course of business also serves as a tire wholesaler to other tire retailers may act as a waste tire transporter to transport waste tires from those retailers back to a central location owned or operated by the wholesaler for consolidation and final disposal or recycling.

(f) All fees collected by the secretary pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the waste tire management fund.

Sec. 87. K.S.A. 2011 Supp. 65-3483 is hereby amended to read as follows: 65-3483. (a) If, within 150 days after receipt of an application, the secretary has not denied the application, the secretary shall notify the board of county commissioners and the governing bodies of all cities located within a ~~ten-mile~~10-mile radius of the proposed facility. The secretary also shall notify the state corporation commission and the secretary of wildlife ~~and parks~~, *parks and tourism* of the proposed facility.

(b) If the secretary determines that such application should be approved, the secretary shall immediately notify the county commissioners and the governing bodies of all cities located within a ~~ten-mile~~10-mile radius of the proposed facility.

(c) Within 10 days after the secretary has determined that such application should be approved, the secretary shall:

(1) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed facility. Such hearing shall be in the county in which the proposed facility will be located. Additional hearings may be held at such other places as the secretary deems suitable. At such hearing or hearings, the applicant may present testimony in favor of the application. Any person may appear or be represented by counsel to present testimony in support of or opposition to the application. The public notice shall:

(A) Contain a map indicating the location of the proposed facility, a description of the proposed action and the location where the application may be reviewed and where copies may be obtained.

(B) Identify the time, place and location for the public hearing held to receive public comment and input on the application.

(2) Publish the notice not less than 30 days before the date of the public hearing.

(d) Comment and input on the proposed facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the secretary for 15 days after the public hearing date.

(e) The secretary shall consider the impact of the proposed facility on the surrounding area in which it is to be located and make a final determination on the application.

(f) The secretary shall consider, at a minimum:

(1) The risk and impact of accident during the transportation of PCB;

(2) the risk and impact of contamination of ground and surface water by leaching and runoff from the proposed facility;

(3) the risk of fires or explosions from improper storage and disposal methods;

(4) the impact on the surrounding area where the proposed facility is to be located in terms of the health, safety, cost and consistency with local planning and existing development. The secretary also shall consider local ordinances, permits or other requirements and their potential relationship to the proposed facility;

(5) an evaluation of measures to mitigate adverse effects;

(6) the nature of the probable environmental impact including the specification of the predictable adverse effects on the following:

(A) The natural environment and ecology;

(B) public health and safety;

(C) scenic, historic, cultural and recreational value; and

(D) water and air quality and wildlife.

(g) The secretary also shall consider the concerns and objections submitted by the public. The secretary shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the proposed site and operation at that site. The secretary, to the fullest extent practicable, shall integrate by stipulation the provisions of the local ordinances, permits or requirements.

(h) The secretary may seek the advice, which shall be given in writing and entered into the public record of the public hearing, of any person in order to render a decision to approve or deny the application.

(i) The public hearing required under subsection (c) shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 88. K.S.A. 2011 Supp. 65-5703 is hereby amended to read as follows: 65-5703. (a) There is hereby created the state emergency response commission for the purpose of carrying out all requirements of the federal act and for the purpose of providing assistance in the coordination of state agency activities relating to: (1) Chemical emergency training, preparedness, and response; and (2) chemical release reporting and prevention, transportation, manufacture, storage, handling, and use.

(b) The commission shall consist of: (1) The following state officers or their appointed designees: The lieutenant governor, the secretary of wildlife ~~and parks~~, *parks and tourism*, the secretary of labor, the secretary of agriculture, the secretary of health and environment, the adjutant general, the superintendent of the Kansas highway patrol, the state fire marshal, the secretary of transportation, the attorney general, the chairperson of the state corporation commission, and the governor; (2) three members appointed by the governor to represent the general public; and (3) two members appointed by the governor to represent owners and operators of facilities regulated pursuant to this act.

(c) Members of the commission appointed by the governor shall serve for terms of two years. Any vacancy in the office of an appointed member of the commission shall be filled for the unexpired term by appointment by the governor.

(d) A chairperson shall be elected annually by the members of the commission. A vice-chairperson shall be designated by the chairperson to serve in the absence of the chairperson.

(e) Members of the commission attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(f) The commission shall perform such duties as are specified in the federal act to be performed by such commissions and, in addition thereto, such duties as are specified in the laws of this state or as are deemed necessary and appropriate by the commission to achieving its purposes. In accordance with the requirements of the federal act, the commission shall establish local planning districts, subject to approval by the secretary of health and environment and the adjutant general, and shall appoint a local planning committee for each such district. Local planning committees shall perform such duties as are specified in the federal act to be performed by such committees, and in addition thereto, such duties as are assigned by the commission or by any member of the commission acting on behalf of or at the direction of the commission, or as are deemed necessary and appropriate by each such committee to achieving its purposes. The duties of the commission and the local planning committees shall be performed in accordance with rules and regulations adopted pursuant to this act.

Sec. 89. K.S.A. 68-406 is hereby amended to read as follows: 68-406.

(a) The secretary of transportation shall designate, adopt and establish and may lay out, open, relocate, alter, vacate, remove, redesignate and reestablish highways in every county in the state, the total mileage of which shall not exceed 10,000 miles. The total mileage of such highways in each county shall be not less than the sum of the north to south and east to west diameters of the county. The highways so designated shall connect the county seats and principal cities and market centers, and all such highways, including bridges and culverts thereon, shall comprise the state highway system. The secretary of transportation shall make such revisions, classifications or reclassifications in the state highway system as are found on the basis of engineering and traffic study to be necessary, and such revisions, classifications or reclassifications may include, after due public hearing, removal from the system of roads which have little or no statewide significance, and the addition of roads which have statewide importance and will provide relief for traffic congestion on existing routes on the system. All roads which have been placed upon the state highway system shall be a part of the state highway system, but changes may be made in the state highway system when the public safety, convenience, economy, classification or reclassification require such change. The total mileage of the state highway system shall not be extended except by act of the legislature. Highways designated under this section shall be state highways, and all other highways outside of the city limits of cities shall be either county roads or township roads as provided for by law. The state highway system thus designated shall be constructed, improved, reconstructed and maintained by the secretary of transportation from funds provided by law.

(b) In addition to highways of the state highway system, the secretary of transportation shall designate in those cities on such system certain streets as city connecting links. "City connecting link" means a routing inside the city limits of a city which: (1) Connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas turnpike authority; or (5) begins and ends within a city's limits and is designated as part of the national system of interstate and defense highways.

(c) The secretary of transportation may mark and maintain existing roads as detours, but detour roads shall not be a part of the state highway system, except that such roads shall be marked and maintained by the secretary of transportation only until that portion of the state highway system for which such road is substituted is completed and open for travel.

(d) The secretary of transportation may use moneys appropriated from the state highway fund for the purchase of right-of-way, construc-

tion, improvement, reconstruction and maintenance of a highway over the most direct and practicable routes from state highways to a state lake, a federal lake or reservoir established by federal authority, any property managed or controlled by the *Kansas* department of wildlife and parks, *parks and tourism*, national monuments and national historical sites, military reservations, motor carrier inspection stations, approaches and connections within an urban area, as defined by federal highway laws, places of major scenic attractions which possess unusual historical interest, as defined by subsections (1) and (2) of K.S.A. 76-2018, and amendments thereto, on which the state now holds or may hereafter hold a long-term lease, a state institution, from the city limits of the nearest city to a state institution, a state-owned natural and scientific preserve, as defined by subsection (b) of K.S.A. 74-6603, and amendments thereto, or such road or roads located within the boundaries of a state park and not presently maintained by a federal agency as shall be designated by the secretary of transportation. Such highways or roads shall not be a part of the state highway system, and the secretary of transportation is not required to plan, design or construct such highways or roads in conformity with the standards applicable to the state highway system.

(e) The secretary of transportation may make reroutings of any portion of the state highway system if such rerouting is required in writing by the United States department of transportation of the federal highway administration before it will permit federal funds to be used thereon. The secretary of transportation shall have control and regulation for purposes of posting speed limits and establishing access and egress facilities on any and all portions of streets and roads which are, or have been, a part of the state highway system, and which have been or may be, placed inside of the limits of an incorporated city by the creation of a new municipality or by the extension of the limits or boundaries of any existing municipality.

(f) Except pursuant to article 21 of chapter 68 of Kansas Statutes Annotated, only the secretary of transportation may authorize temporary closing of any part of the state highway system by any person for any purpose in the interest of the state. Every authorization granted under this subsection shall be granted subject to conditions specified by the secretary to provide for: (1) proper detours, signing and markings;; (2) timing which will not unreasonably inconvenience the public;; and (3) such additional conditions as are appropriate to avoid unreasonable risk of injury to any person. Such requests shall be made in writing and submitted to the secretary at least five days prior to the closing date. In emergencies, temporary closing may be authorized by the secretary by oral communications. The secretary may waive all or any part of the notice otherwise required by this subsection.

Except as provided in subsection (g), any person failing or neglecting to comply with the provisions of this subsection, upon conviction, shall be guilty of a nonperson unclassified misdemeanor.

(g) In cases of sudden emergency, temporary closing of any part of the state highway system may be authorized by order of a person designated by the board of county commissioners for an area outside of any city or a person designated by the governing body of a city for an area within such city. In such cases of sudden emergency the person authorizing such closing shall inform the secretary of transportation thereof as soon as practicable and obtain the authorization of the secretary for any additional time thereafter for such closing.

Sec. 90. K.S.A. 74-134 is hereby amended to read as follows: 74-134. On July 1, 1988, all books, records and other property of the joint council on recreation abolished by K.S.A. 74-131, *and amendments thereto*, are hereby transferred to the custody of the ~~state~~ *Kansas* department of wildlife ~~and parks, parks and tourism~~.

Sec. 91. K.S.A. 2011 Supp. 74-5,133 is hereby amended to read as follows: 74-5,133. (a) (1) There is hereby established in the state treasury the Arkansas river gaging fund, which shall be administered by the secretary of agriculture. All expenditures from the Arkansas river gaging fund shall be for the operation and maintenance of the gages along the Arkansas river necessary to manage the river under the Arkansas river compact, except that, after all expenditures are made during the fiscal year for the operation and maintenance of the gages along the Arkansas river necessary to manage the river under the Arkansas river compact, then, in accordance with the following priorities and subject to the expenditure limitations prescribed therefor:

(A) First, any remaining moneys authorized to be expended from the fund for the fiscal year shall be expended for the purposes of livestock market reporting in an amount not to exceed \$20,000 in a fiscal year; and

(B) second, if there are any remaining moneys authorized to be expended from the fund for the fiscal year after the expenditures for livestock market reporting, then expenditures shall be made from the fund for the purpose of funding the bluestem pasture report in an amount not to exceed \$5,000.

(2) All expenditures from the Arkansas river gaging fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or the designee of the secretary of agriculture.

(b) All moneys received as royalties from the state's oil and gas leases in Hamilton, Kearny, Finney, Gray and Ford counties, except those moneys arising from leases on lands under the control of the secretary of wildlife ~~and parks, parks and tourism~~ as provided by K.S.A. 32-854, and amendments thereto, shall be deposited in the state treasury in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and shall be credited to the Arkansas river gaging fund. During each fiscal year, when the total amount of moneys credited to the fund is equal to

\$75,000, no further moneys shall be credited to the fund. The remainder of the moneys received for such royalties for such fiscal year shall be credited to the state general fund.

Sec. 92. K.S.A. 2011 Supp. 74-2622 is hereby amended to read as follows: 74-2622. (a) There is hereby established within and as a part of the Kansas water office the Kansas water authority. The authority shall be composed of 24 members of whom 13 shall be appointed as follows: (1) One member shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, *and amendments thereto*, such person shall not exercise any power, duty or function as a member or chairperson of the water authority until confirmed by the senate. Such member shall serve at the pleasure of the governor and shall be the chairperson of the authority; (2) except as provided by subsection (b), 10 members shall be appointed by the governor for terms of four years. Of the members appointed under this provision one shall be a representative of large municipal water users, one shall be representative of small municipal water users, one shall be a board member of a western Kansas groundwater management district, one shall be a board member of a central Kansas groundwater management district, one shall be a member of the Kansas association of conservation districts, one shall be representative of industrial water users, one shall be a member of the state association of watershed districts, one shall have a demonstrated background and interest in water use conservation and environmental issues, and two shall be representative of the general public. The member who is representative of large municipal water users shall be appointed from three nominations submitted by the league of Kansas municipalities. The member who is representative of small municipal water users shall be appointed from three nominations submitted by the Kansas rural water district's association. The member who is representative of a western Kansas groundwater management district shall be appointed from three nominations submitted by the presidents of the groundwater management district boards No. 1, 3 and 4. The member who is representative of a central Kansas groundwater management district shall be appointed from three nominations submitted by the presidents of the groundwater management district boards No. 2 and 5. The member who is representative of industrial water users shall be appointed from three nominations submitted by the Kansas association of commerce and industry. The member who is representative of the state association of watershed districts shall be appointed from three nominations submitted by the state association of watershed districts. The member who is representative of the Kansas association of conservation districts shall be appointed from three nominations submitted by the state association of conservation districts. If the governor cannot make an appointment from the original

nominations, the nominating authority shall be so advised and, within 30 days thereafter, shall submit three new nominations. Members appointed by the governor shall be selected with special reference to training and experience with respect to the functions of the Kansas water authority, and no more than six of such members shall belong to the same political party; (3) one member shall be appointed by the president of the senate for a term of two years; and (4) one member shall be appointed by the speaker of the house of representatives for a term of two years. The state geologist, the state biologist, the chief engineer of the division of water resources of the Kansas department of agriculture, the director of the division of environment of the department of health and environment, the chairperson of the state corporation commission, the secretary of commerce, the director of the Kansas water office, the secretary of wild-life ~~and parks~~, *parks and tourism*, the administrative officer of the state conservation commission, the secretary of agriculture and the director of the agricultural experiment stations of Kansas state university of agriculture and applied science shall be nonvoting members *ex officio* of the authority. The director of the Kansas water office shall serve as the secretary of the authority.

(b) A member appointed pursuant to subsection (a)(2) shall be appointed for a term expiring on January 15 of the fourth calendar year following appointment and until a successor is appointed and qualified.

(c) In the case of a vacancy in the appointed membership of the Kansas water authority, the vacancy shall be filled for the unexpired term by appointment in the same manner that the original appointment was made. Appointed members of the authority attending regular or special meetings thereof shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(d) The Kansas water authority shall:

(1) Consult with and be advisory to the governor, the legislature and the director of the Kansas water office.

(2) Review plans for the development, management and use of the water resources of the state by any state or local agency.

(3) Make a study of the laws of this state, other states and the federal government relating to conservation and development of water resources, appropriation of water for beneficial use, flood control, construction of levees, drainage, irrigation, soil conservation, watershed development, stream control, gauging of stream and stream pollution for the purpose of determining the necessity or advisability of the enactment of new or amendatory legislation in this state on such subjects.

(4) Make recommendations to other state agencies and political subdivisions of the state for the coordination of their activities relating to flood control, construction of levees, drainage, irrigation, soil conserva-

tion, watershed development, stream control, gauging of stream, stream pollution and groundwater studies.

(5) Make recommendations to each regular session of the legislature and to the governor at such times as the authority considers advisable concerning necessary or advisable legislation relating to any of the matters or subjects which it is required by this act to study for the purpose of making recommendations to the legislature. All such recommendations to the legislature shall be in drafted bill form together with such explanatory information and data as the authority considers advisable.

(6) Approve, prior to submission to the legislature by the Kansas water office or its director; (A) Any contract entered into pursuant to the state water plan storage act; (B) any amendments to the state water plan or the state water planning act; and (C) any other legislation concerning water resources of the state.

(7) Approve, before they become effective, any policy changes proposed by the Kansas water office concerning the pricing of water for sale pursuant to the state water plan storage act.

(8) Approve, before it becomes effective, any agreement entered into with the federal government by the Kansas water office.

(9) Request any agency of the state, which shall have the duty upon that request, to submit its budget estimate pertaining to the state's water resources and any plans or programs related thereto and, upon the authority's receipt of such budget estimate, review and evaluate it and furnish recommendations relating thereto to the governor and the legislature.

(10) Approve, prior to adoption by the director of the Kansas water office, rules and regulations authorized by law to be adopted.

(11) Approve, prior to adoption by the director of the Kansas water office, guidelines for conservation plans and practices developed pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.

(e) The Kansas water authority may appoint citizens' advisory committees to study and advise on any subjects upon which the authority is required or authorized by this act to study or make recommendations.

(f) The provisions of the Kansas governmental operations accountability law apply to the Kansas water authority, and the authority is subject to audit, review and evaluation under such law.

Sec. 93. K.S.A. 74-3322 is hereby amended to read as follows: 74-3322. (a) The state forestry, fish and game commission is hereby empowered and directed to convey by quitclaim deed, without consideration, to the city of Oberlin, Kansas, all of the following described real estate located in Decatur county, Kansas, to wit:

All that part of the E $\frac{1}{2}$  SE $\frac{1}{4}$  Sec. 31 and all that part of the W $\frac{1}{2}$  W $\frac{1}{2}$  SW $\frac{1}{4}$  Sec. 32, Twp. 2, South, Range 28, West 6th P.M. lying North of the C.B.&Q. Railroad Right-of-Way. Containing 112 acres more or less.

The SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 32, Twp. 2 South, Range 28 West 6th P.M. Also a tract of land out of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 31, Twp. 2 South, Range 28 West 6th P.M. more particularly described as follows: Beginning at the southeast corner of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of said Sec. 31, thence north parallel with the East line of Sec. 31, 405 feet, thence in a southwesterly direction 114°13' a distance of 1003 feet to intersect the south line of said NE $\frac{1}{4}$ , this point being 396 feet east of the southwest corner of the NE $\frac{1}{4}$ , thence east along the south line of the NE $\frac{1}{4}$  924 feet to place of beginning.

The E $\frac{1}{2}$  NE $\frac{1}{4}$  Sec. 31, Twp. 2 South, Range 28 West 6th P.M. except a tract of land described as follows: Beginning at a point 1072.5 feet west of the Northeast corner of the NE $\frac{1}{4}$  thence south parallel with the East line of the NE $\frac{1}{4}$  1485 feet, thence West at right angles 247.5 feet, thence north parallel with the east line of said NE $\frac{1}{4}$  1485 feet, thence East at right angles and along the north line of said NE $\frac{1}{4}$  247.5 feet to place of beginning; total acreage conveyed 116.1 acres more or less.

A tract of land out of the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 31, Twp. 2 South, Range 28 West 6th P.M. more particularly described as follows: Commencing at the Northeast corner of the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 31, Twp. 2 South, Range 28, West 6th P.M., thence west along the north line of said NW $\frac{1}{4}$  SE $\frac{1}{4}$  56 rods; thence south at right angles 70 rods, thence east at right angles 56 rods, thence north along the East line of said NW $\frac{1}{4}$  SE $\frac{1}{4}$  70 rods to the place of beginning, containing about 24 $\frac{1}{2}$  acres more or less.

A tract of land out of the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 31, Twp. 2 South, Range 28 West 6th P.M. more particularly described as follows: Beginning at the Northwest corner of the SE $\frac{1}{4}$  of said Sec. 31, thence East along said half section line 24 rods, thence south at right angles 70 rods, thence West at right angles and parallel with the North line of said SE $\frac{1}{4}$  24 rods, thence North along the half section line 70 rods to place of beginning. Containing 10.5 acres more or less.

NW $\frac{1}{4}$  NW $\frac{1}{4}$ ; E $\frac{1}{2}$  NW $\frac{1}{4}$ ; W $\frac{1}{2}$  W $\frac{1}{2}$  NE $\frac{1}{4}$  Sec. 32, Twp. 2, Range 28, West of the 6th P.M.

A tract of land described as follows: Beginning at the Southwest corner of the SW $\frac{1}{4}$  of Sec. 29, Twp. 2 South, Range 28 West 6th P.M. thence North along and upon the West line of said SW $\frac{1}{4}$  95 feet, thence East at right angles and parallel with the South line of said SW $\frac{1}{4}$  575 feet, thence in a northeasterly direction at an angle of 27°15' left 490 feet, thence North at an angle of 29°15' left 639 feet, thence East at an angle of 46°30' right 1288 feet to the East line of said SW $\frac{1}{4}$ , thence South along and upon the East line of said SW $\frac{1}{4}$  855 feet to the Southeast corner of the SW $\frac{1}{4}$ ; thence West along and upon the South line of said SW $\frac{1}{4}$  2640 feet to place of beginning.

A tract of land out of the SE $\frac{1}{4}$  Sec. 29, Twp. 2 South, Range 28, West 6th P.M. more particularly described as follows: Beginning at the Southwest corner of the SE $\frac{1}{4}$  of Sec. 29, in Twp. 2, Range 28, West 6th P.M. thence North along the half section line 855 feet, thence East at right

angle and parallel with South line of said Section 1019 feet, thence South at right angle and parallel with East line of said Section 855 feet, thence West along the South line of said section 1019 feet to place of beginning, containing 20 acres more or less.

A tract of land out of the NE $\frac{1}{4}$  of Sec. 32, Twp. 2, Range 28 West of the 6th P.M. described as follows: Beginning at a point 1224.7 feet north of the southeast corner of the W $\frac{1}{2}$  W $\frac{1}{2}$  NE $\frac{1}{4}$  of said Sec. 32, thence northeasterly at an angle of 59°23' right, 170.6 feet, thence north at an angle of 61°54' left, 123.3 feet, thence northwesterly at an angle of 25°48' left, 298.5 feet, to the east line of the W $\frac{1}{2}$  W $\frac{1}{2}$  NE $\frac{1}{4}$  of said Sec. 32, thence south 473.9 feet, along said line to point of beginning. Containing .98 acre more or less.

(b) The instruments of conveyance of such real estate authorized by this act shall be executed in the name of the state forestry, fish and game commission by its chairman and secretary.

(c) As soon as is practicable after the effective date of this act, the secretary of wildlife ~~and parks~~, *parks and tourism* shall convey by ~~quit claim~~ *quitclaim* deed, without consideration, any title or interest of the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* in the property described in subsection (a).

Sec. 94. K.S.A. 2011 Supp. 74-4722 is hereby amended to read as follows: 74-4722. (a) The *Kansas* department of wildlife ~~and parks~~, *parks and tourism* shall purchase vessel liability insurance for the protection and benefit of the state, the department and officers, agents and employees of the department responsible for the operation of vessels owned, operated, maintained or controlled by the department, and of persons while riding in or upon such vessels.

(b) As used in this section, the term "vessel" ~~shall include~~ *includes* motorized and nonmotorized vessels, and other methods of aquatic transportation used by the department.

Sec. 95. K.S.A. 2011 Supp. 74-4911f is hereby amended to read as follows: 74-4911f. (a) Subject to procedures or limitations prescribed by the governor, any person who is not an employee and who becomes a state officer may elect to not become a member of the system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. Such election shall be irrevocable. If such election is not filed by such state officer, such state officer shall be a member of the system.

(b) Any such state officer who is a member of the Kansas public employees retirement system, on or after the effective date of this act, may elect to not be a member by filing an election with the office of the retirement system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. If

such election is not filed by such state officer, such state officer shall be a member of the system.

(c) Subject to limitations prescribed by the board, the state agency employing any employee who has filed an election as provided under subsection (a) or (b) and who has entered into an employee participation agreement, as provided in K.S.A. 2011 Supp. 74-49b10, and amendments thereto, for deferred compensation pursuant to the Kansas public employees deferred compensation plan shall contribute to such plan on such employee's behalf an amount equal to 8% of the employee's salary, as such salary has been approved pursuant to K.S.A. 75-2935b, and amendments thereto, or as otherwise prescribed by law. With regard to a state officer who is a member of the legislature who has retired pursuant to the Kansas public employees retirement system and who files an election as provided in this section, employee's salary means per diem compensation as provided by law as a member of the legislature.

(d) As used in this section and K.S.A. 74-4927k, and amendments thereto, "state officer" means the secretary of administration, secretary on aging, secretary of commerce, secretary of corrections, secretary of health and environment, secretary of labor, secretary of revenue, secretary of social and rehabilitation services, secretary of transportation, secretary of wildlife ~~and parks~~, *parks and tourism*, superintendent of the Kansas highway patrol, secretary of agriculture, executive director of the Kansas lottery, executive director of the Kansas racing commission, president of the Kansas development finance authority, state fire marshal, state librarian, securities commissioner, adjutant general, judges and chief hearing officer of the state court of tax appeals, members of the Kansas parole board, members of the state corporation commission, any unclassified employee on the staff of officers of both houses of the legislature, any unclassified employee appointed to the governor's or lieutenant governor's staff, any person employed by the legislative branch of the state of Kansas, other than any such person receiving service credited under the Kansas public employees retirement system or any other retirement system of the state of Kansas therefor, who elected to be covered by the provisions of this section as provided in subsection (e) of K.S.A. 46-1302, and amendments thereto, or who is first employed on or after July 1, 1996, by the legislative branch of the state of Kansas and any member of the legislature who has retired pursuant to the Kansas public employees retirement system.

(e) The provisions of this section shall not apply to any state officer who has elected to remain eligible for assistance by the state board of regents as provided in subsection (a) of K.S.A. 74-4925, and amendments thereto.

Sec. 96. K.S.A. 2011 Supp. 74-5005 is hereby amended to read as follows: 74-5005. The department shall be the lead agency of the state

for economic development of commerce through the promotion of business, industry, ~~trade and tourism~~ and *trade* within the state. In general, but not by way of limitation, the department shall have, exercise and perform the following powers and duties:

(a) To assume central responsibility for implementing all facets of a comprehensive, long-term, economic development strategy and for coordinating the efforts of both state agencies and local economic development groups as they relate to that objective;

(b) to coordinate the implementation of the strategy with all other state and local agencies and offices and state educational institutions which do research work, develop materials and programs, gather statistics, or which perform functions related to economic development; and such state and local agencies and offices and state educational institutions shall advise and cooperate with the department in the planning and accomplishment of the purposes of this act;

(c) to advise and cooperate with all federal departments, research institutions, educational institutions and agencies, quasi-public professional societies, private business and agricultural organizations and associations, and any other party, public or private, and to call upon such parties for consultation and assistance in their respective fields of interest, to the end that all up-to-date available technical advice, information and assistance be gathered for the use of the department, the governor, the legislature and the people of this state;

(d) to enter into agreements necessary to carry out the purposes of this act;

(e) to conduct an effective business information service, keeping up-to-date information on such things as manufacturing industries, labor supply and economic trends in employment, income, savings and purchasing power within the state, utilizing the services and information available from the division of the budget of the department of administration;

(f) to support a coordinated program of scientific and industrial research with the objective of developing additional uses of the state's natural resources, agriculture, agricultural products, new and better industrial products and processes, and the best possible utilization of the raw materials in the state; and to coordinate this responsibility with the state educational institutions, with all state and federal agencies, and all public and private institutions within or outside the state, all in an effort to assist and encourage new industries or expansion of existing industries through basic research, applied research and new development;

(g) to maintain and keep current all available information regarding the industrial opportunities and possibilities of the state, including raw materials and by-products; power and water resources; transportation facilities; available markets and the marketing limitations of the state; labor supply; banking and financing facilities; availability of industrial sites; and the advantages the state and its particular sections have as industrial lo-

cations; and such information shall be used for the encouragement of new industries in the state and the expansion of existing industries within the state;

(h) to publicize information and the economic advantages of the state which make it a desirable place for commercial and industrial operations and a good place in which to live;

(i) to establish a clearinghouse for the collection and dissemination of information concerning the number and location of public and private postsecondary vocational and technical education programs in areas critical to economic development;

(j) to acquaint the people of this state with the industries within the state and encourage closer cooperation between the farming, commercial and industrial enterprises and the people of the state;

~~(k) to encourage and promote the traveling public to visit this state by publicizing information as to the recreational, historic and natural advantages of the state and its facilities for transient travel and to contract with organizations for the purpose of promoting tourism within the state; and the department may request other state agencies such as, but not limited to, the Kansas water office, the Kansas department of wildlife and parks and the department of transportation, for assistance and all such agencies shall coordinate information and their respective efforts with the department to most efficiently and economically carry out the purpose and intent of this subsection;~~

~~(k)~~(k) to participate in economic development and planning assistance programs of the federal government to political subdivisions;

~~(m)~~(l) to assist counties and cities in industrial development through the establishment of industrial development corporations, including site surveys, small business administration situations, and render such other similar assistance as may be required; and in those instances where it is deemed appropriate, to contract with and make a service charge to the county or city involved for such services rendered;

~~(n)~~(m) to render assistance to private enterprise on planning problems and site surveys upon request and shall make a reasonable service charge for such services rendered; and any moneys received for services rendered, as provided in this subsection, shall be deposited in the fund and expended therefrom, as provided in subsection (o);

~~(n)~~(n) to make agreements with other states and with the United States government, or its agencies, and to accept funds from the federal government, or its agencies, or any other source for research studies, investigation, planning and other purposes related to the duties of the department; and any funds so received shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a special revenue fund which is hereby created and shall be known as

the “economic development fund” or used in accordance with or direction of the contributing federal agencies; and expenditures from such fund may be made for any purpose in keeping with the responsibilities, functions and authority of the department; and warrants on such fund shall be drawn in the same manner as required of other state agencies upon vouchers signed by the secretary;

~~(p)~~(o) to do other and further acts as shall be necessary and proper in fostering and promoting the industrial development and economic welfare of the state;

~~(q)~~(p) to organize, or cause to be organized, an advisory board or boards representing interested groups, including industry, labor, agriculture, scientific research, the press, the professions, industrial associations, civic groups, etc.; and such board or boards shall advise with the department as to its work and the department shall, as far as practicable, cooperate with such board or boards, and secure the active aid thereof in the accomplishment of the aims and objectives of the department;

~~(r)~~(q) to perform the duties imposed under the Kansas venture capital company act;

~~(s)~~(r) to serve as the central agency and clearinghouse to collect and disseminate ideas and information bearing on local planning problems; and, in so doing, the department, upon request of the board of county commissioners of any county or the governing body of any city in the state, may make a study and report upon any planning problem of such county or city submitted to it;

~~(t)~~(s) to disseminate to the public information concerning economic development programs available in the state, regardless of whether such programs are administered by the department or some other agency and the department shall make available audio-visual and written materials describing the economic development programs to local chambers of commerce, economic development organizations, banks and public libraries and shall take other measures as may be necessary to effectuate the purpose of this subsection;

~~(u)~~(t) to perform the duties imposed under the individual development account program act, K.S.A. 2011 Supp. 74-50,201 through 74-50,208, and amendments thereto; and

~~(v)~~(u) except as otherwise provided by law, perform the duties and carry out the purposes of K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto.

Sec. 97. K.S.A. 74-5032 is hereby amended to read as follows: 74-5032. There is hereby established within and as a part of the *Kansas* department of ~~commerce~~ *wildlife, parks and tourism* a division of ~~travel and tourism development~~ *tourism*, the head of which shall be the director of ~~travel and tourism development~~ *tourism*. The purpose of the division of ~~travel and tourism development~~ *tourism* shall be to increase the num-

ber of visitors to Kansas by promoting the state as a travel and learning opportunity to both Kansans and non-Kansans alike. Under the supervision of the secretary of ~~commerce~~ *wildlife, parks and tourism*, the director of ~~travel and tourism development~~ *tourism* shall administer the division of ~~travel and tourism development~~ *tourism*. The secretary of ~~commerce~~ *wildlife, parks and tourism* shall appoint the director of ~~travel and tourism development~~ *tourism* and the director shall serve at the pleasure of the secretary. The director of ~~travel and tourism development~~ *tourism* shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of ~~commerce~~ *wildlife, parks and tourism* and approved by the governor.

Sec. 98. K.S.A. 74-5032a is hereby amended to read as follows: 74-5032a. The division of ~~travel and tourism development~~ *tourism of the Kansas department of wildlife, parks and tourism* is hereby authorized and empowered to:

(a) Encourage and promote the traveling public to visit this state by publicizing information as to the recreational, historic and natural advantages of the state and its facilities for transient travel and to contract with organizations for the purpose of promoting tourism within the state;

(b) request other state agencies such as, but not limited to, the Kansas water office, ~~the Kansas department of wildlife and parks~~ *the department of commerce* and the department of transportation, for assistance and all such agencies shall coordinate information and their respective efforts with the department to most efficiently and economically carry out the purpose and intent of this subsection; and

(c) Solicit and receive moneys from any public or private source and administer a program of matching grants to provide assistance to those entities described in K.S.A. 74-5089, *and amendments thereto*, in the promotion of tourism and the development of quality tourist attractions in this state.

Sec. 99. K.S.A. 2011 Supp. 74-5089 is hereby amended to read as follows: 74-5089. (a) There is hereby established a state matching grant program to provide assistance in the promotion of tourism and development of quality tourist attractions within the state of Kansas. Grants awarded under this program shall be limited to not more than 40% of the cost of any proposed project. Applicants shall not utilize any state moneys to meet the matching requirements under the provisions of this program. Both public and private entities shall be eligible to apply for a grant under the provisions of this act. Not less than 75% of all moneys granted under this program shall be allocated to public entities or entities exempt from taxation under the provisions of 501(c)(3) of the federal internal revenue code of 1986 and amendments thereto. ~~After July 1, 1994,~~ No more than 20% of moneys granted to public or nonprofit entities shall be granted to any single such entity. Furthermore, ~~after July 1, 1994,~~

no more than 20% of moneys granted to private entities shall be granted to any single such entity. The secretary of ~~commerce~~ *wildlife, parks and tourism* shall administer the provisions of this act and the secretary may adopt rules and regulations establishing criteria for qualification for a matching grant and such other matters deemed necessary by the secretary for the administration of this act.

(b) For the purpose of K.S.A. 74-5089 through 74-5091, and amendments thereto, "tourist attraction" means a site that is of significant interest to tourists as a historic, cultural, scientific, educational, recreational or architecturally unique site, or as a site of natural scenic beauty or an area naturally suited for outdoor recreation, however, under no circumstances shall "tourist attraction" mean a race track facility, as defined in K.S.A. 74-8802, and amendments thereto, or any casino or other establishment which operates class three games, as defined in the 1991 version of 25 ~~USC~~ *U.S.C.* § 2703.

~~(c) During the fiscal year 1997, Kansas Inc. shall commission an analysis of this program's impact on tourism. The analysis shall include a recommendation for continuation, discontinuation or alteration of the program.~~

Sec. 100. K.S.A. 74-5090 is hereby amended to read as follows: 74-5090. (a) There is hereby established the Kansas tourist attraction evaluation committee within the *Kansas* department of ~~commerce~~ *wildlife, parks and tourism*. The committee shall consist of three members, all of whom shall have appropriate experience and expertise in the area of travel and tourism. The members of the committee shall be appointed by the secretary of ~~commerce~~ *wildlife, parks and tourism* and shall serve at the secretary's pleasure.

(b) The committee shall screen, evaluate and approve or disapprove all applications for matching grants by those entities described in K.S.A. 74-5089, *and amendments thereto*, for the promotion of tourism and the development of tourist attractions in the state. The committee shall also provide technical advice upon request to any local tourist attraction upon ways to improve its operations.

(c) The director of ~~travel and tourism development~~ *tourism* shall serve as a nonvoting chairperson of the committee and the committee shall annually elect a vice-chairperson from among its members. The committee shall meet upon call of the chairperson or upon call of any two of its members. Two voting members shall constitute a quorum for the transaction of business.

(d) All members of the committee shall serve without compensation or any other allowances authorized under the provisions of article 32 of chapter 75 of the Kansas Statutes Annotated.

Sec. 101. K.S.A. 2011 Supp. 74-5091 is hereby amended to read as follows: 74-5091. (a) There is hereby established the Kansas tourist at-

traction matching grant development fund in the state treasury. The Kansas tourist attraction matching grant development fund shall be administered by the secretary of ~~commerce~~ *wildlife, parks and tourism*. All moneys in the Kansas tourist attraction matching grant development fund shall be used to provide matching grants to provide assistance in the promotion of tourism and the development of quality tourist attractions within this state in accordance with this act.

(b) All moneys received pursuant to subsection (c) of K.S.A. 74-5032a, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the Kansas tourist attraction matching grant development fund.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Kansas tourist attraction matching grant development fund interest earnings based on:

- (1) The average daily balance of moneys in the Kansas tourist attraction matching grant development fund for the preceding month; and
- (2) the net earnings rate for the pooled money investment portfolio for the preceding month.

Sec. 102. K.S.A. 2011 Supp. 74-50,167 is hereby amended to read as follows: 74-50,167. As used in K.S.A. 2011 Supp. 74-50,165 through ~~74-50,172~~ 74-50,173, and amendments thereto:

(a) “Agritourism activity” means any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities or historic, cultural or natural attractions. An activity may be an agritourism activity whether or not the participant pays to participate in the activity. An activity is not an agritourism activity if the participant is paid to participate in the activity.

(b) “Inherent risks of a registered agritourism activity” means those dangers or conditions which are an integral part of such agritourism activity including, but not limited to, certain hazards such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming or ranching operations. “Inherent risks of a registered agritourism activity” also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to follow instructions given by the registered agritourism operator or failing to exercise reasonable caution while engaging in the registered agritourism activity.

(c) “Participant” means any person who engages in a registered agritourism activity.

(d) “Registered agritourism activity” means any agritourism activity

registered with the secretary pursuant to K.S.A. 2011 Supp. 74-50,168, and amendments thereto.

(e) “Registered agritourism location” means a specific parcel of land which is registered with the secretary pursuant to K.S.A. 2011 Supp. 74-50,168, and amendments thereto, and where a registered agritourism operator engages in registered agritourism activities.

(f) “Registered agritourism operator” means any person who is engaged in the business of providing one or more agritourism activities and is registered with the secretary pursuant to K.S.A. 2011 Supp. 74-50,168, and amendments thereto.

(g) “Secretary” means the secretary of wildlife, parks and tourism.

Sec. 103. K.S.A. 2011 Supp. 74-50,168 is hereby amended to read as follows: 74-50,168. (a) Any person who is engaged in the business of providing one or more agritourism activities may register with the secretary of ~~commerce~~ *wildlife, parks and tourism*. The registration shall contain all of the following:

(1) Information describing the agritourism activity which the person conducts or intends to conduct.

(2) Information describing the location where the person conducts or intends to conduct such agritourism activity.

(b) The secretary shall maintain a list of all registered agritourism operators, the registered agritourism activities conducted by each operator and the registered agritourism location where the operator conducts such activities. Such list shall be made available to the public. The secretary, in conjunction with other agritourism and rural economic efforts of the secretary, shall promote and publicize registered agritourism operators, activities and locations to advance the purpose of this act by promoting and encouraging tourism.

(c) Registration pursuant to this section shall be for a period of five years.

(d) No fee shall be charged to persons registering under this section.

Sec. 104. K.S.A. 2011 Supp. 74-50,173 is hereby amended to read as follows: 74-50,173. (a) For taxable years commencing on and after December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and December 31, 2007, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who operates an agritourism activity on the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer’s income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer’s income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax

liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(b) For the first five taxable years commencing after a taxpayer opens such taxpayer's business, after the effective date of this act, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who starts an agritourism activity after the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(c) The secretary of ~~commerce~~ *wildlife, parks and tourism* shall adopt rules and regulations establishing criteria for determining those costs which qualify as costs of liability insurance for agritourism activities of a registered agritourism operator.

(d) On or before the 15th day of the regular legislative session in 2006, the secretary of commerce shall submit to the senate standing committee on commerce and the house standing committee on tourism and parks a report on the implementation and use of the tax credit provided by this section.

~~(e) As used in this section, terms have the meanings provided by K.S.A. 2011 Supp. 74-50,167, and amendments thereto.~~

Sec. 105. K.S.A. 2011 Supp. 74-5602 is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within the division of continuing education of the university of Kansas, created by K.S.A. 74-5603, and amendments thereto.

(b) "Commission" means the Kansas commission on peace officers' standards and training, created by K.S.A. 74-5606, and amendments thereto.

(c) "Dean" means the dean of continuing education of the university of Kansas.

(d) "Director of police training" means the director of police training at the law enforcement training center.

(e) "Director" means the executive director of the Kansas commission on peace officers' standards and training.

(f) "Law enforcement" means the prevention or detection of crime

and the enforcement of the criminal or traffic laws of this state or of any municipality thereof.

(g) “Police officer” or “law enforcement officer” means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff’s office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858, and amendments thereto; conservation officers of the Kansas department of wildlife ~~and parks~~, *parks and tourism*; university police officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus police officers, as defined in K.S.A. 22-2401a, and amendments thereto; law enforcement agents of the director of alcoholic beverage control; law enforcement agents designated by the secretary of revenue pursuant to K.S.A. 2011 Supp. 75-5157, and amendments thereto; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol police, existing under the authority of K.S.A. 75-4503, and amendments thereto; and law enforcement officers appointed by the adjutant general pursuant to K.S.A. 48-204, and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524, and amendments thereto; school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222, and amendments thereto; the manager and employees of the horsethief reservoir benefit district pursuant to K.S.A. 2011 Supp. 82a-2212, and amendments thereto; and the director of the Kansas commission on peace officers’ standards and training and any other employee of such commission designated by the director pursuant to K.S.A. 74-5603, and amendments thereto, as a law enforcement officer. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official’s elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the commissioner of juvenile justice, the secretary of corrections or the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife ~~and parks~~, *parks and tourism*; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person’s office or employment.

Such term shall include any officer appointed or elected on a provisional basis.

(h) “Full-time” means employment requiring at least 1,000 hours of law enforcement related work per year.

(i) “Part-time” means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of law enforcement related work per year.

(j) “Misdemeanor crime of domestic violence” means a violation of domestic battery as provided by K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2011 Supp. 21-5414, and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

(k) “Auxiliary personnel” means members of organized nonsalaried groups which operate as an adjunct to a police or sheriff’s department, including reserve officers, posses and search and rescue groups.

(l) “Active law enforcement certificate” means a certificate which attests to the qualification of a person to perform the duties of a law enforcement officer and which has not been suspended or revoked by action of the Kansas commission on peace officers’ standards and training and has not lapsed by operation of law as provided in K.S.A. 74-5622, and amendments thereto.

Sec. 106. K.S.A. 74-6614 is hereby amended to read as follows: 74-6614. There is hereby created the natural and scientific areas advisory board. The advisory board shall be attached to the state biological survey and shall be within the survey as a part thereof. All budgeting, purchasing and related management functions of the advisory board shall be administered under the direction and supervision of the state biological survey. All vouchers for expenditures and all payrolls of the advisory board shall be approved by the state biological survey. The board shall consist of 11 members designated by the following: The state biologist; the secretary of wildlife ~~and parks~~, *parks and tourism*; the state forester; the state geologist; the director of the state historical society; the director of the state water office; the chairperson of the nongame wildlife advisory council; the secretary of health and environment; a member of the house of representatives appointed by the speaker of the house; a member of the senate appointed by the president of the senate; a representative of the governor.

Whenever a vacancy on the board shall occur by death, resignation or

otherwise of any member so appointed, the responsible appointor shall fill the same by appointment.

Sec. 107. K.S.A. 74-7901 is hereby amended to read as follows: 74-7901. There is hereby created a Kansas wildlife arts council which shall be composed of five members. One member shall be a member of the Kansas wildlife ~~and parks~~, *parks and tourism* commission appointed by such commission, one member shall be a member of the Kansas arts commission appointed by such commission, one member shall be the director of the Fort Hays state university Sternberg museum, and two members shall be from the public at large appointed by the president of Fort Hays state university. The director of the Fort Hays state university Sternberg museum shall be chairperson of the council, and personnel of the Fort Hays state university Sternberg museum shall provide such staff and clerical services as the council may require.

Sec. 108. K.S.A. 2011 Supp. 74-9001 is hereby amended to read as follows: 74-9001. (a) There is hereby established the council on travel and tourism. The council shall consist of 17 voting members as follows: (1) The chairperson of the standing committee on commerce of the senate, or a member of the senate appointed by the president of the senate; (2) the vice-chairperson of the standing committee on commerce of the senate, or a member of the senate appointed by the president of the senate; (3) the ranking minority member of the standing committee on commerce of the senate, or a member of the senate appointed by the minority leader of the senate; (4) the chairperson of the standing committee on tourism and parks of the house of representatives, *or its successor committee*, or a member of the house of representatives appointed by the speaker of the house of representatives; (5) the vice-chairperson of the standing committee on tourism and parks of the house of representatives, *or its successor committee*, or a member of the house of representatives appointed by the speaker of the house of representatives; (6) the ranking minority member of the standing committee on tourism and parks of the house of representatives, *or its successor committee*, or a member of the house of representatives appointed by the minority leader of the house of representatives; and (7) eleven members appointed by the governor. Of the 11 members appointed by the governor, one shall be appointed from a list of three nominations made by the travel industry association of Kansas, one shall be an individual engaged in the lodging industry and appointed from a list of three nominations made by the Kansas restaurant and hospitality association, one shall be an individual engaged in the restaurant industry and appointed from a list of three nominations made by the Kansas restaurant and hospitality association, one shall be appointed from a list of three nominations made by the petroleum marketers and convenience store association of Kansas, one shall be appointed from a list of three nominations by the Kansas sport hunting association and six

shall be appointed to represent the general public. In addition to the voting members of the council, four members of the council shall serve *ex officio*: The secretary of commerce, the secretary of transportation, the secretary of wildlife ~~and parks~~, *parks and tourism* and the executive director of the state historical society. Each *ex officio* member of the council may designate an officer or employee of the state agency of the *ex officio* member to serve on the council in place of the *ex officio* member. The *ex officio* members of the council, or their designees, shall be nonvoting members of the council and shall provide information and advice to the council.

(b) Legislator members shall be appointed for terms coinciding with the terms for which such members are elected. Of the 11 members first appointed by the governor, six shall be appointed for terms of three years and five shall be appointed for terms of two years as determined by the governor. Thereafter, all members appointed by the governor shall be appointed for terms of three years. All members appointed to fill vacancies in the membership of the council and all members appointed to succeed members appointed to membership on the council shall be appointed in like manner as that provided for the original appointment of the member succeeded.

(c) On July 1 of each year the council shall elect a chairperson and vice-chairperson from among its members. The council shall meet at least four times each year at the call of the chairperson of the council. Nine voting members of the council shall constitute a quorum.

(d) Members of the council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid amounts for mileage as provided in subsection (c) of K.S.A. 75-3223, and amendments thereto, or a lesser amount as determined by the ~~secretary of commerce~~ *Kansas department of wildlife, parks and tourism*. Amounts paid under this subsection to *ex officio* members of the council, or their designees, shall be from appropriations to the state agencies of which such members are officers or employees upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief administrative officers of such agencies. Amounts paid under this subsection to voting members of the council shall be from moneys available for the payment of such amounts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the council.

Sec. 109. K.S.A. 2011 Supp. 74-9002 is hereby amended to read as follows: 74-9002. The council on travel and tourism shall:

(a) Advise the *Kansas* department of ~~commerce~~ *wildlife, parks and tourism* in the development and implementation of the state's tourism marketing and business development program including, but not limited to, long-range strategies for attracting visitors to the state;

(b) report to the *Kansas* department of ~~commerce~~ *wildlife, parks and tourism* information for preparation of the annual budget for the division of travel and tourism development;

(c) identify and review tourism related issues and current state policies and programs which directly or indirectly affect travel and tourism in the state and, as appropriate, recommend the adoption of new, or the modification of existing, policies and programs; ~~(d) prepare and submit as a part of the annual report of the department of commerce, pursuant to K.S.A. 74-5049, and amendments thereto, a report of findings and recommendations of the council concerning the promoting of travel and tourism in Kansas and such related matters as the council deems appropriate; and (e) and~~

(d) perform such other acts as may be necessary in carrying out the duties of the council.

Sec. 110. K.S.A. 2011 Supp. 74-9003 is hereby amended to read as follows: 74-9003. (a) There is hereby established in the state treasury the state tourism fund. All moneys credited to the state tourism fund shall only be used for expenditures for the purposes of developing new tourism attractions in Kansas and to significantly expand existing tourism attractions in Kansas. Both public and private entities shall be eligible to apply for funds under the provisions of this act.

(b) The secretary of ~~commerce~~ *wildlife, parks and tourism* shall administer the provisions of this act. The secretary may adopt rules and regulations establishing criteria for obtaining grants and other expenditures from such fund and other matters deemed necessary for the administration of this act.

(c) All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of ~~commerce~~ *wildlife, parks and tourism* or the secretary's designee.

(d) The secretary of ~~commerce~~ *wildlife, parks and tourism* shall prepare and submit budget estimates for all proposed expenditures from the state tourism fund in accordance with the provisions of K.S.A. 75-3717 and 75-3717b, and amendments thereto. Such budget estimates shall include detailed information regarding all proposed expenditures for programs, projects, activities and other matters and shall set forth separately each program, project, activity or other expenditure for which the proposed expenditures from the state tourism fund for a fiscal year are for an amount that is equal to \$50,000 or more. Appropriations for the *Kansas* department of ~~commerce~~ *wildlife, parks and tourism* of moneys in the state tourism fund for each program, project, activity or other expenditure for a fiscal year for an amount that is equal to \$50,000 or more shall be made as a separate item of appropriation.

(e) The legislature shall approve or disapprove of any itemized expenditure from the state tourism fund.

(f) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the state tourism fund established in subsection (a) interest earnings based on:

(1) The average daily balance of moneys in the state tourism fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

Sec. 111. K.S.A. 2011 Supp. 74-9004 is hereby amended to read as follows: 74-9004. (a) The council on travel and tourism, established under K.S.A. 74-9001, and amendments thereto, shall oversee all matters concerning the state tourism fund and expenditures therefrom.

(b) The council, by a majority vote, shall determine for inclusion in the *Kansas* department of ~~commerce~~ *wildlife, parks and tourism* budget expenditures from the state tourism fund.

Sec. 112. K.S.A. 2011 Supp. 74-9201 is hereby amended to read as follows: 74-9201. (a) There is hereby established the Kansas film services commission. The commission shall consist of 19 voting members as follows: (1) One member of the senate appointed by the president of the senate; (2) one member of the senate appointed by the minority leader of the senate; (3) one member of the house of representatives appointed by the speaker of the house of representatives; (4) one member of the house of representatives appointed by the minority leader of the house of representatives; and (5) fifteen members appointed by the governor. Of the members appointed by the governor, one shall be appointed from each United States congressional district. All members appointed by the governor shall be appointed for terms of three years, except that of the members first appointed, five shall be appointed for one-year terms, five shall be appointed for two-year terms and five shall be appointed for three-year terms. The governor shall designate the term for which each of the members first appointed shall serve. In addition to the voting members of the commission, six members of the commission shall serve *ex officio*: The secretary of commerce, the secretary of transportation, the secretary of wildlife ~~and parks~~, *parks and tourism*, the secretary of health and environment, the executive director of the Kansas arts commission and the secretary of the state historical society. Each *ex officio* member of the commission may designate an officer or employee of the state agency of the *ex officio* member to serve on the commission in place of the *ex officio* member. The *ex officio* members of the commission, or their designees, shall be nonvoting members of the commission and shall provide information and advice to the commission. In addition to the voting and *ex officio* members of the commission, the governor may appoint such number of representatives of the film industry to nonvoting

membership on the commission as may be recommended by the secretary of commerce.

(b) Legislative members shall be appointed for terms coinciding with the terms for which such members are elected. All members appointed to fill vacancies in the membership of the commission and all members appointed to succeed members appointed to membership on the commission shall be appointed in like manner as that provided for the original appointment of the member succeeded. All members appointed to fill vacancies of a member of the commission appointed by the governor shall be appointed to fill the unexpired term of such member.

(c) The members of the commission shall elect annually a chairperson and vice-chairperson for the commission from among its members. The commission shall meet at least four times each year at the call of the chairperson of the commission. Ten voting members of the commission shall constitute a quorum.

(d) Members of the commission who are not legislators shall receive mileage, tolls and parking as provided in K.S.A. 75-3223, and amendments thereto, for attendance at any meeting of the commission or any subcommittee meeting authorized by the commission. Legislative members of the commission shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto, for attendance at any meeting of the commission or any subcommittee meeting authorized by the commission.

Sec. 113. K.S.A. 2011 Supp. 75-1253 is hereby amended to read as follows: 75-1253. (a) Whenever it becomes necessary in the judgment of the secretary of administration or in any case when the total cost of a project for the construction of a building or for major repairs or improvements to a building for a state agency is expected to exceed \$750,000 when architectural services are desired for the project or to exceed \$500,000 when engineering services or land surveying services are desired for the project, the secretary of administration shall convene a negotiating committee. The state building advisory commission shall prepare a list of at least three and not more than five firms which are, in the opinion of the state building advisory commission, qualified to serve as project architect, engineer or land surveyor for the project. Such list shall be submitted to the negotiating committee, without any recommendation of preference or other recommendation.

(b) The secretary of administration may combine two or more separate projects for the construction of buildings or for major repairs or improvements to buildings for state agencies, for the purpose of procuring architectural, engineering or land surveying services for all such projects from a single firm. In each case, the combined projects shall be construed to be a single project for all purposes under the provisions of K.S.A. 75-1250 ~~to through~~ 75-1267, ~~inclusive~~, and amendments thereto.

(c) (1) This section shall not apply to any repetitive project with a standard plan that was originally designed by the secretary of administration or an agency architect pursuant to paragraphs (2) and (3) of subsection (a) of K.S.A. 75-1254, and amendments thereto. In such a case, the secretary of administration or the agency architect may provide architectural services for the repetitive project.

(2) “Repetitive project” means a project which uses the same standard design as was used for a project constructed previously, including, but not limited to, sub-area shops and salt domes of the department of transportation and showers and toilet buildings of the *Kansas* department of wildlife ~~and parks~~, *parks and tourism*. The plans for the project may be modified as required for current codes, operational needs or cost control. The total floor area of the project may be increased by an area of not more than 25% of the floor area of the originally constructed project, except that not more than 25% of the linear feet of the exterior and interior walls may be moved for such increase. A project shall not be considered to be repetitive if it has been over four years between the substantial completion of the last project using the design plans and the appropriation of funds for the proposed project.

Sec. 114. K.S.A. 2011 Supp. 75-2720 is hereby amended to read as follows: 75-2720. (a) The state historic sites board of review shall have the power and duty to: (1) Subject to the provisions of subsection (b), approve nominations to the state and national registers of historic places.

(2) Review the state survey of historic properties undertaken in accordance with the provisions of this act.

(3) Review the content of the state preservation plan developed in accordance with the provisions of this act.

(4) Approve the removal of properties from the state register of historic places.

(5) Recommend the removal of properties from the national register of historic places.

(6) Otherwise act in an advisory capacity to the state historic preservation agency.

(7) Upon request, to advise the legislature concerning matters relating to historic properties and historic preservation.

(8) Elect a chairman and vice-chairman and establish such rules of procedure as it deems necessary.

(b) The state historic sites board of review shall not consider or approve any nomination of historic property located in an unincorporated area of any county to either the state register of historic places or the national register of historic places unless owners of land located within 500 feet of the boundaries of a proposed historic property have been notified of the time and place of the board meeting at which such nomination is to be considered or approved. Notification shall be by mail or

publication notice. Publication notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in each county in which all, or any part, of the proposed historic property is located. The last publication shall be at least 30 days, but not more than 50 days, prior to the date of such board meeting. Whenever the state historic sites board of review submits a notice to a newspaper for publication under this subsection, such board shall, at the same time, also submit a copy of such notice to the secretary of ~~the department of wildlife and parks~~ *wildlife, parks and tourism*.

Sec. 115. K.S.A. 2011 Supp. 75-2935 is hereby amended to read as follows: 75-2935. The civil service of the state of Kansas is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

- (a) Chosen by election or appointment to fill an elective office;
- (b) members of boards and commissions, heads of departments required by law to be appointed by the governor or by other elective officers, and the executive or administrative heads of offices, departments, divisions and institutions specifically established by law;
- (c) except as otherwise provided under this section, one personal secretary to each elective officer of this state, and in addition thereto, 10 deputies, clerks or employees designated by such elective officer;
- (d) all employees in the office of the governor;
- (e) officers and employees of the senate and house of representatives of the legislature and of the legislative coordinating council and all officers and employees of the office of revisor of statutes, of the legislative research department, of the division of legislative administrative services, of the division of post audit and the legislative counsel;
- (f) chancellor, president, deans, administrative officers, student health service physicians, pharmacists, teaching and research personnel, health care employees and student employees in the institutions under the state board of regents, the executive officer of the board of regents and the executive officer's employees other than clerical employees, and, at the discretion of the state board of regents, directors or administrative officers of departments and divisions of the institution and county extension agents, except that this subsection (1)(f) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors; as used in this subsection (1)(f), "health care employees" means employees of the university of Kansas medical center who provide health care services at the university of Kansas medical center and who are medical technicians or technologists or respiratory therapists, who are licensed professional nurses or licensed practical nurses, or who are in job classes which are

designated for this purpose by the chancellor of the university of Kansas upon a finding by the chancellor that such designation is required for the university of Kansas medical center to recruit or retain personnel for positions in the designated job classes; and employees of any institution under the state board of regents who are medical technologists;

(g) operations, maintenance and security personnel employed to implement agreements entered into by the adjutant general and the federal national guard bureau, and officers and enlisted persons in the national guard and the naval militia;

(h) persons engaged in public work for the state but employed by contractors when the performance of such contract is authorized by the legislature or other competent authority;

(i) persons temporarily employed or designated by the legislature or by a legislative committee or commission or other competent authority to make or conduct a special inquiry, investigation, examination or installation;

(j) officers and employees in the office of the attorney general and special counsel to state departments appointed by the attorney general, except that officers and employees of the division of the Kansas bureau of investigation shall be in the classified or unclassified service as provided in K.S.A. 75-711, and amendments thereto;

(k) all employees of courts;

(l) client, patient and inmate help in any state facility or institution;

(m) all attorneys for boards, commissions and departments;

(n) the secretary and assistant secretary of the Kansas state historical society;

(o) physician specialists, dentists, dental hygienists, pharmacists, medical technologists and long term care workers employed by the department of social and rehabilitation services;

(p) physician specialists, dentists and medical technologists employed by any board, commission or department or by any institution under the jurisdiction thereof;

(q) student employees enrolled in public institutions of higher learning;

(r) administrative officers, directors and teaching personnel of the state board of education and the state department of education and of any institution under the supervision and control of the state board of education, except that this subsection (1)(r) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors;

(s) all officers and employees in the office of the secretary of state;

(t) one personal secretary and one special assistant to the following: The secretary of administration, the secretary of aging, the secretary of agriculture, the secretary of commerce, the secretary of corrections, the

secretary of health and environment, the superintendent of the Kansas highway patrol, the secretary of labor, the secretary of revenue, the secretary of social and rehabilitation services, the secretary of transportation, the secretary of wildlife ~~and parks~~, *parks and tourism* and the commissioner of juvenile justice;

(u) one personal secretary and one special assistant to the chancellor and presidents of institutions under the state board of regents;

(v) one personal secretary and one special assistant to the executive vice chancellor of the university of Kansas medical center;

(w) one public information officer and one chief attorney for the following: The department of administration, the department on aging, the department of agriculture, the department of commerce, the department of corrections, the department of health and environment, the department of labor, the department of revenue, the department of social and rehabilitation services, the department of transportation, the Kansas department of wildlife ~~and parks~~, *parks and tourism* and the commissioner of juvenile justice;

(x) civil service examination monitors;

(y) one executive director, one general counsel and one director of public affairs and consumer protection in the office of the state corporation commission;

(z) specifically designated by law as being in the unclassified service;

(aa) all officers and employees of Kansas, Inc.;

(bb) any position that is classified as a position in the information resource manager job class series, that is the chief position responsible for all information resources management for a state agency, and that becomes vacant on or after the effective date of this act. Nothing in this section shall affect the classified status of any employee in the classified service who is employed on the date immediately preceding the effective date of this act in any position that is a classified position in the information resource manager job class series and the unclassified status as prescribed by this subsection shall apply only to a person appointed to any such position on or after the effective date of this act that is the chief position responsible for all information resources management for a state agency; and

(cc) positions at state institutions of higher education that have been converted to unclassified positions pursuant to K.S.A. 2011 Supp. 76-715a, and amendments thereto.

(2) The classified service comprises all positions now existing or hereafter created which are not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness from eligible pools which so far as practicable shall be competitive. No person shall be appointed, promoted, reduced or discharged as an officer, clerk, employee or laborer in the classified service in any manner or by

any means other than those prescribed in the Kansas civil service act and the rules adopted in accordance therewith.

(3) For positions involving unskilled, or semiskilled duties, the secretary of administration, as provided by law, shall establish rules and regulations concerning certifications, appointments, layoffs and reemployment which may be different from the rules and regulations established concerning these processes for other positions in the classified service.

(4) Officers authorized by law to make appointments to positions in the unclassified service, and appointing officers of departments or institutions whose employees are exempt from the provisions of the Kansas civil service act because of the constitutional status of such departments or institutions shall be permitted to make appointments from appropriate pools of eligibles maintained by the division of personnel services.

Sec. 116. K.S.A. 75-3339 is hereby amended to read as follows: 75-3339. (a) The division of services for the blind of the department of social and rehabilitation services shall:

(1) Make surveys of concession vending opportunities for blind persons on state, county, city and other property;

(2) make surveys throughout the state of Kansas of industries with a view to obtaining information that will assist blind persons to obtain employment;

(3) make available to the public, especially to persons and organizations engaged in work for the blind, information obtained as a result of such surveys;

(4) issue licenses to blind persons who are citizens of the United States for the operating of vending facilities on state, county, city and other property for the vending of foods, beverages and other such articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, as determined by the licensing agency; and

(5) take such other steps, including the adoption of rules and regulations, as may be necessary and proper to carry out the provisions of this act.

(b) The division of services for the blind, in issuing each such license for the operation of a vending facility, shall give preference to blind persons who are in need of employment. Each such license shall be issued for an indefinite period but may be terminated by such division if it is satisfied that the facility is not being operated in accordance with the rules and regulations prescribed by such division. Such licenses shall be issued only to applicants who are blind as defined by subsection (b) of K.S.A. 75-3338, and amendments thereto.

(c) The division of services for the blind, with the approval of the head of the department or agency in control of the maintenance, operation, and protection of the state, county and city or other property on

which the vending facility is to be located but subject to rules and regulations prescribed pursuant to the provisions of this act, shall select a location for such vending facility and the type of facility to be provided.

(d) In the design, construction or substantial alteration or renovation of each public building after July 1, 1970, for use by any department, agency or instrumentality of the state of Kansas, except the Kansas department of wildlife ~~and parks~~, *parks and tourism* and the Kansas turnpike authority, there shall be included, after consultation with the division of services for the blind a satisfactory site or sites with space and electrical and plumbing outlets and other necessary requirements suitable for the location and operation of a vending facility or facilities by a blind person or persons. No space shall be rented, leased or otherwise acquired for use by any department, agency or instrumentality of the state of Kansas after July 1, 1970, except the Kansas department of wildlife ~~and parks~~, *parks and tourism* and the Kansas turnpike authority, unless such space includes, after consultation with the division of services for the blind, a satisfactory site or sites with space and electrical and plumbing outlets and other necessary requirements suitable for the location and operation of a vending facility or facilities by a blind person or persons. All departments, agencies and instrumentalities of the state of Kansas, except the Kansas department of wildlife ~~and parks~~, *parks and tourism* and the Kansas turnpike authority, shall consult with the secretary of social and rehabilitation services or the secretary's designee and the division of services for the blind in the design, construction or substantial alteration or renovation of each public building used by them, and in the renting, leasing or otherwise acquiring of space for their use, to insure that the requirements set forth in this subsection are satisfied. This subsection shall not apply when the secretary of social and rehabilitation services or the secretary's designee and the division of services for the blind determine that the number of people using the property is insufficient to support a vending facility.

Sec. 117. K.S.A. 2011 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ or contract with presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may

be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its presiding officers within 60 days in response to a requesting agency's request, the director shall designate in writing a full-time employee of an agency other than the requesting agency to serve as presiding officer for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of presiding officers employed by the office.

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding other than a proceeding as provided in subsection (h).

(e) The secretary of administration may adopt rules and regulations:

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

(2) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern presiding officers; and

(3) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.

(f) The director may implement the provisions of this section and rules and regulations adopted under its authority.

(g) The secretary of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using a presiding officer.

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for conducting adjudicative hearings under the Kansas administrative procedures act in which the presiding officer is not the agency head or one or more members of the agency head:

(1) On and after July 1, 2005: Department of social and rehabilitation services, juvenile justice authority, department on aging, department of health and environment, Kansas public employees retirement system, Kansas water office, Kansas animal health department and Kansas insurance department.

(2) On and after July 1, 2006: Emergency medical services board, emergency medical services council, Kansas health policy authority and Kansas human rights commission.

(3) On and after July 1, 2007: Kansas lottery, Kansas racing and gaming commission, state treasurer, pooled money investment board, Kansas department of wildlife ~~and parks~~, *parks and tourism* and state court of tax appeals.

(4) On and after July 1, 2008: Department of human resources, state

corporation commission, state conservation commission, agricultural labor relations board, department of administration, department of revenue, board of adult care home administrators, Kansas state grain inspection department, board of accountancy and Kansas wheat commission.

(5) On and after July 1, 2009, all other Kansas administrative procedure act hearings not mentioned in subsections (1), (2), (3) and (4).

(i) (1) Effective July 1, 2005, any presiding officer in agencies specified in subsection (h)(1) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(2) Effective July 1, 2006, any presiding officer in agencies specified in subsection (h)(2) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(3) Effective July 1, 2007, any presiding officer in agencies specified in subsection (h)(3) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to

have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(4) Effective July 1, 2008, any full-time presiding officer in agencies specified in subsection (h)(4) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(5) Effective July 1, 2009, any full-time presiding officer in agencies specified in subsection (h)(5) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment occurred.

Sec. 118. K.S.A. 75-3907 is hereby amended to read as follows: 75-3907. Except as otherwise provided in this order, on the effective date of this order, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of any state agency or office which is abolished by this order, or which becomes a part of the *Kansas* department of wildlife and parks, *parks and tourism*, or the powers, duties and functions of which are transferred to the secretary of wildlife and parks, *parks and tourism*, and who, in the opinion

of the secretary of wildlife ~~and parks~~, *parks and tourism*, are necessary to perform the powers, duties and functions of the Kansas department of wildlife ~~and parks~~, *parks and tourism*, shall be transferred to, and shall become officers and employees of the department. Any such officer or employee shall retain all retirement benefits and all rights of civil service which had accrued to or vested in such officer or employee prior to the effective date of this order. The service of each such officer and employee so transferred shall be deemed to have been continuous.

Sec. 119. K.S.A. 75-3908 is hereby amended to read as follows: 75-3908. (a) When any conflict arises as to the disposition of any property, power, duty or function or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The Kansas department of wildlife ~~and parks~~, *parks and tourism* shall succeed to all property, property rights and records which were used for or pertain to the performance of the powers, duties and functions transferred to the secretary of wildlife ~~and parks~~, *parks and tourism*. Any conflict as to the proper disposition of property or records arising under this section, and resulting from the transfer, attachment or abolition of any state agency or office, or all or part of the powers, duties and functions thereof, shall be determined by the governor, whose decision shall be final.

Sec. 120. K.S.A. 75-3910 is hereby amended to read as follows: 75-3910. (a) On the effective date of this order, the balance of all funds appropriated and reappropriated to any of the state agencies abolished by this order is hereby transferred to the Kansas department of wildlife ~~and parks~~, *parks and tourism* and shall be used only for the purpose for which the appropriation was originally made.

(b) On the effective date of this order, the liability for all accrued compensation or salaries of officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of any state agency or office abolished by this order, or which becomes a part of the Kansas department of wildlife ~~and parks~~, *parks and tourism* established by this order, or the powers, duties and functions of which are transferred to the secretary of wildlife ~~and parks~~, *parks and tourism* provided for by this order, shall be assumed and paid by the Kansas department of wildlife ~~and parks~~, *parks and tourism* established by this order.

Sec. 121. K.S.A. 76-463 is hereby amended to read as follows: 76-463. In connection with its duties, the section shall cooperate with the Kansas department of wildlife ~~and parks~~, *parks and tourism*.

Sec. 122. K.S.A. 2011 Supp. 77-415 is hereby amended to read as follows: 77-415. (a) K.S.A. 77-415 through 77-438, and amendments

thereto, shall be known and may be cited as the Kansas rules and regulations filing act.

(b) (1) Unless otherwise provided by statute or constitutional provision, each rule and regulation issued or adopted by a state agency shall comply with the requirements of the Kansas rules and regulations filing act. Except as provided in this section, any standard, requirement or other policy of general application may be given binding legal effect only if it has complied with the requirements of the Kansas rules and regulations filing act.

(2) Notwithstanding the provisions of this section:

(A) An agency may bind parties, establish policies, and interpret statutes or regulations by order in an adjudication under the Kansas administrative procedure act or other procedures required by law, except that such order shall not be used as precedent in any subsequent adjudication against a person who was not a party to the original adjudication unless the order is:

- (i) Designated by the agency as precedent;
- (ii) not overruled by a court or later adjudication; and
- (iii) disseminated to the public in one of the following ways:

(a) Inclusion in a publicly available index, maintained by the agency and published on its website, of all orders designated as precedent;

(b) publication by posting in full on an agency website in a format capable of being searched by key terms; or

(c) being made available to the public in such other manner as may be prescribed by the secretary of state.

(B) Any statement of agency policy may be treated as binding within the agency if such statement of policy is directed to:

- (i) Agency personnel relating to the performance of their duties.
- (ii) The internal management of or organization of the agency.

No such statement of agency policy listed in clauses (i) and (ii) of this subparagraph may be relied on to bind the general public.

(C) An agency may provide forms, the content or substantive requirements of which are prescribed by rule and regulation or statute, except that no such form may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.

(D) An agency may provide guidance or information to the public, describing any agency policy or statutory or regulatory requirement except that no such guidance or information may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.

(E) None of the following shall be subject to the Kansas rules and regulations filing act:

(i) Any policy relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution.

(ii) Any parking and traffic regulations of any state educational institution under the control and supervision of the state board of regents.

(iii) Any rule and regulation relating to the emergency or security procedures of a correctional institution, as defined in subsection (d) of K.S.A. 75-5202, and amendments thereto.

(iv) Any order issued by the secretary of corrections or any warden of a correctional institution under K.S.A. 75-5256, and amendments thereto.

(F) When a statute authorizing an agency to issue rules and regulations or take other action specifies the procedures for doing so, those procedures shall apply instead of the procedures in the Kansas rules and regulations filing act.

(c) As used in the Kansas rules and regulations filing act, and amendments thereto, unless the context clearly requires otherwise:

(1) "Board" means the state rules and regulations board established under the provisions of K.S.A. 77-423, and amendments thereto.

(2) "Environmental rule and regulation" means:

(A) A rule and regulation adopted by the secretary of agriculture, the secretary of health and environment or the state corporation commission, which has as a primary purpose the protection of the environment; or

(B) a rule and regulation adopted by the secretary of wildlife ~~and parks~~, *parks and tourism* concerning threatened or endangered species of wildlife as defined in K.S.A. 32-958, and amendments thereto.

(3) "Person" means an individual, firm, association, organization, partnership, business trust, corporation, company or any other legal or commercial entity.

(4) "Rule and regulation," "rule," and "regulation" means a standard, requirement or other policy of general application that has the force and effect of law, including amendments or revocations thereof, issued or adopted by a state agency to implement or interpret legislation.

(5) "Rulemaking" shall have the meaning ascribed to it in K.S.A. 77-602, and amendments thereto.

(6) "Small employer" means any person, firm, corporation, partnership or association that employs not more than 50 employees, the majority of whom are employed within this state.

(7) "State agency" means any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and legislative branches, which is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state.

Sec. 123. K.S.A. 2011 Supp. 77-421 is hereby amended to read as follows: 77-421. (a) (1) Except as provided by subsection (a)(2), subsection (a)(3) or subsection (a)(4), prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to

be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations established by K.S.A. 77-436, and amendments thereto. The notice shall be provided to the secretary of state and to the chairperson, vice chairperson, ranking minority member of the joint committee and legislative research department and shall be published in the Kansas register. A complete copy of all proposed rules and regulations and the complete economic impact statement required by K.S.A. 77-416, and amendments thereto, shall accompany the notice sent to the secretary of state. The notice shall contain:

(A) A summary of the substance of the proposed rules and regulations;

(B) a summary of the economic impact statement indicating the estimated economic impact on governmental agencies or units, persons subject to the proposed rules and regulations and the general public;

(C) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed rules and regulations;

(D) the address where a complete copy of the proposed rules and regulations, the complete economic impact statement, the environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto, may be obtained;

(E) the time and place of the public hearing to be held; the manner in which interested parties may present their views; and

(F) a specific statement that the period of 60 days' notice constitutes a public comment period for the purpose of receiving written public comments on the proposed rules and regulations and the address where such comments may be submitted to the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and regulations.

(2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of ~~the department of wildlife and parks~~ *wildlife, parks and tourism* shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(3) Prior to adopting any rule and regulation which establishes any permanent prior authorization on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state medicaid plan, and after such rule and regulation has been approved by the secretary of administration and the attorney general, the Kansas health policy authority shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(4) Prior to adopting any rule and regulation pursuant to subsection (c), the state agency shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of notice constitutes a public comment period on such rules and regulations.

(b) (1) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. At the time it adopts or amends a rule and regulation, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including:

(A) The agency's reasons for not accepting substantial arguments made in testimony and comments; and

(B) the reasons for any substantial change between the text of the proposed adopted or amended rule and regulation contained in the published notice of the proposed adoption or amendment of the rule and regulation and the text of the rule and regulation as finally adopted.

(2) Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of following the requirements or statutory procedure set out in such other law, may give notice and hold hearings on proposed rules and regulations in the manner prescribed by this section.

(3) Notwithstanding the other provisions of this section, the Kansas parole board and the secretary of corrections, may give notice or an opportunity to be heard to any inmate in the custody of the secretary of corrections with regard to the adoption of any rule and regulation, but the secretary shall not be required to give such notice or opportunity.

(c) (1) The agency shall initiate new rulemaking proceedings under this act, if a state agency proposes to adopt a final rule and regulation that:

(A) Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

(B) is not a logical outgrowth of the rule and regulation as originally proposed.

(2) In accordance with subsection (a), the period for public comment required by K.S.A. 77-421, and amendments thereto, may be shortened to not less than 30 days.

(3) For the purposes of this provision, a rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed if a person affected by the final rule and regulation was not put on notice that such person's interests were affected in the rulemaking.

(d) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a proposed rule and regulation, the agency shall cause written minutes or other records, including a record maintained on sound recording tape or on any electronically accessed media or any combination of written or electronically accessed media records of the hearing to be made. If the proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for not less than three years after its effective date, such minutes or other records, together with any recording, transcript or other record made of the hearing and a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.

(e) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

Sec. 124. K.S.A. 2011 Supp. 79-201a is hereby amended to read as follows: 79-201a. The following described property, to the extent herein specified, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

*First.* All property belonging exclusively to the United States, except property which congress has expressly declared to be subject to state and local taxation.

*Second.* All property used exclusively by the state or any municipality or political subdivision of the state. All property owned, being acquired pursuant to a lease-purchase agreement or operated by the state or any municipality or political subdivision of the state, including property which is vacant or lying dormant, which is used or is to be used for any govern-

mental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be used exclusively by the state, municipality or political subdivision for the purposes of this section. The lease by a municipality or political subdivision of the state of any real property owned or being acquired pursuant to a lease-purchase agreement for the purpose of providing office space necessary for the performance of medical services by a person licensed to practice medicine and surgery or osteopathic medicine by the board of healing arts pursuant to K.S.A. 65-2801 *et seq.*, and amendments thereto, dentistry services by a person licensed by the Kansas dental board pursuant to K.S.A. 65-1401 *et seq.*, and amendments thereto, optometry services by a person licensed by the board of examiners in optometry pursuant to K.S.A. 65-1501 *et seq.*, and amendments thereto, or K.S.A. 74-1501 *et seq.*, and amendments thereto, podiatry services by a person licensed by the board of healing arts pursuant to K.S.A. 65-2001 *et seq.*, and amendments thereto, or the practice of psychology by a person licensed by the behavioral sciences regulatory board pursuant to K.S.A. 74-5301 *et seq.*, and amendments thereto, shall be construed to be a governmental function, and such property actually and regularly used for such purpose shall be deemed to be used exclusively for the purposes of this paragraph. The lease by a municipality or political subdivision of the state of any real property, or portion thereof, owned or being acquired pursuant to a lease-purchase agreement to any entity for the exclusive use by it for an exempt purpose, including the purpose of displaying or exhibiting personal property by a museum or historical society, if no portion of the lease payments include compensation for return on the investment in such leased property shall be deemed to be used exclusively for the purposes of this paragraph. All property leased, other than motor vehicles leased for a period of at least one year and property being acquired pursuant to a lease-purchase agreement, to the state or any municipality or political subdivision of the state by any private entity shall not be considered to be used exclusively by the state or any municipality or political subdivision of the state for the purposes of this section except that the provisions of this sentence shall not apply to any such property subject to lease on the effective date of this act until the term of such lease expires but property taxes levied upon any such property prior to tax year 1989, shall not be abated or refunded. Any property constructed or purchased with the proceeds of industrial revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 12-1740 to 12-1749, *and amendments thereto*, or purchased with proceeds of improvement district bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-2776, *and amendments thereto*, or with proceeds of bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-3815a and 19-3815b, *and amendments thereto*, or any property improved, purchased, constructed, reconstructed or repaired with the proceeds of revenue bonds issued prior to July 1, 1963, as authorized by

K.S.A. 13-1238 to 13-1245, inclusive, *and amendments thereto*, or any property improved, reimproved, reconstructed or repaired with the proceeds of revenue bonds issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-1245, inclusive, *and amendments thereto*, which had previously been improved, reconstructed or repaired with the proceeds of revenue bonds issued under such act on or before July 1, 1963, shall be exempt from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid. Any property constructed or purchased with the proceeds of any revenue bonds authorized by K.S.A. 13-1238 to 13-1245, inclusive, *and amendments thereto*, 19-2776, 19-3815a and 19-3815b, and amendments thereto, issued on or after July 1, 1963, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Any property, all or any portion of which is constructed or purchased with the proceeds of revenue bonds authorized by K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, issued on or after July 1, 1963 and prior to July 1, 1981, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased wholly with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79-2301 *et seq.*, and amendments thereto. Property constructed or purchased in whole or in part with the proceeds of revenue bonds issued on or after January 1, 1995, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, and used in any retail enterprise identified under NAICS sectors 44 and 45, except facilities used exclusively to house the headquarters or back office operations of such retail enterprises identified thereunder, shall not be exempt from taxation. For the purposes of the preceding provision “NAICS” means the North American industry classification system, as developed under the authority of the office of management and budget of the office of the president of the United States. “Headquarters or back office operations”

means a facility from which the enterprise is provided direction, management, administrative services, or distribution or warehousing functions in support of transactions made by the enterprise. Property purchased, constructed, reconstructed, equipped, maintained or repaired with the proceeds of industrial revenue bonds issued under the authority of K.S.A. 12-1740 *et seq.*, and amendments thereto, which is located in a redevelopment project area established under the authority of K.S.A. 12-1770 *et seq.*, and amendments thereto, shall not be exempt from taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for any poultry confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903, and amendments thereto, shall not be exempt from such taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under the authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for a rabbit confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903, and amendments thereto, shall not be exempt from such taxation.

*Third.* All works, machinery and fixtures used exclusively by any rural water district or township water district for conveying or production of potable water in such rural water district or township water district, and all works, machinery and fixtures used exclusively by any entity which performed the functions of a rural water district on and after January 1, 1990, and the works, machinery and equipment of which were exempted hereunder on March 13, 1995.

*Fourth.* All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof, and for the meeting of fire companies, whether belonging to any rural fire district, township fire district, town, city or village, or to any fire company organized therein or therefor.

*Fifth.* All property, real and personal, owned by county fair associations organized and operating under the provisions of K.S.A. 2-125 *et seq.*, and amendments thereto.

*Sixth.* Property acquired and held by any municipality under the municipal housing law (K.S.A. 17-2337 *et seq.*), and amendments thereto, except that such exemption shall not apply to any portion of the project used by a nondwelling facility for profit making enterprise.

*Seventh.* All property of a municipality, acquired or held under and for the purposes of the urban renewal law (K.S.A. 17-4742 *et seq.*), and amendments thereto, except that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property

in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

*Eighth.* All property acquired and held by the Kansas armory board for armory purposes under the provisions of K.S.A. 48-317, and amendments thereto.

*Ninth.* All property acquired and used by the Kansas turnpike authority under the authority of K.S.A. 68-2001 *et seq.*, and amendments thereto, K.S.A. 68-2030 *et seq.*, and amendments thereto, K.S.A. 68-2051 *et seq.*, and amendments thereto, and K.S.A. 68-2070 *et seq.*, and amendments thereto.

*Tenth.* All property acquired and used for state park purposes by the Kansas department of wildlife ~~and parks~~, *parks and tourism*.

*Eleventh.* The state office building constructed under authority of K.S.A. 75-3607 *et seq.*, and amendments thereto, and the site upon which such building is located.

*Twelfth.* All buildings erected under the authority of K.S.A. 76-6a01 *et seq.*, and amendments thereto, and all other student union buildings and student dormitories erected upon the campus of any institution mentioned in K.S.A. 76-6a01, and amendments thereto, by any other non-profit corporation.

*Thirteenth.* All buildings, as the same is defined in subsection (c) of K.S.A. 76-6a13, and amendments thereto, which are erected, constructed or acquired under the authority of K.S.A. 76-6a13 *et seq.*, and amendments thereto, and building sites acquired therefor.

*Fourteenth.* All that portion of the waterworks plant and system of the city of Kansas City, Missouri, now or hereafter located within the territory of the state of Kansas pursuant to the compact and agreement adopted by K.S.A. 79-205, and amendments thereto.

*Fifteenth.* All property, real and personal, owned by a groundwater management district organized and operating pursuant to K.S.A. 82a-1020, and amendments thereto.

*Sixteenth.* All property, real and personal, owned by the joint water district organized and operating pursuant to K.S.A. 80-1616 *et seq.*, and amendments thereto.

*Seventeenth.* All property, including interests less than fee ownership, acquired for the state of Kansas by the secretary of transportation or a predecessor in interest which is used in the administration, construction, maintenance or operation of the state system of highways, regardless of how or when acquired.

*Eighteenth.* Any building used primarily as an industrial training center for academic or vocational education programs designed for and operated under contract with private industry, and located upon a site owned, leased or being acquired by or for an area vocational school, an area vocational-technical school, a technical college, or a community college,

as defined by K.S.A. 72-4412, and amendments thereto, and the site upon which any such building is located.

*Nineteenth.* For all taxable years commencing after December 31, 1997, all buildings of an area vocational school, an area vocational-technical school, a technical college or a community college, as defined by K.S.A. 72-4412, and amendments thereto, which are owned and operated by any such school or college as a student union or dormitory and the site upon which any such building is located.

*Twentieth.* For all taxable years commencing after December 31, 1997, all personal property which is contained within a dormitory that is exempt from property taxation and which is necessary for the accommodation of the students residing therein.

*Twenty-First.* All real property from and after the date of its transfer by the city of Olathe, Kansas, to the Kansas state university foundation, all buildings and improvements thereafter erected and located on such property, and all tangible personal property, which is held, used or operated for educational and research purposes at the Kansas state university Olathe innovation campus located in the city of Olathe, Kansas.

*Twenty-Second.* All real property, and all tangible personal property, owned by postsecondary educational institutions, as that term is defined in K.S.A. 74-3201b, and amendments thereto, or by the board of regents on behalf of the postsecondary educational institutions, which is leased by a for profit company and is actually and regularly used exclusively for research and development purposes so long as any rental income received by such postsecondary educational institution or the board of regents from such a company is used exclusively for educational or scientific purposes. Any such lease or occupancy described in this section shall be for a term of no more than five years.

Except as otherwise specifically provided, the provisions of this section shall apply to all taxable years commencing after December 31, 2009.

Sec. 125. K.S.A. 79-3221e is hereby amended to read as follows: 79-3221e. (a) The director of taxation of the department of revenue shall determine annually the total amount designated for use in the Kansas nongame wildlife improvement program pursuant to K.S.A. 79-3221d, and amendments thereto, and shall report such amount to the state treasurer who shall credit the entire amount thereof to the nongame wildlife improvement fund which fund is hereby established in the state treasury. In the case where donations are made pursuant to K.S.A. 79-3221d, and amendments thereto, the director shall remit the entire amount thereof to the state treasurer who shall credit the same to such fund. All moneys deposited in such fund shall be used solely for the purpose of preserving, protecting, perpetuating and enhancing nongame wildlife in this state. All expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued

pursuant to vouchers approved by the secretary of wildlife ~~and parks,~~ *parks and tourism* or the secretary's designee.

(b) As used in K.S.A. 79-3221d, and amendments thereto, and this section, "nongame wildlife" means any species of wildlife not legally classified as a game species or furbearer by statute or by rules and regulations adopted pursuant to statute.

Sec. 126. K.S.A. 2011 Supp. 79-3221h is hereby amended to read as follows: 79-3221h. (a) All federal moneys received pursuant to federal assistance, federal-aid funds and federal-aid grant reimbursements related to the nongame wildlife improvement fund under the control, authorities and duties of the *Kansas* department of wildlife ~~and parks,~~ *parks and tourism*, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the nongame wildlife improvement ~~fund—federal fund—federal,~~ which is hereby created. *The nongame wildlife improvement fund—federal is hereby redesignated as the plant and animal disease and pest control fund.*

(b) No moneys derived from sources described in subsection (a) shall be used for any purpose other than the administration of matters which relate to purposes authorized under K.S.A. 79-3221e, and amendments thereto, and which are under the control, authorities and duties of the secretary of wildlife ~~and parks,~~ *parks and tourism* and the *Kansas* department of wildlife ~~and parks,~~ *parks and tourism* as provided by law.

(c) *On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the plant and animal disease and pest control fund, interest earnings based on:*

(1) *The average daily balance of moneys in the plant and animal disease and pest control fund; and*

(2) *the net earnings rate of the pooled money investment portfolio for the preceding month.*

~~(c)~~(d) All expenditures from the ~~nongame wildlife improvement fund—federal~~ *plant and animal disease and pest control fund*, shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of wildlife ~~and parks,~~ *parks and tourism*.

Sec. 127. K.S.A. 2011 Supp. 79-3234 is hereby amended to read as follows: 79-3234. (a) All reports and returns required by this act shall be preserved for three years and thereafter until the director orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be unlawful for the secretary, the director, any deputy, agent, clerk or

other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act; and it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer or employee engaged in the administration of this act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government, or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Kansas, any other state or by the United States government.

(c) The secretary or the secretary's designee may: (1) Publish statistics, so classified as to prevent the identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or other legal representatives of the state;

(3) provide the post auditor access to all income tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

(4) disclose taxpayer information from income tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) disclose to the secretary of commerce the following: (A) Specific taxpayer information related to financial information previously submitted by the taxpayer to the secretary of commerce concerning or relevant to any income tax credits, for purposes of verification of such information or evaluating the effectiveness of any tax credit or economic incentive program administered by the secretary of commerce; (B) the amount of payroll withholding taxes an employer is retaining pursuant to K.S.A. 2011 Supp. 74-50,212, and amendments thereto; (C) information received from businesses completing the form required by K.S.A. 2011 Supp. 74-50,217, and amendments thereto; and (D) findings related to a compliance audit conducted by the department of revenue upon the request of the secretary of commerce pursuant to K.S.A. 2011 Supp. 74-50,215, and amendments thereto;

(6) disclose income tax returns to the state gaming agency to be used solely for the purpose of determining qualifications of licensees of and applicants for licensure in tribal gaming. Any information received by the state gaming agency shall be confidential and shall not be disclosed except

to the executive director, employees of the state gaming agency and members and employees of the tribal gaming commission;

(7) disclose the taxpayer's name, last known address and residency status to the *Kansas* department of wildlife and parks, *parks and tourism* to be used solely in its license fraud investigations;

(8) disclose the name, residence address, employer or Kansas adjusted gross income of a taxpayer who may have a duty of support in a title IV-D case to the secretary of the Kansas department of social and rehabilitation services for use solely in administrative or judicial proceedings to establish, modify or enforce such support obligation in a title IV-D case. In addition to any other limits on use, such use shall be allowed only where subject to a protective order which prohibits disclosure outside of the title IV-D proceeding. As used in this section, "title IV-D case" means a case being administered pursuant to part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*) and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e);

(9) permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an income tax, or the authorized representative of either, to inspect the income tax returns made under this act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in income tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the income tax laws, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of tax laws of such state, the state of Kansas or of the United States;

(10) communicate to the executive director of the Kansas lottery information as to whether a person, partnership or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer;

(11) communicate to the executive director of the Kansas racing commission as to whether a person, partnership or corporation has failed to meet any tax obligation to the state of Kansas for the purpose of determining whether such person, partnership or corporation is eligible for a facility owner license or facility manager license pursuant to the Kansas parimutuel racing act;

(12) provide such information to the executive director of the Kansas public employees retirement system for the purpose of determining that certain individuals' reported compensation is in compliance with the Kan-

sas public employees retirement act, K.S.A. 74-4901 *et seq.*, and amendments thereto; and

(13) (i) provide taxpayer information of persons suspected of violating K.S.A. 2011 Supp. 44-766, and amendments thereto, to the secretary of labor or such secretary's designee for the purpose of determining compliance by any person with the provisions of *subsection (i)(3)(D) of K.S.A. 44-703(i)(3)(D)* and K.S.A. 2011 Supp. 44-766, and amendments thereto. The information to be provided shall include all relevant information in the possession of the department of revenue necessary for the secretary of labor to make a proper determination of compliance with the provisions of *subsection (i)(3)(D) of K.S.A. 44-703(i)(3)(D)* and K.S.A. 2011 Supp. 44-766, and amendments thereto, and to calculate any unemployment contribution taxes due. Such information to be provided by the department of revenue shall include, but not be limited to, withholding tax and payroll information, the identity of any person that has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act, K.S.A. 79-3294 *et seq.*, and amendments thereto, and the results or status of such audit or investigation.

(ii) Any person receiving tax information under the provisions of this paragraph shall be subject to the same duty of confidentiality imposed by law upon the personnel of the department of revenue and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality.

(iii) Each of the secretary of labor and the secretary of revenue may adopt rules and regulations necessary to effect the provisions of this paragraph.

(d) Any person receiving information under the provisions of subsection (c) shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e).

(e) Any violation of subsection (b) or (c) is a class A nonperson misdemeanor and, if the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(f) Nothing in this section shall be construed to allow disclosure of the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information, where such disclosure is prohibited by the federal internal revenue code as in effect on September 1, 1996, and amendments thereto, related federal internal revenue rules or regulations, or other federal law.

Sec. 128. K.S.A. 2011 Supp. 79-3234b is hereby amended to read as follows: 79-3234b. (a) All reports and returns required by this act shall be preserved for three years and thereafter until the director orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided

in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act; and it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer or employee engaged in the administration of this act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government, or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Kansas, any other state or by the United States government.

(c) The secretary or the secretary's designee may: (1) Publish statistics, so classified as to prevent the identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or other legal representatives of the state;

(3) provide the post auditor access to all income tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

(4) disclose taxpayer information from income tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) disclose to the secretary of commerce the following: (A) Specific taxpayer information related to financial information previously submitted by the taxpayer to the secretary of commerce concerning or relevant to any income tax credits, for purposes of verification of such information or evaluating the effectiveness of any tax credit or economic incentive program administered by the secretary of commerce; (B) the amount of payroll withholding taxes an employer is retaining pursuant to K.S.A. 2011 Supp. 74-50,212, and amendments thereto; (C) information received from businesses completing the form required by K.S.A. 2011 Supp. 74-50,217, and amendments thereto; and (D) findings related to a compliance audit conducted by the department of revenue upon the request of the secretary of commerce pursuant to K.S.A. 2011 Supp. 74-50,215, and amendments thereto;

(6) disclose income tax returns to the state gaming agency to be used

solely for the purpose of determining qualifications of licensees of and applicants for licensure in tribal gaming. Any information received by the state gaming agency shall be confidential and shall not be disclosed except to the executive director, employees of the state gaming agency and members and employees of the tribal gaming commission;

(7) disclose the taxpayer's name, last known address and residency status to the *Kansas* department of wildlife ~~and parks~~, *parks and tourism* to be used solely in its license fraud investigations;

(8) disclose the name, residence address, employer or Kansas adjusted gross income of a taxpayer who may have a duty of support in a title IV-D case to the secretary of the Kansas department of social and rehabilitation services for use solely in administrative or judicial proceedings to establish, modify or enforce such support obligation in a title IV-D case. In addition to any other limits on use, such use shall be allowed only where subject to a protective order which prohibits disclosure outside of the title IV-D proceeding. As used in this section, "title IV-D case" means a case being administered pursuant to part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*), and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e);

(9) permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an income tax, or the authorized representative of either, to inspect the income tax returns made under this act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in income tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the income tax laws, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of tax laws of such state, the state of Kansas or of the United States;

(10) communicate to the executive director of the Kansas lottery information as to whether a person, partnership or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer;

(11) communicate to the executive director of the Kansas racing commission as to whether a person, partnership or corporation has failed to meet any tax obligation to the state of Kansas for the purpose of determining whether such person, partnership or corporation is eligible for a facility owner license or facility manager license pursuant to the Kansas parimutuel racing act;

(12) provide such information to the executive director of the Kansas public employees retirement system for the purpose of determining that certain individuals' reported compensation is in compliance with the Kansas public employees retirement act at K.S.A. 74-4901 *et seq.*, and amendments thereto;

(13) provide taxpayer information of persons suspected of violating K.S.A. 2011 Supp. 44-766, and amendments thereto, to the staff attorneys of the department of labor for the purpose of determining compliance by any person with the provisions of K.S.A. 2011 Supp. 44-766, and amendments thereto, which information shall be limited to withholding tax and payroll information, the identity of any person that has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act, K.S.A. 79-3294 *et seq.*, and amendments thereto, and the results or status of such audit or investigation; and

(14) provide such information to the state treasurer for the sole purpose of carrying out the provisions of K.S.A. 58-3934, and amendments thereto. Such information shall be limited to current and prior addresses of taxpayers or associated persons who may have knowledge as to the location of an owner of unclaimed property. For the purposes of this paragraph, "associated persons" includes spouses or dependents listed on income tax returns.

(d) Any person receiving information under the provisions of subsection (c) shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e).

(e) Any violation of subsection (b) or (c) is a class A nonperson misdemeanor and, if the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(f) Nothing in this section shall be construed to allow disclosure of the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information, where such disclosure is prohibited by the federal internal revenue code as in effect on September 1, 1996, and amendments thereto, related federal internal revenue rules or regulations, or other federal law.

Sec. 129. K.S.A. 79-32,203 is hereby amended to read as follows: 79-32,203. (a) There shall be allowed two types of credits against the tax liability of a taxpayer imposed under the Kansas income tax act related to real property that is both:

(1) Designated by the secretary of wildlife ~~and parks~~, *parks and tourism* pursuant to the nongame and endangered species conservation act as critical habitat for a threatened or endangered species or certified by the secretary of wildlife ~~and parks~~, *parks and tourism* as land known to support populations of species in need of conservation; and

(2) included in management activities as part of a recovery plan, or

an agreement identified in subsection (b) of K.S.A. 32-962, and amendments thereto, as approved by the secretary of wildlife ~~and parks~~, *parks and tourism* for a species listed as threatened, endangered or in need of conservation pursuant to the nongame and endangered species conservation act.

(b) There shall be allowed as an annual credit against the tax liability of a taxpayer imposed an amount equal to the total amount paid by the taxpayer during the taxable year for ad valorem taxes and assessments that are imposed by the state or by any political or taxing subdivision of the state or related to real property described in subsection (a) for each year that the management activities specified in the recovery plan or agreement described in subsection (a)(2) remain in effect and apply to such real property. The credit allowed by this subsection shall not exceed the amount of tax imposed under the Kansas income tax act reduced by the sum of any other credits allowable pursuant to law.

(c) There shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act an amount equal to costs incurred by the taxpayer for habitat management or construction and maintenance of improvements on real property described in subsection (a). Such costs shall be for management or improvements in accordance with management activities as a part of a recovery plan or conservation agreement identified in subsection (b) of K.S.A. 32-962, and amendments thereto, as approved by the secretary of wildlife ~~and parks~~, *parks and tourism*, for a species listed as threatened, endangered or in need of conservation pursuant to the nongame and endangered species conservation act. The tax credit allowed by this subsection shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the taxpayer may elect, at the time of filing the initial return upon which the credit is claimed, to: (1) Carry over the amount thereof that exceeds such tax liability for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability; or (2) receive reimbursement of the amount thereof that exceeds such tax liability, to be paid from amounts appropriated to the secretary of revenue for that purpose upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person or persons designated by the secretary.

(d) The provisions of this section shall be applicable to all taxable years commencing after December 31, 1997, but before January 1, 2003.

Sec. 130. K.S.A. 2011 Supp. 79-5212 is hereby amended to read as follows: 79-5212. (a) Whenever a taxpayer liable to pay any tax, penalty or interest assessed pursuant to K.S.A. 79-5205, and amendments thereto,

refuses or neglects to immediately pay the amount due, the director of taxation may issue one or more warrants for the immediate collection of the amount due, directed to the sheriff of any county of the state commanding the sheriff to seize and sell the real and personal property of the taxpayer, or to seize, appraise and dispose of the firearms of the taxpayer, found within the sheriff's county to satisfy the amount specified on the warrant and the cost of executing the warrant. The director of taxation may also issue one or more warrants directed to any employee of the department of revenue commanding the employee to seize and sell the real and personal property of the taxpayer, or to seize, appraise and dispose of the firearms of the taxpayer, found anywhere within the state of Kansas to satisfy the amount specified on the warrant and the cost of executing the warrant. A copy of the warrant shall also be mailed to the taxpayer at the taxpayer's last known address or served upon the taxpayer in person.

(b) The sheriff or department of revenue employee shall proceed to execute upon the warrant in the same manner as provided for attachment orders by K.S.A. 60-706, 60-707 and 60-710, and amendments thereto, except as otherwise provided herein. In the execution of a warrant issued to a department of revenue employee, the employee shall have all of the powers conferred by law upon sheriffs. Any law enforcement officer may assist in the execution of a warrant if requested to do so by a department of revenue employee.

(c) No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a seizure and sale, or in the case of firearms, sale or disposal, under any warrant.

(d) A third party holding funds or other personal property of the taxpayer shall immediately, or as soon thereafter as possible, after service of the warrant on such third party, deliver such funds or other personal property to the sheriff or department of revenue employee, who shall then deliver such to the director of taxation or the director's designee for deposit toward the balance due on the taxpayer's assessment.

(e) The sheriff or department of revenue employee shall make return of such warrant to the director of taxation within 60 days from the date of the warrant. If property is seized, then the sheriff or department of revenue employee shall also make return of such warrant to the clerk of the district court in the county where the property was seized.

(f) (1) If the taxpayer fails to appeal the assessment as provided by subsection (b) of K.S.A. 79-5205, and amendments thereto, or if the taxpayer requests a hearing and a final order has been entered by the director of taxation as to the correctness of the assessment, then the sheriff or department of revenue employee shall sell the seized property at public auction, except that firearms may be sold at public auction or disposed of as provided in subsection (2). The provisions of K.S.A. 60-2406, and amendments thereto, shall apply to liens against the property being sold.

Notice of the sale of personal property shall be given in accordance with K.S.A. 60-2409, and amendments thereto. Notice of the sale of real property shall be given in accordance with K.S.A. 60-2410, and amendments thereto. The taxpayer shall have the right to redeem real property within a period of six months from the date of the sale.

(2) In the case of seized firearms not sold, the director of taxation shall obtain an appraisal value performed by a federally licensed firearms dealer or an employee thereof. Such value shall be credited against the taxpayer's outstanding liability. Subsequent to such appraisal and credit against the taxpayer's outstanding liability, the director shall transfer such firearm or firearms as follows:

(A) If the firearm or firearms have historical significance, the director may transfer the firearm or firearms to the Kansas state historical society;

(B) the director may transfer the firearm or firearms to the secretary of wildlife ~~and parks~~, *parks and tourism*;

(C) the director may transfer the firearm or firearms to the director of the Kansas bureau of investigation; or

(D) the director may transfer the firearm or firearms to such city or county law enforcement agency where the firearm was seized.

At least 30 days prior to the transfer of such firearm or firearms, pursuant to this subsection, the director shall give written notice by mail to the taxpayer at the taxpayer's last known address of the appraised value of such firearm or firearms and the date that the director intends to transfer such firearm or firearms. The taxpayer may appeal the appraised value of any such firearm or firearms by filing a written request for a hearing before the district court in which the tax warrant used to seize such firearm or firearms was filed. Such request must be filed with the district court within 15 days after such notice to the taxpayer was mailed by the director. If no appeal is filed with the district court within 15 days, or if upon appeal the district court rules against the taxpayer, the director shall transfer such firearm or firearms.

(g) The director of taxation may also direct the sheriff or department of revenue employee to file any warrant issued pursuant to subsection (a) with the clerk of the district court of any county in Kansas, and thereupon the clerk shall enter in the appearance docket the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of it, interest and penalties for which the warrant is issued and the date such copy is filed and note the taxpayer's name in the general index. No fee shall be charged for such entry. The amount of such warrant shall thereupon become a lien upon the title to, and interest in, the real property of the taxpayer located within such county. Thereupon, the director of taxation shall have the same remedies to collect the amount of the tax, penalty and interest, as if the state of Kansas had recovered judgment against the taxpayer, including immediately garnishing the wages or other property of the taxpayer pursuant to K.S.A. 60-716 *et seq.*, and amendments

thereto. Such remedies shall be in addition to the other collection remedies provided herein.

(h) The director of taxation shall have the right at any time to issue alias warrants until the full amount of the tax, penalty and interest is collected.

Sec. 131. K.S.A. 82a-209 is hereby amended to read as follows: 82a-209. Whenever the channel, or any part thereof, of any navigable stream in or bordering upon the state of Kansas has ~~heretofore~~ *previously* been, or shall hereafter be, changed or altered by such stream establishing a new channel by flood or avulsion, so that any land situated between the banks of such stream at high-water mark shall be abandoned or no longer used as a channel for such stream and the title to such channel is not controlled by K.S.A. 24-454, and amendments thereto, or the provisions of article 2 of chapter 82a of the Kansas Statutes Annotated are not applicable, the *Kansas* secretary of state ~~of the state of Kansas~~ shall cause such land to be surveyed by a surveyor selected by the secretary of state, and may thereafter sell and convey the same, or any part thereof, by grant or patent, as hereinafter provided. Any such survey and appropriate field notes, maps, records or other papers relating to such survey shall be filed with the register of the state land office. A certified copy of such survey may be filed in the office of the register of deeds of the county within which the land is located. Such land, or any part thereof, may be conveyed to the ~~Kansas department of wildlife and parks~~, *parks and tourism* or may be sold at the best price obtainable to be agreed upon between the secretary of state, acting for and in behalf of the state of Kansas, and any person desiring to buy the same. In any case where any such land has been a part of the bed or channel of any navigable stream bordering on the state of Kansas and the survey establishes parts of such land lying between the Kansas bank of such stream at the high-water mark and the center of the main channel of such stream to be the property of this state which prior to the survey has been occupied and claimed by any person under any patent, conveyance or grant issued or made after April, 1952, to such person from a bordering state or a political subdivision thereof, the secretary of state first shall offer such parts of such lands to such persons occupying and claiming the same as aforesaid at a price represented by the proportionate cost of such survey determined by applying the total cost of the survey to the total acreage of lands covered by said survey. Upon satisfactory proof made thereof, the secretary of state shall allow as a credit to such purchase price the actual cash paid for any such patent, conveyance or grant and the actual costs of any permanent improvements made to any such lands or parts thereof by the person occupying and claiming the same. Upon the refusal of any such offer to such person, the land may be sold by the secretary of state as herein provided.

If it is not possible for such prospective purchaser and the secretary of state to agree on a price, then the land shall be sold by the secretary of state as one tract, or in different tracts, as the secretary of state may determine, under an appraisement made by three disinterested persons residing in the county or counties where such abandoned channel sought to be sold is situated, which appraisers shall be appointed by the secretary of state. Such sale shall be for not less than three-fourths of the appraised value. In no case shall such land be sold for less than the cost of surveying, appraising and selling the same.

Sec. 132. K.S.A. 2011 Supp. 82a-220 is hereby amended to read as follows: 82a-220. (a) As used in this act:

(1) "Conservation project" means any project or activity that the director of the Kansas water office determines will assist in restoring, protecting, rehabilitating, improving, sustaining or maintaining the banks of the Arkansas, Kansas or Missouri rivers from the effects of erosion;

(2) "director" means the director of the Kansas water office; and

(3) "state property" means real property currently owned in full or in part by the state in the Arkansas, Kansas or Missouri rivers in Kansas, in and along the bed of the river to the ordinary high water mark on the banks of such rivers.

(b) (1) The director is hereby authorized to negotiate and grant easements on state property for construction and maintenance of conservation projects with cooperating landowners in such projects for the expected life of the project and with such terms and conditions as the director, after consultation with the Kansas department of agriculture, the Kansas department of health and environment, the Kansas department of wildlife and parks, parks and tourism and the state conservation commission, may deem appropriate.

(2) Notice of the easement shall be given to the county or counties in which the easement is proposed and to any municipality or other governmental entity that, in the opinion of the director, holds a riparian interest in the river and may have an interest in the project or results thereof. Those persons or entities receiving notice shall have a period, not to exceed 30 days, to provide comment on the proposed easement to the director.

(3) In the event such an easement is proposed to be granted on state property owned or managed by any other agency of the state, the director shall give notice of the proposed easement and project to that agency and shall jointly negotiate any easement so granted.

(4) A copy of all easements so entered shall be filed by the director with the office of the secretary of state and the office of the register of deeds for the county or counties in which the easement is located.

(c) The director shall adopt rules and regulations necessary to carry out the provisions of this act.

Sec. 133. K.S.A. 82a-326 is hereby amended to read as follows: 82a-326. When used in this act:

(a) “Water development project” means any project or plan which may be allowed or permitted pursuant to K.S.A. 24-126, 24-1213, 82a-301 *et seq.*, and amendments thereto, or the multipurpose small lakes program act, and amendments thereto;

(b) “environmental review agencies” means the:

- (1) Kansas department of wildlife ~~and parks~~, *parks and tourism*;
- (2) Kansas forest service;
- (3) state biological survey;
- (4) Kansas department of health and environment;
- (5) state historical society;
- (6) state conservation commission; and
- (7) state corporation commission.

Sec. 134. K.S.A. 2011 Supp. 82a-903 is hereby amended to read as follows: 82a-903. In accordance with the policies and long-range goals and objectives established by the legislature, the office shall formulate on a continuing basis a comprehensive state water plan for the management, conservation and development of the water resources of the state. Such state water plan shall include sections corresponding with water planning areas as determined by the office. The Kansas water office and the Kansas water authority shall seek advice from the general public and from committees consisting of individuals with knowledge of and interest in water issues in the water planning areas. The plan shall set forth the recommendations of the office for the management, conservation and development of the water resources of the state, including the general location, character, and extent of such existing and proposed projects, programs, and facilities as are necessary or desirable in the judgment of the office to accomplish such policies, goals and objectives. The plan shall specify standards for operation and management of such projects, programs, and facilities as are necessary or desirable. The plan shall be formulated and used for the general purpose of accomplishing the coordinated management, conservation and development of the water resources of the state. The division of water resources of the Kansas department of agriculture, state geological survey, the division of environment of the department of health and environment, *Kansas* department of wildlife ~~and parks~~, *parks and tourism*, state conservation commission and all other interested state agencies shall cooperate with the office in formulation of such plan.

Sec. 135. K.S.A. 2011 Supp. 82a-1501 is hereby amended to read as follows: 82a-1501. As used in the water transfer act:

(a) (1) “Water transfer” means the diversion and transportation of water in a quantity of 2,000 acre feet or more per year for beneficial use at a point of use outside a 35-mile radius from the point of diversion of such water. In determining the amount of water transferred in the case

of a water transfer supplying water to multiple public water supply systems or other water users, the amount of water transferred shall be considered to be the aggregate amount of water which will be supplied by the transfer to all public water supply systems and other water users whose points of use are located outside a 35-mile radius from the point of diversion of such water.

(2) Water transfer does not include a release of water from a reservoir to the water's natural watercourse for use within the natural watercourse or watershed, made under the authority of the state water plan storage act (K.S.A. 82a-1301 *et seq.*, and amendments thereto) or the water assurance program act (K.S.A. 82a-1330 *et seq.*, and amendments thereto).

(b) "Point of diversion" means:

(1) The point where the longitudinal axis of the dam crosses the center line of the stream in the case of a reservoir;

(2) the location of the headgate or intake in the case of a direct diversion from a river, stream or other watercourse;

(3) the location of a well in the case of groundwater diversion; or

(4) the geographical center of the points of diversion in the case of multiple diversion points.

(c) "Point of use" means the geographical center of each water user's proposed or authorized place of use where any water authorized by the proposed transfer will be used.

(d) "Chief engineer" means the chief engineer of the division of water resources of the Kansas department of agriculture.

(e) "Secretary" means the secretary of the department of health and environment, or the director of the division of environment of the department of health and environment if designated by the secretary.

(f) "Director" means the director of the Kansas water office.

(g) "Panel" means the water transfer hearing panel.

(h) "Party" means: (1) The applicant; or (2) any person who successfully intervenes pursuant to K.S.A. 82a-1503, and amendments thereto, and actively participates in the hearing. "Party" does not mean a person who makes a limited appearance for the purpose of presenting a statement for or against the water transfer.

(i) "Commenting agencies" means groundwater management districts and state natural resource and environmental agencies, including but not limited to the Kansas department of health and environment, the Kansas water office, the Kansas water authority, the Kansas department of wildlife and parks, *parks and tourism* and the division of water resources of the Kansas department of agriculture.

(j) "Public water supply system" means any water supply system, whether publicly or privately owned, for which a permit is required pursuant to K.S.A. 65-163, and amendments thereto.

Sec. 136. K.S.A. 2011 Supp. 82a-2001 is hereby amended to read as follows: 82a-2001. As used in this act:

(a) (1) “Classified stream segments” shall include all stream segments that are waters of the state as defined in subsection (a) of K.S.A. 65-161, and amendments thereto, and waters described in subsection (d) of K.S.A. 65-171d, and amendments thereto, that:

(A) Are indicated on the federal environmental protection agency’s reach file 1 (RF1) (1982) and have the most recent 10-year median flow of equal to or in excess of one cubic foot per second based on data collected and evaluated by the United States geological survey or in the absence of stream segment flow data, calculations of flow conducted by extrapolation methods provided by the United States geological survey;

(B) have the most recent 10-year median flow of equal to or in excess of one cubic foot per second based on data collected and evaluated by the United States geological survey or in the absence of stream segment flow data, calculations of flow conducted by extrapolation methods provided by the United States geological survey;

(C) are actually inhabited by threatened or endangered aquatic species listed in rules and regulations promulgated by the Kansas department of wildlife and parks, *parks and tourism* or the United States fish and wildlife service;

(D) (i) scientific studies conducted by the department show that during periods of flow less than one cubic foot per second stream segments provide important refuges for aquatic life and permit biological recolonization of intermittently flowing segments; and

(ii) a ~~cost/benefit~~ *cost-benefit* analysis conducted by the department and taking into account the economic and social impact of classifying the stream segment indicates that the benefits of classifying the stream segment outweigh the costs of classifying the stream segment, as consistent with the federal clean water act and federal regulations; or

(E) are at the point of discharge on the stream segment and downstream from such point where the department has issued a national pollutant discharge elimination system permit other than a permit for a confined feeding facility, as defined in K.S.A. 65-171d, and amendments thereto.

(2) Classified stream segments other than those described in subsection (a)(1)(E) shall not include ephemeral streams; grass, vegetative or other waterways; culverts; or ditches.

(3) Any definition of classified stream or “classified stream segment” in rules and regulations or law that is inconsistent with this definition is hereby declared null and void.

(b) “Department” means the department of health and environment.

(c) “Designated uses of classified stream segments” shall be defined as follows:

(1) “Agricultural water supply use” means the use of a classified stream segment for agricultural purposes, including the following:

(A) “Irrigation” means the withdrawal of water from a classified stream segment for application onto land; or

(B) “livestock watering” means the provision of water from a classified stream segment to livestock for consumption.

(2) “Aquatic life support use” means the use of a classified stream segment for the maintenance of the ecological integrity of streams, lakes and wetlands, including the sustained growth and propagation of native aquatic life; naturalized, important, recreational aquatic life; and indigenous or migratory semiaquatic or terrestrial wildlife directly or indirectly dependent on surface water for survival. Categories of aquatic life support use include:

(A) “Special aquatic life use waters” means classified stream segments that contain combinations of habitat types and indigenous biota not found commonly in the state, or classified stream segments that contain representative populations of threatened or endangered species, that are listed in rules and regulations promulgated by the Kansas department of wildlife ~~and parks~~, *parks and tourism* or the United States fish and wildlife service.

(B) “Expected aquatic life use waters” means classified stream segments containing habitat types and indigenous biota commonly found or expected in the state.

(C) “Restricted aquatic life use waters” means classified stream segments containing indigenous biota limited in abundance or diversity by the physical quality or availability of habitat, due to natural deficiencies or artificial modifications, compared to more suitable habitats in adjacent waters.

(3) “Domestic water supply” means the use of a classified stream segment, after appropriate treatment, for the production of potable water.

(4) “Food procurement use” means the use of a classified stream segment for the obtaining of edible forms of aquatic or semiaquatic life for human consumption.

(5) “Groundwater recharge use” means the use of a classified stream segment for the replenishing of fresh or usable groundwater resources. This use may involve the infiltration and percolation of surface water through sediments and soils or the direct injection of surface water into underground aquifers.

(6) “Industrial water supply use” means the use of a classified stream segment for nonpotable purposes by industry, including withdrawals for cooling or process water.

(7) (A) “Recreational use” means:

(i) Primary contact recreational use is use of a classified stream segment for recreation during the period from April 1 through October 31 of each year, provided such classified stream segment is capable of supporting the recreational activities of swimming, skin diving, water skiing, wind surfing, kayaking or mussel harvesting where the body is intended

to be immersed in surface water to the extent that some inadvertent ingestion of water is probable.

(a) Primary contact recreational use-Class A: Use of a classified stream segment for recreation during the period from April 1 through October 31 of each year, and the classified stream segment is a designated public swimming area. Water quality criterion for bacterial indicator organisms applied to Class A waters shall be set at an illness rate of eight or more per 1000 swimmers. The classified stream segment shall only be considered impaired for primary contact recreational use-Class A if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion. The water quality criterion for primary contact recreational use-Class A waters during the period November 1 through March 31 of each year shall be equal to the criterion applied to secondary contact recreational use-Class A waters.

(b) Primary contact recreational use-Class B: Use of a classified stream segment for recreation, where moderate full body contact recreation is expected, during the period from April 1 through October 31 of each year, and the classified stream segment is by law or written permission of the landowner open to and accessible by the public. Water quality criterion for bacterial indicator organisms applied to Class B waters shall be set at an illness rate of 10 or more per 1000 swimmers. The classified stream segment shall only be considered impaired for primary contact recreational use-Class B if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion. The water quality criterion for primary contact recreational use-Class B waters during the period November 1 through March 31 of each year shall be equal to the criterion applied to secondary contact recreational use-Class A waters.

(c) Primary contact recreational use-Class C: Use of a classified stream segment for recreation, where full body contact recreation is infrequent during the period from April 1 through October 31 of each year, and is not open to and accessible by the public under Kansas law and is capable of supporting the recreational activities of swimming, skin diving, water-skiing, wind surfing, boating, mussel harvesting, wading or fishing. Water quality criterion for bacterial indicator organisms applied to Class C waters shall be set at an illness rate of 12 or more per 1000 swimmers. The classified stream segment shall only be considered impaired for primary contact recreational use-Class C if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion. The water quality criterion for primary contact recreational use-Class C waters during the period November 1 through March 31 of each year shall be equal to the criterion applied to secondary contact recreational use-Class B waters.

(ii) Secondary contact recreational use is use of a classified stream segment for recreation, provided such classified stream segment is capable of supporting the recreational activities of wading, fishing, canoeing, motor boating, rafting or other types of boating where the body is not intended to be immersed and where ingestion of surface water is not probable.

(a) Secondary contact recreational use-Class A: Use of a classified stream segment for recreation capable of supporting the recreational activities of wading or fishing and the classified stream segment is by law or written permission of the landowner open to and accessible by the public. Water quality criterion for bacterial indicator organisms applied to secondary contact recreational use-Class A waters shall be nine times the criterion applied to primary contact recreational use-Class B waters. The classified stream segment shall only be considered impaired for secondary contact recreational use-Class A if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion.

(b) Secondary contact recreational use-Class B: Use of a classified stream segment for recreation capable of supporting the recreational activities of wading or fishing and the classified stream segment is not open to and accessible by the public under Kansas law. Water quality criterion for bacterial indicator organisms applied to secondary contact recreational use-Class B waters shall be nine times the criterion applied to primary contact recreational-Class C use waters. The classified stream segment shall only be considered impaired for secondary contact recreational use-Class B if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion.

(B) If opposite sides of a classified stream segment would have different designated recreational uses due to differences in public access, the designated use of the entire classified stream segment may be the higher attainable use, notwithstanding that such designation does not grant the public access to both sides of such segment.

(C) Recreational use designations shall not apply to stream segments where the natural, ephemeral, intermittent or low flow conditions or water levels prevent recreational activities.

(d) "Ephemeral stream" means streams that flow only in response to precipitation and whose channel is at all times above the water table.

(e) "Secretary" means the secretary of health and environment.

Sec. 137. K.S.A. 2011 Supp. 82a-2204 is hereby amended to read as follows: 82a-2204. (a) The governing board of the horsethief reservoir benefit district shall consist of eight members, as follows:

(1) Four members to be appointed one each by the board of county commissioners of the four counties in the district;

(2) one member to be appointed one each by the governing body of the cities of Dodge City and Garden City;

(3) one member appointed by the Pawnee watershed district; and

(4) the secretary of wildlife and parks, *parks and tourism* or the secretary's designee.

(b) The member appointed by the Pawnee watershed district shall serve as chairperson of the governing board.

(c) The board shall meet upon call of the chairperson as necessary to carry out its duties under this act.

(d) The initial appointment for the members appointed by Finney and Gray counties and Dodge City shall be for a term of one year. The initial appointment for the members appointed by Ford and Hodgeman counties, Garden City and the Pawnee watershed district shall be for a term of two years. For each subsequent appointment, each appointed member of the board shall be appointed for a term of two years. Each member shall continue in such position until a successor is appointed and qualified. Members shall be eligible for reappointment. Whenever a vacancy occurs in the membership of the board, a successor shall be selected to fill such vacancy in the same manner as and for the unexpired term of the member such person is succeeding.

(e) The governing body shall have the following powers and duties:  
(1) Authority to impose a district wide sales tax pursuant to the provisions of this act;

(2) authority to issue bonds pursuant to the provisions of this act; and

(3) authority to manage recreational facilities within the district.

(f) The governing body shall provide that any fee schedule imposed for users of recreational facilities within the district may be set at a reduced rate or schedule for residents of any county which is a part of the district.

Sec. 138. K.S.A. 2-2473, 19-2803b, 19-2803d, 19-2817, 19-2822, 19-2835, 19-2836, 19-2839, 19-2844, 19-2844a, 19-2855, 19-2868, 19-2873, 19-2894, 19-3543, 32-802, 32-806, 32-807, 32-809, 32-832, 32-839, 32-840, 32-845, 32-846, 32-869, 32-874, 32-874c, 32-886, 32-887, 32-888, 32-976, 32-1040, 32-1041, 32-1049, 32-1051, 32-1052, 32-1053, 32-1203, 49-408, 58-3221, 58-3225, 65-189e, 68-406, 73-2101, 73-2102, 73-2103, 73-2104, 74-134, 74-3322, 74-5032, 74-5032a, 74-5090, 74-6614, 74-7901, 75-3339, 75-3907, 75-3908, 75-3910, 76-463, 79-3221e, 79-32,203, 82a-209 and 82a-326 and K.S.A. 2011 Supp. 2-1334, 21-5810, 21-6416, 32-701, 32-801, 32-805, 32-833, 32-844, 32-873, 32-874a, 32-874b, 32-874d, 32-874e, 32-906, 32-918, 32-930, 32-932, 32-938, 32-966, 32-996, 32-997, 32-998, 32-999, 32-1001, 32-1004, 32-1005, 32-1031, 32-1032, 32-1049a, 32-1050, 32-1054, 32-1062, 32-1063, 32-1064, 32-1066, 32-1102, 32-1112, 32-1174, 32-1306, 32-1308, 32-1310, 47-2101, 65-3424b, 65-3483, 65-5703, 74-5,133, 74-2622, 74-4722, 74-4911f, 74-5005, 74-5089, 74-

5091, 74-50,167, 74-50,168, 74-50,173, 74-5602, 74-9001, 74-9002, 74-9003, 74-9004, 74-9005, 74-9201, 75-1253, 75-2720, 75-2935, 75-37,121, 77-415, 77-421, 79-201a, 79-3221h, 79-3234, 79-3234b, 79-5212, 82a-220, 82a-903, 82a-1501, 82a-2001 and 82a-2204 are hereby repealed.

Sec. 139. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2012.

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## CHAPTER 48

### HOUSE BILL No. 2335

AN ACT concerning the Kansas act against discrimination; amending K.S.A. 44-1002 and 44-1006 and repealing the existing sections.

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

Section 1. K.S.A. 44-1002 is hereby amended to read as follows: 44-1002. When used in this act:

(a) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(b) "Employer" includes any person in this state employing four or more persons and any person acting directly or indirectly for an employer, labor organizations, nonsectarian corporations, organizations engaged in social service work and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.

(c) "Employee" does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.

(d) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

(e) "Employment agency" includes any person or governmental agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.

(f) "Commission" means the Kansas human rights commission created by this act.

(g) "Unlawful employment practice" includes only those unlawful practices and acts specified in K.S.A. 44-1009, and amendments thereto, and includes segregate or separate.

(h) "Public accommodations" means any person who caters or offers

goods, services, facilities and accommodations to the public. Public accommodations include, but are not limited to, any lodging establishment or food service establishment, as defined by K.S.A 36-501, and amendments thereto; any bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public; or any public transportation facility. Public accommodations do not include a religious or nonprofit fraternal or social association or corporation.

(i) “Unlawful discriminatory practice” means: (1) Any discrimination against persons, by reason of their race, religion, color, sex, disability, national origin or ancestry:

(A) In any place of public accommodations; or

(B) in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof; and

(2) any discrimination against persons in regard to membership in a nonprofit recreational or social association or corporation by reason of race, religion, sex, color, disability, national origin or ancestry if such association or corporation has 100 or more members and: (A) Provides regular meal service; and (B) receives payment for dues, fees, use of space, use of facility, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers.

This term shall not apply to a religious or private fraternal and benevolent association or corporation.

(j) “Disability” means, with respect to an individual:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment ~~by the person or entity alleged to have committed the unlawful discriminatory practice complained of.~~

Disability does not include current, illegal use of a controlled substance as defined in section 102 of the federal controlled substance act (21 U.S.C. § 802), in housing discrimination. In employment and public accommodation discrimination, “disability” does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the controlled substance act (21 U.S.C. § 812), when the covered entity acts on the basis of such use.

(k) (1) “Reasonable accommodation” means:

~~(1)(A)~~ Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

~~(2)(B)~~ job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations,

training materials or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(2) *A reasonable accommodation or a reasonable modification to policies, practices or procedures need not be provided to an individual who meets the definition of disability in K.S.A. 44-1002(j)(3), and amendments thereto.*

(l) “Regarded as having such an impairment” means the absence of a physical or mental impairment but regarding or treating an individual as though such an impairment exists. *An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that such individual has been subjected to an action prohibited under this act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. Subsection (j)(3) shall not apply to impairments that are transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.*

(m) “Major life activities” means:

(1) *Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.*

(2) *It also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.*

~~(m)~~(n) “Genetic screening or testing” means a laboratory test of a person’s genes or chromosomes for abnormalities, defects or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects or deficiencies, and not an indirect manifestation of genetic disorders.

Sec. 2. K.S.A. 44-1006 is hereby amended to read as follows: 44-1006.

(a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this act shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, religion, color, sex, disability, national origin or ancestry, unless the same is specifically repealed by this act.

(b) Nothing in this act shall be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel.

(c) *The definition of “disability” in K.S.A. 44-1002(j), and amendments thereto, shall be construed in accordance with the following:*

(1) *The definition of disability in this act shall be construed in favor of broad coverage of individuals under this act, to the maximum extent permitted by the terms of this act;*

(2) *an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability;*

(3) *an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and*

(4) (A) *The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as the following:*

(i) *Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eye glasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;*

(ii) *use of assistive technology;*

(iii) *reasonable accommodations or auxiliary aides or services; or*

(iv) *learned behavioral or adaptive neurological modifications.*

(B) *The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether and impairment substantially limits a major life activity.*

(C) *As used in this subparagraph:*

(i) *“Ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and*

(ii) *“low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.*

Sec. 3. K.S.A. 44-1002 and 44-1006 are hereby repealed.

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

Approved March 29, 2012.

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## CHAPTER 49

### HOUSE BILL No. 2491

AN ACT concerning wildlife; relating to hunting; amending K.S.A. 2011 Supp. 32-1002 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 32-1002 is hereby amended to read as follows: 32-1002. (a) Unless and except as permitted by law or rules and regulations adopted by the secretary in accordance with K.S.A. 32-805, and amendments thereto, it is unlawful for any person to:

(1) Hunt, fish, furharvest or take any wildlife in this state by any means or manner;

(2) possess any wildlife, dead or alive, at any time or in any number, in this state;

(3) purchase, sell, exchange, ship or offer for sale, exchange or shipment any wildlife in this state;

(4) take any wildlife in this state for sale, exchange or other commercial purposes;

(5) possess any seine, trammel net, hoop net, fyke net, fish gig, fish spear, fish trap or other device, contrivance or material for the purpose of taking wildlife; or

(6) take or use, at any time or in any manner, any game bird, game animal, coyote or furbearing animal, whether pen-raised or wild, in any field trial or for training dogs.

(b) The provisions of subsections (a)(2) and (a)(3) do not apply to animals sold in surplus property disposal sales of department exhibit herds or animals legally taken outside this state, except the provisions of subsection (a)(3) shall apply to:

(1) The meat of game animals legally taken outside this state; and

(2) other restrictions as provided by rule and regulation of the secretary.

(c) The provisions of this section shall not be construed to prevent:

(1) Any person from taking starlings or English and European sparrows;

(2) owners or legal occupants of land from killing any animals when found in or near buildings on their premises or when destroying property, subject to the following: (A) The provisions of all federal laws and regulations governing protected species and the provisions of K.S.A. 32-957 through 32-963, and amendments thereto, and rules and regulations adopted thereunder; (B) it is unlawful to use, or possess with intent to use, any such animal so killed unless authorized by rules and regulations of the secretary; and (C) such owners or legal occupants shall make reasonable efforts to alleviate their problems with any such animals before killing them;

(3) any person who is licensed under the personal and family protection act, K.S.A. 75-7c01 *et seq.*, and amendments thereto, from exercising the right to carry a concealed handgun while lawfully hunting, fishing or furharvesting; ~~or~~

(4) *any person who lawfully possesses a handgun from carrying such handgun while lawfully hunting, fishing or furharvesting; or*

~~(4)~~(5) any person who lawfully possesses a device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm from using such device or attachment in conjunction with lawful hunting, fishing or furharvesting.

(d) Any person convicted of violating provisions of this section shall

be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 2. K.S.A. 2011 Supp. 32-1002 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2012.

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## CHAPTER 50

Substitute for HOUSE BILL No. 2207

AN ACT concerning limited liability companies; relating to series limited liability companies; amending K.S.A. 17-7663 and 17-7682 and repealing the existing sections.

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

New Section 1. (a) An operating agreement may establish or provide for the establishment of one or more designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this section or under other applicable law, in the event that an operating agreement establishes or provides for the establishment of one or more series, and if the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the operating agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of organization of the limited liability company and if the limited liability company has filed a certificate of designation for each series which is to have limited liability under this section, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. The fact that the articles of organization

contain the foregoing notice of the limitation on liabilities of a series and a certificate of designation for a series is on file in the office of the secretary of state shall constitute notice of such limitation on liabilities of a series. A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business and exercise the powers of a limited liability company under this act. The limited liability company and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly or elect to be treated as a single business for purposes of qualification to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this section except to the extent that the series have specifically accepted joint liability by contract.

(c) Except in the case of a foreign limited liability company that has adopted an assumed name pursuant to K.S.A. 17-76,123, and amendments thereto, the name of the series with limited liability must contain the entire name of the limited liability company and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted an assumed name pursuant to K.S.A. 17-76,123, and amendments thereto, the name of the series with limited liability must contain the entire name under which the foreign limited liability company has been admitted to transact business in this state.

(d) Upon the filing of the certificate of designation with the secretary of state setting forth the name of each series with limited liability, the series' existence shall begin, and copies of the filed certificate of designation marked with the filing date shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed have been complied with and that the series has been or shall be legally organized and formed under this act. If different from the limited liability company, the certificate of designation for each series shall list the names of the members if the series is member managed or the names of the managers if the series is manager managed. The name of a series with limited liability under subsection (b) may be changed by filing with the secretary of state a certificate of designation identifying the series whose name is being changed and the new name of such series. If not the same as the limited liability company, the names of the members of a member managed series or of the managers of a manager managed series may be changed by filing a new certificate of designation with the secretary of state. A series with limited liability under subsection (b) may be dissolved by filing with the secretary of state a certificate of designation identifying the series being dissolved or by the dissolution of the limited liability company as provided in subsection (m). Certificates of designation may

be executed by the limited liability company or any manager, person or entity designated in the operating agreement for the limited liability company.

(e) A series of a limited liability company will be deemed to be in good standing as long as the limited liability company is in good standing.

(f) The registered agent and registered office for the limited liability company in Kansas shall serve as the agent and office for service of process in Kansas for each series.

(g) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series.

(h) A series may be managed by either the member or members associated with the series or by a manager or managers chosen by the members of such series, as provided in the operating agreement. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series.

(i) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(j) Except to the extent modified in this section, the provisions of this act which are generally applicable to limited liability companies, their managers, members and transferees shall be applicable to each particular series with respect to the operation of such series.

(k) Except as otherwise provided in an operating agreement, any event under this act or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(l) Except as otherwise provided in an operating agreement, any event under this act or an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(m) Except to the extent otherwise provided in the operating agree-

ment, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a series established in accordance with subsection (b) shall not affect the limitation on liabilities of such series provided by subsection (b). A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under article 76 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

(n) If a limited liability company with the ability to establish a series does not register to do business in a foreign jurisdiction for itself and certain of its series, a series of a limited liability company may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

(o) If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers or duties and has limited the liabilities of such series so that the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on their own behalf may register to do business in the state in accordance with the provisions of K.S.A. 17-76,121, and amendments thereto. The limitation of liability shall be so stated on the application for admission as a foreign limited liability company and a certificate of designation shall be filed for each series being registered to do business in the state by the limited liability company. Unless otherwise provided in the operating agreement, the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series of such a foreign limited liability company shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof and none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such a foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

Sec. 2. K.S.A. 17-7663 is hereby amended to read as follows: 17-7663. As used in this act unless the context otherwise requires:

(a) "Articles of organization" means the articles of organization referred to in K.S.A. 17-7673, and amendments thereto, and the articles as amended.

(b) “Bankruptcy” means an event that causes a person to cease to be a member as provided in K.S.A. 17-7689, and amendments thereto.

(c) “Contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in such person’s capacity as a member.

(d) “Foreign limited liability company” means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

(e) “Knowledge” means a person’s actual knowledge of a fact, rather than the person’s constructive knowledge of the fact.

(f) “Limited liability company” and “domestic limited liability company” means a limited liability company formed under the laws of the state of Kansas and having one or more members.

(g) “Operating agreement” means any agreement, written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business. A written operating agreement or another written agreement or writing:

(1) May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the operating agreement:

(A) If such person ~~or~~ a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest~~}, executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee;~~ or

(B) without such execution, if such person ~~or~~ a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest~~}, complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing and requests ~~orally, in writing or by other action such as payment for a limited liability company interest~~, that the records of the limited liability company reflect such admission or assignment; and~~

(2) shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subparagraph (a) of this paragraph, or by reason of its having been signed by a representative as provided in this act.

(h) “Limited liability company interest” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

(i) “Liquidating trustee” means a person carrying out the winding up of a limited liability company.

(j) “Majority in interest” means the affirmative vote or consent of the members who own more than 50% of the then current percentage or other interest in the profits of the limited liability company owned by all members entitled to vote thereon or the members in each class or group entitled to vote thereon as appropriate.

(k) “Manager” means a person who is named as a manager of a limited liability company in, or designated as a manager of, a limited liability company pursuant to an operating agreement or similar instrument under which the limited liability company is formed.

(l) “Member” means a person who has been admitted to a limited liability company as a member as provided in K.S.A. 17-7686, and amendments thereto, or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

(m) “Person” means a natural person, partnership~~(, whether general or limited and whether domestic or foreign)~~, limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity, *or series thereof*, in its own or any representative capacity.

(n) “Personal representative” means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

(o) “State” means the District of Columbia or the commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the state of Kansas.

Sec. 3. K.S.A. 17-7682 is hereby amended to read as follows: 17-7682. An operating agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for *any class, group or series of* members or limited liability company interests in connection with any amendment of the operating agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger or consolidation, or the sale of all or substantially all of the limited liability company’s assets. The district court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

Sec. 4. K.S.A. 17-7663 and 17-7682 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2012.

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## CHAPTER 51

## HOUSE BILL No. 2683

AN ACT concerning the director of penal institutions; amending K.S.A. 22-3416 and repealing the existing section; also repealing K.S.A. 75-5207, 75-5208 and 75-5213.

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

Section 1. K.S.A. 22-3416 is hereby amended to read as follows: 22-3416. No prisoner in the custody of the ~~director of penal institutions~~ *secretary of corrections* shall be required to attend as a witness in any criminal action or proceeding except on order of the court before whom the prosecution is pending and under such terms as the court may prescribe.

Sec. 2. K.S.A. 22-3416, 75-5207, 75-5208 and 75-5213 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2012.

## CHAPTER 52

## HOUSE BILL No. 2677

AN ACT dealing with county appraisers; amending K.S.A. 19-430 and repealing the existing section.

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

Section 1. K.S.A. 19-430 is hereby amended to read as follows: 19-430. (a) On July 1, 1993, and on July 1 of each fourth year thereafter, the board of county commissioners of each county shall by resolution appoint a county appraiser for such county who shall serve for a term of four years and until a successor is appointed. ~~County appraisers appointed in counties having a population of more than 25,000 shall devote full time to the duties of such office but county appraisers appointed in counties having a population of 25,000 or less may be appointed either as a full-time or a part-time county appraiser as prescribed in the resolution providing for such appointment.~~ No person shall be appointed or reappointed to or serve as county appraiser in any county under the provisions of this act unless such person shall have at least three years of mass appraisal experience and be qualified by the director of property valuation as an eligible Kansas appraiser under the provisions of this act. Whenever a vacancy shall occur in the office of county appraiser the board of county commissioners shall appoint an eligible Kansas appraiser to fill such vacancy for the unexpired term and until a successor is appointed. The

person holding the office of county or district appraiser or performing the duties thereof on the effective date of this act shall continue to hold such office and perform such duties until a county appraiser is appointed under the provisions of this act. No person shall be appointed to the office of county or district appraiser or to fill a vacancy therein unless such person is currently: (1) A certified general real property appraiser pursuant to article 41 of chapter 58 of the Kansas Statutes Annotated, and amendments thereto; (2) a registered mass appraiser pursuant to rules and regulations adopted by the secretary of revenue; or (3) holding a valid residential evaluation specialist or certified assessment evaluation designation from the International Association of Assessing Officers. Notwithstanding the foregoing provision, any person who holds the office of county or district appraiser on the effective date of this act and who is not eligible for reappointment pursuant to this section shall be eligible for reappointment to such office or appointment as a county or district appraiser in another county for a term expiring on July 1, 1999, and if any such person qualifies for an original appointment or reappointment prior to July 1, 1999, such person may be reappointed for a full term, and any other person who has at least three years of mass appraisal experience and is qualified by the director of property valuation as an eligible Kansas appraiser shall be eligible for appointment to such office for a term expiring on July 1, 1999, and if any such person qualifies for an original appointment prior to July 1, 1999, such person may be reappointed for a full term.

(b) The secretary of revenue shall adopt rules and regulations prior to October 1, 1997, necessary to establish qualifications for the designation of a registered mass appraiser.

Sec. 2. K.S.A. 19-430 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2012.

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## CHAPTER 53

### HOUSE BILL No. 2675

AN ACT concerning county clerks and county appraisers; amending K.S.A. 79-408 and repealing the existing section.

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

Section 1. K.S.A. 79-408 is hereby amended to read as follows: 79-408. The county clerk shall ~~complete~~ *maintain* all real estate assessment rolls that may be required for the assessment districts of the county. Such

assessment rolls shall contain a correct and pertinent description of each piece, parcel or lot of real property in numerical order as to lots and blocks, sections or subdivisions, in the respective townships or cities, as the case may be. In making up such assessment rolls, the county clerk shall consult the real estate transfer record in the office of the clerk, ~~and the records and plats in the office of the register of deeds, reports from United States land offices, and may require the owner or occupant of a particular property to furnish a proper description thereof. In making such rolls the county clerk shall deduct the acreage of all lands used for railway right-of-way or interurban railway right-of-way.~~

~~After the county clerk has completed such rolls, the clerk shall deliver them to the county appraiser no later than December 15. All such rolls and descriptions may be maintained electronically, as the county may find necessary and proper.~~

Sec. 2. K.S.A. 79-408 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2012.

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#### CHAPTER 54

##### HOUSE BILL No. 2669

AN ACT repealing K.S.A. 19-901, 19-902, 19-903 and 19-904; concerning matron of a county jail.

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

Section 1. K.S.A. 19-901, 19-902, 19-903 and 19-904 are hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2012.

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#### CHAPTER 55

##### HOUSE BILL No. 2507

AN ACT repealing K.S.A. 40-3508; concerning reinsurance limits for mortgage guaranty insurance companies.

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

Section 1. K.S.A. 40-3508 is hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 30, 2012.

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CHAPTER 56

HOUSE BILL No. 2496  
(Amended by Chapter 166)

AN ACT concerning law enforcement; relating to law enforcement officers and juvenile justice authority employees; amending K.S.A. 2011 Supp. 38-2386 and 74-5602 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 38-2386 is hereby amended to read as follows: 38-2386. (a) The superintendent of any juvenile correctional facility operated by the commissioner, all persons on the staff of the juvenile justice authority who are in the chain of command from the commissioner of juvenile justice to the juvenile corrections officer and every juvenile corrections officer, regardless of rank and every investigator, while acting within the scope of their duties as employees of the juvenile justice authority, shall possess such powers and duties of a law enforcement officer as are necessary for performing such duties for the purpose of regaining or maintaining custody, security and control of any person in the custody of the commissioner and may exercise such powers and duties anywhere within the state of Kansas. Such powers and duties may be exercised outside the state of Kansas for the purpose of maintaining custody, security and control of any person in the custody of the commissioner being transported or escorted by anyone authorized to so act. Such employees of the juvenile justice authority shall be responsible to and shall be at all times under the supervision and control of the commissioner of juvenile justice or the commissioner's designee.

(b) *The commissioner shall have the authority to appoint and designate special investigators. Each special investigator designated by the commissioner is hereby vested with the power and authority of peace and police officers and shall have the authority to:*

- (1) *Make arrests;*
- (2) *conduct searches and seizures;*
- (3) *maintain custody, security and control of any person in the custody of the commissioner; and*
- (4) *generally enforce all the criminal laws of the state as violations of those laws are encountered during the routine performance of duty.*

(c) *No special investigator may carry firearms while performing such duties without having first successfully completed the training course pre-*

scribed for law enforcement officers under the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(d) Each special investigator designated shall:

- (1) Be vested with law enforcement authority;
- (2) be in classified service under the Kansas civil service act; and
- (3) be subject to the requirements of the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(e) The commissioner may adopt rules and regulations prescribing additional training required for such special investigators.

Sec. 2. K.S.A. 2011 Supp. 74-5602 is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within the division of continuing education of the university of Kansas, created by K.S.A. 74-5603, and amendments thereto.

(b) "Commission" means the Kansas commission on peace officers' standards and training, created by K.S.A. 74-5606, and amendments thereto.

(c) "Dean" means the dean of continuing education of the university of Kansas.

(d) "Director of police training" means the director of police training at the law enforcement training center.

(e) "Director" means the executive director of the Kansas commission on peace officers' standards and training.

(f) "Law enforcement" means the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof.

(g) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to: The sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858, and amendments thereto; conservation officers of the Kansas department of wildlife and parks, *parks and tourism*; university police officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus police officers, as defined in K.S.A. 22-2401a, and amendments thereto; law enforcement agents of the director of alcoholic beverage control; law enforcement agents designated by the secretary of revenue pursuant to K.S.A. 2011 Supp. 75-5157, and amendments thereto; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol police, existing under the authority of K.S.A. 75-4503, and amendments thereto; *special investigators of the ju-*

*venile justice authority*; and law enforcement officers appointed by the adjutant general pursuant to K.S.A. 48-204, and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524, and amendments thereto; school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222, and amendments thereto; the manager and employees of the horsethief reservoir benefit district pursuant to K.S.A. 2011 Supp. 82a-2212, and amendments thereto; and the director of the Kansas commission on peace officers' standards and training and any other employee of such commission designated by the director pursuant to K.S.A. 74-5603, and amendments thereto, as a law enforcement officer. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the commissioner of juvenile justice, ~~the secretary of corrections or~~ *who is employed solely to perform correctional, administrative or operational duties related to juvenile correctional facilities; any employee of the secretary of corrections, any employee of the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife and parks, parks and tourism; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.*

(h) "Full-time" means employment requiring at least 1,000 hours of law enforcement related work per year.

(i) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of law enforcement related work per year.

(j) "Misdemeanor crime of domestic violence" means a violation of domestic battery as provided by K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2011 Supp. 21-5414, and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the

victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

(k) “Auxiliary personnel” means members of organized nonsalaried groups ~~which~~ *who* operate as an adjunct to a police or sheriff’s department, including reserve officers, posses and search and rescue groups.

(l) “Active law enforcement certificate” means a certificate which attests to the qualification of a person to perform the duties of a law enforcement officer and which has not been suspended or revoked by action of the Kansas commission on peace officers’ standards and training and has not lapsed by operation of law as provided in K.S.A. 74-5622, and amendments thereto.

Sec. 3. K.S.A. 2011 Supp. 38-2386 and 74-5602 are hereby repealed.

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

Approved March 30, 2012.

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## CHAPTER 57

### HOUSE BILL No. 2429

AN ACT concerning state educational institutions; relating to the state educational institution project delivery construction procurement act and expiration thereof; amending K.S.A. 2011 Supp. 76-7,125 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 76-7,125 is hereby amended to read as follows: 76-7,125. (a) K.S.A. 2011 Supp. 76-7,125 through 76-7,133, and amendments thereto, shall be known and may be cited as the state educational institution project delivery construction procurement act.

(b) The provisions of this act shall apply only to construction projects and construction project services totally funded by non-state moneys.

~~(c) The provisions of this act shall expire on June 30, 2012.~~

Sec. 2. K.S.A. 2011 Supp. 76-7,125 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 30, 2012.

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## CHAPTER 58

SENATE BILL No. 290  
(Amended by Chapter 162)

AN ACT concerning the addictions counselor licensure act; amending K.S.A. 2011 Supp. 65-6608, 65-6610 and 65-6613 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 65-6608 is hereby amended to read as follows: 65-6608. As used in the addictions counselor licensure act:

(a) “Board” means the behavioral sciences regulatory board created under K.S.A. 74-7501, and amendments thereto.

(b) “Addiction counseling” means the utilization of special skills to assist persons with addictions, and to assist such persons’ families and friends to achieve resolution of addiction through the exploration of the disease and its ramifications, the examination of attitudes and feelings, the consideration of alternative solutions and decision making, as these relate specifically to addiction. Evaluation and assessment, treatment including treatment plan development, crisis intervention, referral, record keeping and clinical consultation specifically related to addiction are within the scope of addiction counseling. Additionally, at the clinical level of licensure, addiction counseling includes independent practice and the diagnosis and treatment of substance use disorders.

(c) “Licensed addiction counselor” means a person who engages in the practice of addiction counseling limited to substance use disorders and who is licensed under this act, ~~except that on and after July 1, 2011,~~ Such person shall engage in the practice of addiction counseling only in a state-licensed or certified alcohol and other drug treatment program unless otherwise exempt for licensure under subsection (m) of K.S.A. 59-29b46, and amendments thereto.

(d) “Licensed clinical addiction counselor” means a person who engages in the independent practice of addiction counseling and ~~to the~~ diagnosis and treatment of substance use disorders specified in the edition of the American psychiatric association’s diagnostic and statistical manual of mental disorders (DSM) designated by the board by rules and regulations and is licensed under this act.

Sec. 2. K.S.A. 2011 Supp. 65-6610 is hereby amended to read as follows: 65-6610. (a) An applicant for licensure as an addiction counselor shall furnish evidence that the applicant:

- (1) Has attained the age of 21; *and*
- (2) (A) has completed *at least* a baccalaureate degree from an addiction counseling program that is part of a college or university approved by the board; or
- (B) has completed *at least* a baccalaureate degree from a college or university approved by the board in a related field that includes a mini-

imum number of semester hours of coursework on substance use disorders as approved by the board; or

(C) *has completed at least a baccalaureate degree from a college or university approved by the board in a related field with additional ~~work coursework~~ in addiction counseling from a college or university approved by the board, and such degree program and the additional ~~work coursework~~ includes ~~the course work requirements provided in paragraph (a)(2)(B) of this subsection~~ a minimum number of semester hours of coursework on substance use disorders as approved by the board; or*

(D) *is currently licensed in Kansas as a licensed baccalaureate social worker and has completed a minimum number of semester hours of coursework on substance use disorders as approved by the board; or*

(E) *is currently licensed in Kansas as a ~~licensed psychologist~~, licensed master social worker, licensed professional counselor, licensed marriage and family therapist or licensed ~~master's~~ masters level psychologist; and*

(3) *has passed an examination approved by the board; and*

(4) *has satisfied the board that the applicant is a person who merits the public trust; and*

(5) *each applicant has paid the application fee established by the board under K.S.A. 2011 Supp. 65-6618, and amendments thereto.*

(b)(1) ~~Applications for licensure as a clinical addiction counselor shall be made to the board on a form and in the manner prescribed by the board. Each applicant shall furnish evidence satisfactory to the board that the applicant:~~

~~(A) Is licensed by the board as a licensed addiction counselor or meets all requirements for licensure as an addiction counselor, and~~

~~(1) Has attained the age of 21; and~~

~~(2)(A)(i) Has completed at least a master's degree from an addiction counseling program that is part of a college or university approved by the board; or and~~

~~(ii) has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 4,000 hours of supervised professional experience including at least 1,500 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 150 hours of clinical supervision, including not less than 50 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association; or has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 2,000 hours of supervised professional experience including at least 750 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 75~~

hours of clinical supervision, including not less than 25 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association, and such person has a doctoral degree in addiction counseling or a related field as approved by the board; or

~~(ii)(B)(i)~~ Has completed a master's degree from a college or university approved by the board in a related field that includes a minimum number of semester hours of coursework supporting the diagnosis and treatment of substance use disorders as approved by the board; ~~or~~ and

(ii) has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 4,000 hours of supervised professional experience including at least 1,500 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 150 hours of clinical supervision, including not less than 50 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association; or has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 2,000 hours of supervised professional experience including at least 750 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 75 hours of clinical supervision, including not less than 25 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association, and such person has a doctoral degree in addiction counseling or a related field as approved by the board; or

~~(iii)(C)(i)~~ Has completed a master's degree from a college or university approved by the board in a related field with additional ~~work~~ coursework in addiction counseling from a college or university approved by the board and such degree program and the additional work includes the course work requirements provided in paragraph (b)(2)(B) of this subsection; or additional coursework includes a minimum number of semester hours of coursework supporting the diagnosis and treatment of substance use disorders as approved by the board; and

(ii) has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 4,000 hours of supervised professional experience including at least 1,500 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 150 hours of clinical supervision,

*including not less than 50 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association; or has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 2,000 hours of supervised professional experience including at least 750 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 75 hours of clinical supervision, including not less than 25 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association, and such person has a doctoral degree in addiction counseling or a related field as approved by the board; or*

~~(iv)~~(D)(i) *Has completed a master's degree in a related field from a college or university approved by the board and is licensed by the board as a licensed addiction counselor; and*

~~(B)~~(ii) *has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 4,000 hours of supervised professional experience including at least 1,500 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 150 hours of clinical supervision, including not less than 50 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association, except that 1/2 of the requirement of this paragraph (B) may be waived for persons with a doctoral degree in addiction counseling or a related field acceptable to the board, and; or has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 2,000 hours of supervised professional experience including at least 750 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 75 hours of clinical supervision, including not less than 25 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association, and such person has a doctoral degree in addiction counseling or a related field as approved by the board; or*

(E) *Is currently licensed in Kansas as a licensed psychologist, licensed specialist clinical social worker, licensed clinical professional counselor, licensed clinical psychotherapist or licensed clinical marriage and family*

*therapist and provides to the board an attestation from a professional licensed to diagnose and treat mental disorders, or substance use disorders, or both, in independent practice or licensed to practice medicine and surgery stating that the applicant is competent to diagnose and treat substance use disorders; and*

~~(C)~~(3) has passed an examination approved by the board; and

(4) *has satisfied the board that the applicant is a person who merits the public trust; and*

~~(D)~~(5) has paid the application fee fixed under K.S.A. 2011 Supp. 65-6618, and amendments thereto.

~~(2)~~(c) A person who was registered by the behavioral sciences regulatory board as an alcohol and other drug counselor or credentialed by the department of social and rehabilitation services as an alcohol and drug credentialed counselor or credentialed by the Kansas association of addiction professionals as an alcohol and other drug abuse counselor in Kansas at any time prior to the effective date of this act, who was registered in Kansas as an alcohol and other drug counselor, an alcohol and drug credentialed counselor or a credentialed alcohol and other drug abuse counselor within three years prior to the effective date of this act and whose last registration or credential in Kansas prior to the effective date of this act was not suspended or revoked, upon application to the board, payment of fees and completion of applicable continuing education requirements, shall be licensed as a licensed addiction counselor by providing demonstration acceptable to the board of competence to perform the duties of an addiction counselor.

~~(3)~~(d) Any person who was registered by the behavioral sciences regulatory board as an alcohol and other drug counselor or credentialed by the department of social and rehabilitation services as an alcohol and drug credentialed counselor or credentialed by the Kansas association of addiction professionals as an alcohol and other drug abuse counselor in Kansas at any time prior to the effective date of this act, and who is also licensed to practice independently as a mental health practitioner or person licensed to practice medicine and surgery, and who was registered or credentialed in Kansas as an alcohol and other drug counselor within three years prior to the effective date of this act and whose last registration or credential in Kansas prior to the effective date of this act was not suspended or revoked, upon application to the board, payment of fees and completion of applicable continuing education requirements, shall be licensed as a licensed clinical addiction counselor and may engage in the independent practice of addiction counseling and is authorized to diagnose and treat substance use disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations.

~~(4)~~(e) Any person who was credentialed by the department of social and rehabilitation services as an alcohol and drug counselor and has been

actively engaged in the practice, supervision or administration of addiction counseling in Kansas for not less than four years and holds a master's degree in a related field *from a college or university approved by the board* and whose last registration or credential in Kansas prior to the effective date of this act was not suspended or revoked, upon application to the board, payment of fees and completion of applicable continuing education requirements, shall be licensed as a clinical addiction counselor and may engage in the independent practice of addiction counseling and is authorized to diagnose and treat substance use disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations.

~~(5) On and after July 1, 2011, (f)~~ A licensed addiction counselor shall engage in the practice of addiction counseling ~~in only~~ *in* a state licensed or certified alcohol and other drug treatment program, unless otherwise exempt from licensure under subsection (m) of K.S.A. 59-29b46, and amendments thereto.

Sec. 3. K.S.A. 2011 Supp. 65-6613 is hereby amended to read as follows: 65-6613. (a) The board may issue a license to an individual who is currently registered, certified or licensed to practice addiction counseling in another jurisdiction if the board determines that:

(1) The standards for registration, certification or licensure to practice addiction counseling in the other jurisdiction are substantially the equivalent of the requirements of the addictions counselor licensure act and rules and regulations of the board; or

(2) the applicant demonstrates on forms provided by the board compliance with the following standards as adopted by the board:

(A) Continuous registration, certification or licensure to practice addiction counseling during the five years immediately preceding the application with at least the minimum professional experience as established by rules and regulations of the board; *and*

(B) the absence of disciplinary actions of a serious nature brought by a registration, certification or licensing board or agency; and

(C) completion of a baccalaureate or master's degree in addiction counseling from a college or university approved by the board or completion of a baccalaureate or master's degree in a related field that includes all required addiction coursework.

(b) ~~Applicants for licensure as a clinical addiction counselor shall additionally demonstrate competence to diagnose and treat substance abuse disorders through meeting the requirements of either paragraph (1) or (2) of subsection (a) and at least two of the following areas acceptable to the board. The board may issue a license to an individual who is currently registered, certified or licensed to practice clinical addiction counseling in another jurisdiction if the board determines that:~~

(1) *The standards for registration, certification or licensure to practice clinical addiction counseling in the other jurisdiction are substantially the equivalent of the requirements of the addictions counselor licensure act and rules and regulations of the board; or*

(2) *the applicant demonstrates on forms provided by the board compliance with the following standards as adopted by the board:*

(A) *Continuous registration, certification or licensure to practice clinical addiction counseling during the five years immediately preceding the application with at least the minimum professional experience as established by rules and regulations of the board; and*

(B) *the absence of disciplinary actions of a serious nature brought by a registration, certification or licensing board or agency; and*

(C) (i) *completion of at least a master's degree in clinical addiction counseling from a college or university approved by the board; or*

(2) (ii) *completion of at least a master's degree from a college or university approved by the board in a related field that includes a minimum number of semester hours of coursework supporting the diagnosis and treatment of substance use disorders as approved by the board; or*

(3) (iii) *completion of at least a master's degree from a college or university approved by the board in a related field with additional coursework in addiction counseling from a college or university approved by the board and such degree program and additional coursework includes a minimum number of semester hours of coursework supporting the diagnosis and treatment of substance use disorders as approved by the board; and*

(D) *at least two of the following areas acceptable to the board:*

~~(1)~~(i) *Either coursework as established by rules and regulations of the board or passing a national clinical examination approved by the board; or*

~~(2)~~(ii) *three years of clinical practice with demonstrated experience supporting diagnosing or treating substance use disorders; or*

~~(3)~~(iii) *attestation from a professional licensed to diagnose and treat mental disorders, or substance use disorders, or both, in independent practice or licensed to practice medicine and surgery stating that the applicant is competent to diagnose and treat substance use disorders.*

(c) An applicant for a license under this section shall pay an application fee established by the board under K.S.A. 2011 Supp. 65-6618, and amendments thereto.

Sec. 4. K.S.A. 2011 Supp. 65-6608, 65-6610 and 65-6613 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

## CHAPTER 59

## SENATE BILL No. 280

AN ACT concerning commitment of sexually violent predators; relating to evaluations; testimony of expert witnesses; amending K.S.A. 59-29a05 and K.S.A. 2011 Supp. 59-29a06 and repealing the existing sections.

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

Section 1. K.S.A. 59-29a05 is hereby amended to read as follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be taken into custody.

(b) Within 72 hours after a person is taken into custody pursuant to subsection (a), such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall: (1) Verify the detainer's identity; and (2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) At the probable cause hearing as provided in subsection (b), the detained person shall have the following rights in addition to the rights previously specified: (1) To be represented by counsel; (2) to present evidence on such person's behalf; (3) to cross-examine witnesses who testify against such person; and (4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall ~~direct~~ *order* that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation *ordered by the court* shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

(e) *The person conducting the evaluation ordered by the court pursuant to this section shall notify the detained person of the following: (1) The nature and purpose of the evaluation; and (2) that the evaluation will not be confidential and that any statements made by the detained person, and any conclusions drawn by the evaluator, will be disclosed to the court, the detained person's attorney, the prosecutor and the trier of fact at any proceeding conducted under K.S.A. 59-29a01 et seq., and amendments thereto.*

Sec. 2. K.S.A. 2011 Supp. 59-29a06 is hereby amended to read as follows: 59-29a06. (a) Within 60 days after the completion of any hearing held pursuant to K.S.A. 59-29a05, and amendments thereto, the court shall conduct a trial to determine whether the person is a sexually violent

predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced.

(b) At all stages of the proceedings under K.S.A. 59-29a01 *et seq.*, and amendments thereto, any person subject to K.S.A. 59-29a01 *et seq.*, and amendments thereto, shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under K.S.A. 59-29a01 *et seq.*, and amendments thereto, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source.

(c) Notwithstanding K.S.A. 60-456, and amendments thereto, at any ~~trial~~ proceeding conducted under K.S.A. 59-29a01 *et seq.*, and amendments thereto, the parties shall be permitted to call expert witnesses. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If the facts or data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, such facts and data need not be admissible in evidence in order for the opinion or inference to be admitted.

(d) The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. Number and selection of jurors shall be determined as provided in K.S.A. 22-3403, and amendments thereto. If no demand is made, the trial shall be before the court.

(e) A jury shall consist of 12 jurors unless the parties agree in writing with the approval of the court that the jury shall consist of any number of jurors less than 12 jurors. The person and the attorney general shall

each have eight peremptory challenges, or in the case of a jury of less than 12 jurors, a proportionally equal number of peremptory challenges.

(f) The provisions of this section are not jurisdictional, and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59-29a01 *et seq.*, and amendments thereto.

Sec. 3. K.S.A. 59-29a05 and K.S.A. 2011 Supp. 59-29a06 are hereby repealed.

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

Approved March 30, 2012.

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## CHAPTER 60

Substitute for SENATE BILL No. 282

AN ACT concerning covered offenses and conduct giving rise to forfeiture; relating to fleeing or eluding; amending K.S.A. 2011 Supp. 60-4104 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 60-4104 is hereby amended to read as follows: 60-4104. Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

- (a) All offenses which statutorily and specifically authorize forfeiture;
- (b) ~~violations of~~ *involving controlled substances, as described in K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto;*
- (c) theft, *as defined in K.S.A. 2011 Supp. 21-5801, and amendments thereto;*
- (d) criminal discharge of a firearm, as defined in subsections (a)(1) and (a)(2) of K.S.A. 2011 Supp. 21-6308, and amendments thereto;
- (e) gambling, *as defined in K.S.A. 2011 Supp. 21-6404, and amendments thereto, and commercial gambling, as defined in subsection (a)(1) of K.S.A. 2011 Supp. 21-6406, and amendments thereto;*
- (f) counterfeiting, *as defined in K.S.A. 2011 Supp. 21-5825, and amendments thereto;*
- (g) ~~violations of~~ *unlawful possession of a scanning device or reencoder, as described in K.S.A. 2011 Supp. 21-6108, and amendments thereto;*
- (h) medicaid fraud, *as described in K.S.A. 2011 Supp. 21-5925 through 21-5934, and amendments thereto;*
- (i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section

if the act occurred in this state, whether or not it is prosecuted in any state;

(j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(l) ~~violations of~~ *violations of furtherance of terrorism or illegal use of weapons of mass destruction, as described in K.S.A. 2011 Supp. 21-5423, and amendments thereto;*

(m) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2011 Supp. 21-6414, and amendments thereto;

(n) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2011 Supp. 21-6417, and amendments thereto;

(o) prostitution, *as defined in K.S.A. 2011 Supp. 21-6419, and amendments thereto, promoting prostitution, as defined in K.S.A. 2011 Supp. 21-6420, and amendments thereto, and patronizing a prostitute, as defined in K.S.A. 2011 Supp. 21-6421, and amendments thereto;*

(p) human trafficking and aggravated human trafficking, *as defined in K.S.A. 2011 Supp. 21-5426, and amendments thereto;*

(q) violations of *the banking code, as described in K.S.A. 9-2012, and amendments thereto;*

(r) mistreatment of a dependent adult, *as defined in K.S.A. 2011 Supp. 21-5417, and amendments thereto;*

(s) giving a worthless check, *as defined in K.S.A. 2011 Supp. 21-5821, and amendments thereto;*

(t) forgery, *as defined in K.S.A. 2011 Supp. 21-5823, and amendments thereto;*

(u) making false information, *as defined in K.S.A. 2011 Supp. 21-5824, and amendments thereto;*

(v) criminal use of a financial card, *as defined in K.S.A. 2011 Supp. 21-5828, and amendments thereto;*

(w) ~~violations of~~ *unlawful acts concerning computers, as described in K.S.A. 2011 Supp. 21-5839, and amendments thereto;*

(x) identity theft and identity fraud, as defined in subsections (a) and (b) of K.S.A. 2011 Supp. 21-6107, and amendments thereto; ~~and~~

(y) electronic solicitation, *as defined in K.S.A. 2011 Supp. 21-5509, and amendments thereto; and*

(z) *felony violations of fleeing or attempting to elude a police officer, as described in K.S.A. 8-1568, and amendments thereto.*

Sec. 2. K.S.A. 2011 Supp. 60-4104 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 30, 2012.

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## CHAPTER 61

SENATE BILL No. 252  
(Amended by Chapter 166)

AN ACT concerning the rules and regulations filing act; pertaining to the notice period for certain rules and regulations; amending K.S.A. 2011 Supp. 77-415 and 77-421 and repealing the existing sections.

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

Sec. 1. K.S.A. 2011 Supp. 77-415 is hereby amended to read as follows: 77-415. (a) K.S.A. 77-415 through 77-438, and amendments thereto, shall be known and may be cited as the Kansas rules and regulations filing act.

(b) (1) Unless otherwise provided by statute or constitutional provision, each rule and regulation issued or adopted by a state agency shall comply with the requirements of the Kansas rules and regulations filing act. Except as provided in this section, any standard, requirement or other policy of general application may be given binding legal effect only if it has complied with the requirements of the Kansas rules and regulations filing act.

(2) Notwithstanding the provisions of this section:

(A) An agency may bind parties, establish policies, and interpret statutes or regulations by order in an adjudication under the Kansas administrative procedure act or other procedures required by law, except that such order shall not be used as precedent in any subsequent adjudication against a person who was not a party to the original adjudication unless the order is:

(i) Designated by the agency as precedent;

(ii) not overruled by a court or later adjudication; and

(iii) disseminated to the public in one of the following ways:

(a) Inclusion in a publicly available index, maintained by the agency and published on its website, of all orders designated as precedent;

(b) publication by posting in full on an agency website in a format capable of being searched by key terms; or

(c) being made available to the public in such other manner as may be prescribed by the secretary of state.

(B) Any statement of agency policy may be treated as binding within the agency if such statement of policy is directed to:

(i) Agency personnel relating to the performance of their duties.

(ii) The internal management of or organization of the agency.

No such statement of agency policy listed in clauses (i) and (ii) of this subparagraph may be relied on to bind the general public.

(C) An agency may provide forms, the content or substantive requirements of which are prescribed by rule and regulation or statute, except that no such form may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.

(D) An agency may provide guidance or information to the public, describing any agency policy or statutory or regulatory requirement except that no such guidance or information may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.

(E) None of the following shall be subject to the Kansas rules and regulations filing act:

(i) Any policy relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution.

(ii) Any parking and traffic regulations of any state educational institution under the control and supervision of the state board of regents.

(iii) Any rule and regulation relating to the emergency or security procedures of a correctional institution, as defined in subsection (d) of K.S.A. 75-5202, and amendments thereto.

(iv) Any order issued by the secretary of corrections or any warden of a correctional institution under K.S.A. 75-5256, and amendments thereto.

(F) When a statute authorizing an agency to issue rules and regulations or take other action specifies the procedures for doing so, those procedures shall apply instead of the procedures in the Kansas rules and regulations filing act.

(c) As used in the Kansas rules and regulations filing act, and amendments thereto, unless the context clearly requires otherwise:

(1) "Board" means the state rules and regulations board established under the provisions of K.S.A. 77-423, and amendments thereto.

(2) "Environmental rule and regulation" means:

(A) A rule and regulation adopted by the secretary of agriculture, the secretary of health and environment or the state corporation commission, which has as a primary purpose the protection of the environment; or

(B) a rule and regulation adopted by the secretary of wildlife ~~and parks~~, *parks and tourism* concerning threatened or endangered species of wildlife as defined in K.S.A. 32-958, and amendments thereto.

(3) "Person" means an individual, firm, association, organization, partnership, business trust, corporation, company or any other legal or commercial entity.

(4) "Rule and regulation," "rule," and "regulation" means a standard, requirement or other policy of general application that has the force and

effect of law, including amendments or revocations thereof, issued or adopted by a state agency to implement or interpret legislation.

(5) “Rulemaking” shall have the meaning ascribed to it in K.S.A. 77-602, and amendments thereto.

(6) “Small employer” means any person, firm, corporation, partnership or association that employs not more than 50 employees, the majority of whom are employed within this state.

(7) “State agency” means any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and legislative branches, which is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state.

Sec. 2. K.S.A. 2011 Supp. 77-421 is hereby amended to read as follows: 77-421. (a) (1) Except as provided by subsection (a)(2), subsection (a)(3) or subsection (a)(4), prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least 60 days’ notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations established by K.S.A. 77-436, and amendments thereto. The notice shall be provided to the secretary of state and to the chairperson, vice chairperson, ranking minority member of the joint committee and legislative research department and shall be published in the Kansas register. A complete copy of all proposed rules and regulations and the complete economic impact statement required by K.S.A. 77-416, and amendments thereto, shall accompany the notice sent to the secretary of state. The notice shall contain:

(A) A summary of the substance of the proposed rules and regulations;

(B) a summary of the economic impact statement indicating the estimated economic impact on governmental agencies or units, persons subject to the proposed rules and regulations and the general public;

(C) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed rules and regulations;

(D) the address where a complete copy of the proposed rules and regulations, the complete economic impact statement, the environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto, may be obtained;

(E) the time and place of the public hearing to be held; the manner in which interested parties may present their views; and

(F) a specific statement that the period of 60 days’ notice constitutes

a public comment period for the purpose of receiving written public comments on the proposed rules and regulations and the address where such comments may be submitted to the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and regulations.

(2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of the department of wildlife ~~and parks~~, *parks and tourism* shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(3) Prior to adopting any rule and regulation which establishes any permanent prior authorization on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state medicaid plan, and after such rule and regulation has been approved by the secretary of administration and the attorney general, the ~~Kansas health policy authority~~ *division of health care finance of the department of health and environment* shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(4) Prior to adopting any rule and regulation pursuant to subsection (c), the state agency shall give at least ~~30~~ 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of notice constitutes a public comment period on such rules and regulations.

(b) (1) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. At the time it adopts or amends a rule and regulation, the state agency shall prepare a concise

statement of the principal reasons for adopting the rule and regulation or amendment thereto, including:

(A) The agency's reasons for not accepting substantial arguments made in testimony and comments; and

(B) the reasons for any substantial change between the text of the proposed adopted or amended rule and regulation contained in the published notice of the proposed adoption or amendment of the rule and regulation and the text of the rule and regulation as finally adopted.

(2) Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of following the requirements or statutory procedure set out in such other law, may give notice and hold hearings on proposed rules and regulations in the manner prescribed by this section.

(3) Notwithstanding the other provisions of this section, the Kansas parole board and the secretary of corrections, may give notice or an opportunity to be heard to any inmate in the custody of the secretary of corrections with regard to the adoption of any rule and regulation, but the secretary shall not be required to give such notice or opportunity.

(c) (1) The agency shall initiate new rulemaking proceedings under this act, if a state agency proposes to adopt a final rule and regulation that:

(A) Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

(B) is not a logical outgrowth of the rule and regulation as originally proposed.

(2) ~~In accordance with subsection (a), the period for public comment required by K.S.A. 77-421, and amendments thereto, may be shortened to not less than 30 days.~~

(3) For the purposes of this provision, a rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed if a person affected by the final rule and regulation was not put on notice that such person's interests were affected in the rulemaking.

(d) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a proposed rule and regulation, the agency shall cause written minutes or other records, including a record maintained on sound recording tape or on any electronically accessed media or any combination of written or electronically accessed media records of the hearing to be made. If the proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for not less than three years after its effective date, such minutes or other records, together with any recording, transcript or other record made of the hearing and a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.

(e) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

Sec. 3. K.S.A. 2011 Supp. 77-415 and 77-421 are hereby repealed.

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

Approved March 30, 2012.

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## CHAPTER 62

SENATE BILL No. 310\*

AN ACT concerning water; relating to local enhanced management areas; groundwater management districts.

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

Section 1. (a) Whenever a groundwater management district recommends the approval of a local enhanced management plan within the district to address any of the conditions set forth in subsections (a) through (d) of K.S.A. 82a-1036, and amendments thereto, the chief engineer shall review the local enhanced management plan submitted by the groundwater management district. The chief engineer's review shall be limited to whether the plan:

- (1) Proposes clear geographic boundaries;
- (2) pertains to an area wholly within the groundwater management district;
- (3) proposes goals and corrective control provisions as provided in subsection (f) adequate to meet the stated goals;
- (4) includes a compliance monitoring and enforcement element; and
- (5) is consistent with state law.

If, based on such review, the chief engineer finds that the local enhanced management plan is acceptable for consideration, the chief engineer shall initiate, as soon as practicable thereafter, proceedings to designate a local enhanced management area.

(b) In any case where proceedings to designate a local enhanced management area are initiated, the chief engineer shall conduct an initial public hearing on the question of designating such an area as a local enhanced management area according to the local enhanced management plan. The initial public hearing shall resolve the following findings of fact:

(1) Whether one or more of the circumstances specified in subsection (a) through (d) of K.S.A. 82a-1036, and amendments thereto, exist;

(2) whether the public interest of K.S.A. 82a-1020, and amendments thereto, requires that one or more corrective control provisions be adopted; and

(3) whether the geographic boundaries are reasonable.

The chief engineer shall conduct a subsequent hearing or hearings only if the initial public hearing is favorable on all three issues of fact and the expansion of geographic boundaries is not recommended. At least 30 days prior to the date set for any hearing, written notice of such hearing shall be given to every person holding a water right of record within the area in question and by one publication in any newspaper of general circulation within the area in question. The notice shall state the question and shall denote the time and place of the hearing. At every such hearing, documentary and oral evidence shall be taken and a complete record of the same shall be kept.

(c) The subject matter of the hearing or hearings set forth in subsection (b) shall be limited to the local enhanced management plan that the chief engineer previously reviewed pursuant to subsection (a) and set for hearing.

(d) Within 120 days of the conclusion of the final public hearing set forth in subsections (b) and (c), the chief engineer shall issue an order of decision:

(1) Accepting the local enhanced management plan as sufficient to address any of the conditions set forth in subsections (a) through (d) of K.S.A. 82a-1036, and amendments thereto;

(2) rejecting the local enhanced management plan as insufficient to address any of the conditions set forth in subsections (a) through (d) of K.S.A. 82a-1036, and amendments thereto;

(3) returning the local enhanced management plan to the groundwater management district, giving reasons for the return and providing the district with the opportunity to resubmit a revised plan for public hearing within 90 days of the return of the deficient plan; or

(4) returning the local enhanced management plan to the groundwater management district and proposing modifications to the plan, based on testimony at the hearing or hearings, that will improve the administration of the plan, but will not impose reductions in groundwater withdrawals that exceed those contained in the plan. If the groundwater management district approves of the modifications proposed by the chief engineer, the district shall notify the chief engineer within 90 days of receipt of return of the plan. Upon receipt of the groundwater management district's approval of the modifications, the chief engineer shall accept the modified local management plan. If the groundwater management district does not approve of the modifications proposed by the chief engineer, the local management plan shall not be accepted.

(e) In any case where the chief engineer issues an order of decision accepting the local enhanced management plan pursuant to subsection (d), the chief engineer, within a reasonable time, shall issue an order of designation that designates the area in question as a local enhanced management area.

(f) The order of designation shall define the boundaries of the local enhanced management area and shall indicate the circumstances upon which the findings of the chief engineer are made. The order of designation may include any of the following corrective control provisions set forth in the local enhanced management plan:

(1) Closing the local enhanced management area to any further appropriation of groundwater. In which event, the chief engineer shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such area;

(2) determining the permissible total withdrawal of groundwater in the local enhanced management area each day, month or year, and, insofar as may be reasonably done, the chief engineer shall apportion such permissible total withdrawal among the valid groundwater right holders in such area in accordance with the relative dates of priority of such rights;

(3) reducing the permissible withdrawal of groundwater by any one or more appropriators thereof, or by wells in the local enhanced management area;

(4) requiring and specifying a system of rotation of groundwater use in the local enhanced management area; or

(5) any other provisions making such additional requirements as are necessary to protect the public interest.

The chief engineer is hereby authorized to delegate the enforcement of any corrective control provisions ordered for a local enhanced management area to the groundwater management district in which that area is located, upon written request by the district.

(g) The order of designation shall follow, insofar as may be reasonably done, the geographical boundaries recommended by the local enhanced management plan.

(h) Except as provided in subsection (f), the order of designation of a local enhanced management area shall be in full force and effect from the date of its entry in the records of the chief engineer's office unless and until its operation shall be stayed by an appeal from an order entered on review of the chief engineer's order pursuant to K.S.A. 2011 Supp. 82a-1901, and amendments thereto, and in accordance with the provisions of the Kansas judicial review act. The chief engineer upon request shall deliver a copy of such order to any interested person who is affected by such order and shall file a copy of the same with the register of deeds of any county within which any part of the local enhanced management area lies.

(i) If the holder of a groundwater right within the local enhanced

management area applies for review of the order of designation pursuant to K.S.A. 2011 Supp. 82a-1901, and amendments thereto, the provisions of the order with respect to the inclusion of the holder's water right within the area may be stayed in accordance with the Kansas administrative procedure act.

(j) Unless otherwise specified in the proposed enhanced management plan and included in the order of designation, a public hearing to review the designation of a local enhanced management area shall be conducted by the chief engineer within seven years after the order of designation is final. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer. Upon the request of a petition signed by at least 10% of the affected water users in a local enhanced management area, a public review hearing to review the designation shall be conducted by the chief engineer. This requested public review hearing shall not be conducted more frequently than every four years.

(k) The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section.

(l) The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 82a-1020 through K.S.A. 82a-1040, and amendments thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 30, 2012.

Published in the *Kansas Register* April 12, 2012.

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## CHAPTER 63

### SENATE BILL No. 403

AN ACT concerning the uniform principal and income act; relating to conversion of a trust into a unitrust; amending K.S.A. 2011 Supp. 58-9-105 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 58-9-105 is hereby amended to read as follows: 58-9-105. (a) Unless expressly prohibited by the governing instrument, a trustee may release the power under K.S.A. 58-9-104, and amendments thereto, and convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust;

(2) the trustee gives to each qualified beneficiary of the trust, as de-

fined by K.S.A. 58a-103, and amendments thereto, written notice of (A) the trustee's intention to release the power to adjust and to convert the trust into a unitrust and (B) how the unitrust will operate, including what initial decisions the trustee will make under this section *and the initial payout percentage to be utilized in determining a unitrust distribution*; and

(3) no qualified beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subsection (a)(2).

(b) (1) If a qualified beneficiary timely objects to the conversion to a unitrust, the trustee may petition the appropriate district court to approve the conversion to a unitrust.

(2) A qualified beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the qualified beneficiary may petition the appropriate district court to order the conversion.

(3) The district court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust, after considering the factors enumerated under subsection (c) deemed by the court to be relevant.

(c) In deciding whether to exercise the power conferred by subsection (a), the trustee shall consider all factors relevant to the trust and its beneficiaries, including the following to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;  
(2) the intent of the settlor;  
(3) the identity and circumstances of the beneficiaries;  
(4) the needs for liquidity, regularity of income and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a qualified beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(8) the anticipated tax consequences of conversion.

(d) After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(A) From appreciation of capital;

(B) from earnings and distributions from capital; or

(C) from both.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

(3) The term “income” in the governing instrument shall mean an annual distribution—the unitrust distribution—equal to between 3% and 5%—the payout percentage—of the net fair market value of the trust’s assets, whether such assets would be considered income or principal under other provisions of this act, averaged over a period of up to the three preceding years.

(e) The trustee may, in the trustee’s discretion from time to time, determine all of the following:

(1) The effective date of a conversion to a unitrust;

(2) the provisions for prorating a unitrust distribution for a short year in which a qualified beneficiary’s right to payments commences or ceases;

(3) the frequency of unitrust distributions during the year;

(4) the effect of other payments from or contributions to the trust on the trust’s valuation;

(5) whether to value the trust’s assets annually or more frequently;

(6) what valuation dates to use;

(7) how frequently to value nonliquid assets and whether to estimate their value;

(8) whether to omit from the calculations trust property occupied or possessed by a qualified beneficiary; ~~and~~

(9) *whether the payout percentage utilized in determining the unitrust distribution should be modified to a percentage the trustee could have initially chosen. The trustee may modify the payout percentage if:*

(A) *The trustee gives each qualified beneficiary of the trust three months written notice prior to modifying the payout percentage. Such notice shall include the proposed modified payout percentage, the reasons for such modification and the effective date of such modification; and*

(B) (i) *no qualified beneficiary objects to the modification of the payout percentage in writing to the trustee within 60 days of the mailing of such notice; or*

(ii) *the modification of the payout percentage is approved by the appropriate district court; and*

~~(10)~~ any other matters necessary for the proper functioning of the unitrust.

(f) (1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from the following sources in the following order: Net income, net realized short-term capital gains, net realized long-term capital gains and the principal of the trust.

(g) A trustee may reconvert from a unitrust to restore the power to adjust the trust without judicial procedure if:

(1) The trustee determines that the intent of the settlor or testator and the purposes of the trust are no longer served by such conversion;

(2) the trustee gives each qualified beneficiary of the trust written notice of the trustee's intent to reconvert from a unitrust to the power to adjust the trust and the reasons for such reconversion; and

(3) no qualified beneficiary objects to such reconversion in writing to the trustee within 60 days of the mailing of such notice.

~~(g)~~(h) The trustee or, if the trustee declines to do so, a qualified beneficiary may petition the appropriate district court to:

(1) Authorize a payout percentage of less than 3% or more than 5%;

(2) provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

(3) average the valuation of the trust's net assets over a period other than three years; and

(4) reconvert from a unitrust. Upon a reconversion, the power to adjust under K.S.A. 58-9-104, and amendments thereto, shall be revived.

~~(h)~~(i) A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a qualified beneficiary to withdraw a portion or all of the principal.

~~(i)~~(j) Except as provided in subsection ~~(j)~~(k), a trust may not be converted into a unitrust in any of the following circumstances:

(1) If payment of the unitrust distribution would change the amount payable to a qualified beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

(3) If:

(A) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

(B) the individual would not be treated as the owner if the trustee did not possess the power to convert.

(4) If:

(A) Possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual; and

(B) the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

(5) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

(6) If the trustee is a qualified beneficiary of the trust.

~~(j)(k)~~ (1) If subsection ~~(i)(3)~~ (j)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(2) If subsection ~~(i)(3)~~ (j)(3), (4) or (6) applies to all the trustees, the trustees may petition the appropriate district court to direct a conversion.

~~(k)(l)~~ (1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

(A) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection ~~(i)(3)~~ (j)(3), (4) or (5).

(B) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection ~~(i)(j)~~.

(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.

(1) This section shall be part of and supplemental to the uniform principal and income act (1997).

Sec. 2. K.S.A. 2011 Supp. 58-9-105 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 3, 2012.

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## CHAPTER 64

### SENATE BILL No. 422

AN ACT concerning courts; relating to judges *pro tem*; amending K.S.A. 20-310a and repealing the existing section.

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

Section 1. K.S.A. 20-310a is hereby amended to read as follows: 20-310a. (a) ~~Upon the application of the chief judge of a judicial district to the departmental justice of that district, Subject to the budget limitations of the district court, the chief judge of any judicial district may appoint a judge pro tem within such judicial district: (1) For good cause shown;; or (2) in the absence, sickness or disability of a district judge or district magistrate judge in any judicial district, a judge pro tem may be appointed, whenever the departmental justice for such judicial district has~~

~~not assigned~~—a district judge or district magistrate judge from another judicial district; has not been assigned to replace such district judge or district magistrate judge as provided in K.S.A. 20-319, and amendments thereto.

(b) Any judge *pro tem* appointed pursuant to this section shall be a regularly admitted, *active status* member of the bar of this state. The appointment of any such judge *pro tem* shall be made by the chief judge or, in the absence of the chief judge, by the departmental justice for the judicial district.

(c) Any judge *pro tem* appointed pursuant to this section shall have the full power and authority of a district judge with respect to any actions or proceedings before such judge *pro tem*, except that any judge *pro tem* appointed pursuant to subsection (d) or (e) shall have only such power and authority as provided therein. A judge *pro tem* shall receive such compensation as is prescribed by the district court, subject to the budget limitations of such district court.

(d) Subject to the budget limitations of the district court, the chief judge of any judicial district may appoint one or more judges *pro tem* for the limited purpose of hearing the original trials of actions filed pursuant to the small claims procedures act or other action within the jurisdiction of a district magistrate judge as provided in K.S.A. 20-302b, and amendments thereto. Any such judge *pro tem* shall have only such judicial power and authority as is necessary to hear such actions. Any party aggrieved by any order of a judge *pro tem* under this subsection may appeal such order and such appeal shall be heard by a district judge *de novo*. If the appeal is a small claims action, the appeal shall be under K.S.A. 61-2709, and amendments thereto. If the appeal is an action within the jurisdiction of a district magistrate judge, the appeal shall be under K.S.A. 20-302b, and amendments thereto.

(e) Subject to the budget limitations of the district court, the chief judge of any judicial district in which the board of county commissioners is authorized to use the code for the enforcement of county codes and resolutions as provided in subsection (b) of K.S.A. 19-101d, and amendments thereto, may appoint one or more judges *pro tem* for the limited purpose of hearing such cases. Any such judge *pro tem* shall have only such power and authority as is necessary to hear such actions, and shall have the power to compel appearances before the court, to hold persons in contempt for failure to appear, and to issue bench warrants for appearances. Such judge *pro tem* shall receive the salary and other compensation set by resolution of the board of county commissioners which shall be paid from the revenues of the county general fund or other fund established for the purpose of financing code enforcement.

(f) The chief judge of each judicial district shall report to the judicial administrator of the courts: (1) The dates on which any judge *pro tem* served in such district, (2) the compensation paid to any judge *pro tem*,

and (3) such other information as the judicial administrator may request with regard to the appointment of judges *pro tem*. The reports shall be submitted annually on or before January 15 on forms provided by the judicial administrator.

Sec. 2. K.S.A. 20-310a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 3, 2012.

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## CHAPTER 65

SENATE BILL No. 417  
(Amended by Chapter 166)

AN ACT concerning economic development; relating to the powers, duties and functions transferred to the secretary of commerce from Kansas, Inc.; making changes in references and transfers to state officers and agencies with respect thereto; amending K.S.A. 74-5007a, 74-50,101, 74-8009a, 74-8013, 74-8015, 74-8016, 74-8204, 74-8310 and 74-9306 and K.S.A. 2011 Supp. 12-17,169, 12-17,177, 74-5001a, 74-5049, 74-5089, 74-5095, 74-50,151, 74-8004, 74-8006, 74-8010, 74-8106, 74-8111, 74-8136, 74-8317, 74-8405, 74-99b09, 74-99c07, 74-99e02, 75-2935, 75-2935b, 75-3702k, 75-3702l, 75-3702m and 75-3702n and repealing the existing sections; also repealing K.S.A. 74-8003, 74-8011, 74-8012 and 74-8014 and K.S.A. 2011 Supp. 74-50,134, 74-8001, 74-8002, 74-8005, 74-8007, 74-8102 and 74-99c10.

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

Section 1. K.S.A. 2011 Supp. 12-17,169 is hereby amended to read as follows: 12-17,169. (a) (1) Any city or county shall have the power to issue special obligation bonds in one or more series to finance the undertaking of any STAR bond project in accordance with the provisions of this act. Such special obligation bonds shall be made payable, both as to principal and interest:

(A) From revenues of the city or county derived from or held in connection with the undertaking and carrying out of any STAR bond project or projects under this act including historic theater sales tax increments;

(B) from any private sources, contributions or other financial assistance from the state or federal government;

(C) from a pledge of 100% of the tax increment revenue received by the city from any local sales and use taxes, including the city's share of any county sales tax, which are collected from taxpayers doing business within that portion of the city's STAR bond project district established pursuant to K.S.A. 2011 Supp. 12-17,165, and amendments thereto, occupied by a STAR bond project, except for amounts committed to other uses by election of voters or pledged to bond repayment prior to the approval of the STAR bond project;

(D) at the option of the county in a city STAR bond project district, from a pledge of all of the tax increment revenues received by the county from any local sales and use taxes which are collected from taxpayers doing business within that portion of the city's STAR bond project district established pursuant to K.S.A. 2011 Supp. 12-17,165, and amendments thereto, except for amounts committed to other uses by election of voters or pledged to bond repayment prior to the approval of a STAR bond project;

(E) in a county STAR bond project district, from a pledge of 100% of the tax increment revenue received by the county from any county sales and use tax, but excluding any portions of such taxes that are allocated to the cities in such county pursuant to K.S.A. 12-192, and amendments thereto, which are collected from taxpayers doing business within that portion of the county's STAR bond project district established pursuant to K.S.A. 2011 Supp. 12-17,165, and amendments thereto, occupied by a STAR bond project;

(F) from a pledge of all of the tax increment revenue received from any state sales taxes which are collected from taxpayers doing business within that portion of the city's or county's STAR bond project district occupied by a STAR bond project;

(G) at the option of the city or county and with approval of the secretary, from all or a portion of the transient guest tax of such city or county;

(H) at the option of the city or county and with approval of the secretary, (i) from a pledge of all or a portion of increased revenue received by the city or county from franchise fees collected from utilities and other businesses using public right-of-way within the STAR bond project district; or (ii) from a pledge of all or a portion of the revenue received by a city or county from local sales taxes or local transient guest and local use taxes; or

(I) by any combination of these methods.

The city or county may pledge such revenue to the repayment of such special obligation bonds prior to, simultaneously with, or subsequent to the issuance of such special obligation bonds.

(2) Bonds issued under paragraph (1) of this subsection shall not be general obligations of the city or the county, nor in any event shall they give rise to a charge against its general credit or taxing powers, or be payable out of any funds or properties other than any of those set forth in paragraph (1) of this subsection and such bonds shall so state on their face.

(3) Bonds issued under the provisions of paragraph (1) of this subsection shall be special obligations of the city or county and are declared to be negotiable instruments. Such bonds shall be executed by the mayor and clerk of the city or the chairperson of the board of county commissioners and the county clerk and sealed with the corporate seal of the city

or county. All details pertaining to the issuance of such special obligation bonds and terms and conditions thereof shall be determined by ordinance of the city or by resolution of the county.

All special obligation bonds issued pursuant to this act and all income or interest therefrom shall be exempt from all state taxes. Such special obligation bonds shall contain none of the recitals set forth in K.S.A. 10-112, and amendments thereto. Such special obligation bonds shall, however, contain the following recitals: (i) The authority under which such special obligation bonds are issued; (ii) such bonds are in conformity with the provisions, restrictions and limitations thereof; and (iii) that such special obligation bonds and the interest thereon are to be paid from the money and revenue received as provided in paragraph (1) of this subsection.

(4) Any city or county issuing special obligation bonds under the provisions of this act may refund all or part of such issue pursuant to the provisions of K.S.A. 10-116a, and amendments thereto.

(b) (1) Subject to the provisions of paragraph (2) of this subsection, any city shall have the power to issue full faith and credit tax increment bonds to finance the undertaking, establishment or redevelopment of any major motorsports complex, as defined in subsection (k) of K.S.A. 2011 Supp. 12-17,162, and amendments thereto. Such full faith and credit tax increment bonds shall be made payable, both as to principal and interest: (A) From the revenue sources identified in paragraph (1) of subsection (a) or by any combination of these sources; and (B) subject to the provisions of paragraph (2) of this subsection, from a pledge of the city's full faith and credit to use its ad valorem taxing authority for repayment thereof in the event all other authorized sources of revenue are not sufficient.

(2) Except as provided in paragraph (3) of this subsection, before the governing body of any city proposes to issue full faith and credit tax increment bonds as authorized by this subsection, the feasibility study required by subsection (b) of K.S.A. 2011 Supp. 12-17,166, and amendments thereto, shall demonstrate that the benefits derived from the project will exceed the cost and that the income therefrom will be sufficient to pay the costs of the project. No full faith and credit tax increment bonds shall be issued unless the governing body states in the resolution required by subsection (e) of K.S.A. 2011 Supp. 12-17,166, and amendments thereto, that it may issue such bonds to finance the proposed STAR bond project. The governing body may issue the bonds unless within 60 days following the conclusion of the public hearing on the proposed STAR bond project plan a protest petition signed by 3% of the qualified voters of the city is filed with the city clerk in accordance with the provisions of K.S.A. 25-3601, *et seq.*, and amendments thereto. If a sufficient petition is filed, no full faith and credit tax increment bonds shall be issued until the issuance of the bonds is approved by a majority of the voters voting

at an election thereon. Such election shall be called and held in the manner provided by the general bond law. The failure of the voters to approve the issuance of full faith and credit tax increment bonds shall not prevent the city from issuing special obligation bonds in accordance with this section. No such election shall be held in the event the board of county commissioners or the board of education determines, as provided in K.S.A. 2011 Supp. 12-17,165, and amendments thereto, that the proposed STAR bond project district will have an adverse effect on the county or school district.

(3) As an alternative to paragraph (2) of this subsection, any city which adopts a STAR bond project plan for a major motorsports complex, but does not state its intent to issue full faith and credit tax increment bonds in the resolution required by subsection (e) of K.S.A. 2011 Supp. 12-17,166, and amendments thereto, and has not acquired property in the STAR bond project area may issue full faith and credit tax increment bonds if the governing body of the city adopts a resolution stating its intent to issue the bonds and the issuance of the bonds is approved by a majority of the voters voting at an election thereon. Such election shall be called and held in the manner provided by the general bond law. The failure of the voters to approve the issuance of full faith and credit tax increment bonds shall not prevent the city from issuing special obligation bonds pursuant to paragraph (1) of subsection (a). Any project plan adopted by a city prior to the effective date of this act in accordance with K.S.A. 12-1772, and amendments thereto, shall not be invalidated by any requirements of this act.

(4) During the progress of any major motorsports complex project in which the project costs will be financed, in whole or in part, with the proceeds of full faith and credit tax increment bonds, the city may issue temporary notes in the manner provided in K.S.A. 10-123, and amendments thereto, to pay the project costs for the major motorsports complex project. Such temporary notes shall not be issued and the city shall not acquire property in the STAR bond project area until the requirements of paragraph (2) or (3) of this subsection, whichever is applicable, have been met.

(5) Full faith and credit tax increment bonds issued under this subsection shall be general obligations of the city and are declared to be negotiable instruments. Such bonds shall be issued in accordance with the general bond law. All such bonds and all income or interest therefrom shall be exempt from all state taxes. The amount of the full faith and credit tax increment bonds issued and outstanding which exceeds 3% of the assessed valuation of the city shall be within the bonded debt limit applicable to such city.

(6) Any city issuing full faith and credit tax increment bonds under the provisions of this subsection may refund all or part of such issue pursuant to the provisions of K.S.A. 10-116a, and amendments thereto.

(c) For each project financed with special obligation bonds payable from the revenues described in subsection (a)(1), the city or county shall prepare and submit to the secretary by October 1 of each year, a report describing the status of any projects within such STAR bond project area, any expenditures of the proceeds of special obligation bonds that have occurred since the last annual report and any expenditures of the proceeds of such bonds expected to occur in the future, including the amount of sales tax revenue, how such revenue has been spent, the projected amount of such revenue and the anticipated use of such revenue. The department of commerce shall compile this information and submit a report annually to the governor, ~~Kansas, Inc.~~ and the legislature by February 1 of each year.

(d) A city or county may use the proceeds of special obligation bonds or any uncommitted funds derived from sources set forth in this section to pay the bond project costs as defined in K.S.A. 2011 Supp. 12-17,162, and amendments thereto, to implement the STAR bond project plan.

(e) With respect to a STAR bond project district established prior to January 1, 2003, for which, prior to January 1, 2003, the secretary made a finding as provided in subsection (a) of this section that a STAR bond project would create a major tourism area for the state, such special obligation bonds shall be payable both as to principal and interest, from a pledge of all of the revenue from any transient guest, state and local sales and use taxes collected from taxpayers as provided in subsection (a) of this section whether or not revenues from such taxes are received by the city.

Sec. 2. K.S.A. 2011 Supp. 12-17,177 is hereby amended to read as follows: 12-17,177. (a) The boundaries of any STAR bond project district in a major tourism area including an auto race track facility located in Wyandotte county, shall, without regard to that portion of the district pertaining to the auto race track facility, be as follows: Beginning at the intersection of Interstate 70 and Interstate 435; West along Interstate 70 to 118th Street; North along 118th Street to State Avenue; Northeasterly along proposed relocated State Avenue to 110th Street; North along 110th Street to Parallel Parkway; East along Parallel Parkway to Interstate 435; South along Interstate 435 to Interstate 70.

(b) Any major tourism area may include an additional area not exceeding 400 acres of additional property, excluding roads and highways, in addition to the property necessary for the auto race track facility upon a finding by the governor that the development plan and each project within such additional 400 acre area will enhance the major tourism area. For the development of each project within such additional 400 acre area the city shall select qualified developers pursuant to a request for proposals in accordance with written official procedures approved by the governing body of the city.

(c) Any project within such additional 400 acre area that is financed in whole or in part by special obligation bonds payable from revenues derived from subsection (a)(1)(C), (a)(1)(F) or (a)(1)(G) of K.S.A. 2011 Supp. 12-17,169, and amendments thereto, shall not be entitled to any real property tax abatements or the revenues described in K.S.A. 12-1775, and amendments thereto.

(d) Any project within such additional 400 acre area must be approved by the governor and construction must be commenced by July 1, 2002.

(e) The maximum principal amount of special obligation bonds issued to fund STAR bond projects within a major tourism area, including any such additional 400 acre area, shall not exceed \$308,000,000, unless the city has secured prior approval from the secretary of commerce and the secretary of revenue. Any special obligation bonds issued for the following purposes shall not be counted toward such limit on the principal amount:

(1) Special obligation bonds issued solely for the purpose of refunding such bonds, either at maturity or in advance of maturity, pursuant to the provisions of K.S.A. 10-116a, and amendments thereto; and

(2) special obligation bonds issued solely to fund reserve funds for such refunding bonds.

(f) Prior to issuing any special obligation bonds for any purpose, the city or county must have the approval of the secretary and the secretary of revenue.

(g) The city or county shall prepare and submit annually to the secretary by October 1 of each year, a report describing the status of any projects within a major tourism area and all other STAR bond projects, including any such additional 400 acre area, any expenditures of the proceeds of special obligation bonds that have occurred since the last annual report and any expenditures of the proceeds of such bonds expected to occur in the future, including the amount of sales tax revenue, how it has been spent, the projected amount of such revenue and the anticipated use of such revenue. The department of commerce shall compile this information and submit a report annually to the governor, ~~Kansas, Inc.~~ and the legislature by February 1 of each year.

(h) Any business located in Kansas within 50 miles of a major tourism area that relocates into a major tourism area, including such additional 400 acre area, shall not receive any of the benefits of K.S.A. 2011 Supp. 12-17,160 *et seq.*, and amendments thereto.

(i) If a city determines that revenues from sources other than property taxes will be sufficient to pay any special obligation bonds issued to finance a STAR bond project for an auto race track facility as described in K.S.A. 2011 Supp. 12-17,162, and amendments thereto, and the secretary makes a finding that such project will create a major tourism area as defined in K.S.A. 2011 Supp. 12-17,162, and amendments thereto, all real and personal property, constituting an auto race track facility de-

scribed in K.S.A. 2011 Supp. 12-17,162, and amendments thereto, in such STAR bond project district shall be exempt from property taxation for a period ending on the earlier of:

(1) The date which is 30 years after the date of the finding by the secretary with respect to such major tourism area; or

(2) the date on which no such special obligation bonds issued to finance such auto race track facility in a major tourism area remain outstanding.

(j) The city which is authorized to issue bonds pursuant to the provisions of K.S.A. 2011 Supp. 12-17,160 *et seq.*, and amendments thereto, in order to finance a STAR bond project in a major tourism area as defined by K.S.A. 2011 Supp. 12-17,162, and amendments thereto, shall obtain underwriting services required by the city for the issuance of such bonds pursuant to written proposals received in accordance with this section.

Each city which is authorized to issue such bonds shall establish written official procedures for obtaining underwriting services required for the issuance of such bonds, including specifications for requests for proposals and criteria for evaluation of proposals on a competitive basis. The proposal evaluation criteria shall include factors based on cost, capacity to provide the required services, qualifications and experience.

Prior to the issuance of any such bond to finance a STAR bond project in a major tourism area, the city shall publish notice of a request for proposals to provide the underwriting services that are required by the city with regard to the proposed bond issuance and shall mail requests for proposals to qualified interested parties upon request for such notice. The city shall award contracts for such underwriting services from the proposals received in accordance with the procedures and evaluation criteria adopted by the city for such purpose. A city shall publish such notice in the official newspaper of the city.

(k) A STAR bond project in a major tourism area for an auto race track facility, shall be completed within 30 years from the date the secretary makes the finding that the STAR bond project will create a major tourism area pursuant to subsection (l) of K.S.A. 2011 Supp. 12-17,162, and amendments thereto.

(l) The maximum maturity on bonds issued to finance projects pursuant to this act shall not exceed 20 years as provided in K.S.A. 2011 Supp. 12-17,166, *and amendments thereto*, except that:

(1) Such maximum period of special obligation bonds not payable from revenues described by subsections (a)(1)(C), (a)(1)(F) and (a)(1)(G) of K.S.A. 2011 Supp. 12-17,169, and amendments thereto, issued to finance an auto race track facility shall not exceed 30 years; and

(2) such maximum period, if the governor determines and makes and submits a finding to the speaker of the house of representatives and the president of the senate that a maturity greater than 20 years, but in no

event exceeding 30 years, is necessary for the economic feasibility of the financing of an auto race track facility with special obligation bonds payable primarily from revenues described by subsections (a)(1)(C), (a)(1)(F) and (a)(1)(G) of K.S.A. 2011 Supp. 12-17,169, and amendments thereto, may be extended in accordance with such determination and finding.

(m) The secretary of revenue shall determine when the amount of sales tax and other revenues that have been collected and distributed to the bond debt service or reserve fund is sufficient to satisfy all principal and interest costs to the maturity date or dates, of any special obligation bonds issued by a city or county to finance a STAR bond project in a major tourism area. Thereafter, all sales tax and other revenues shall be collected and distributed in accordance with applicable law.

Sec. 3. K.S.A. 2011 Supp. 74-5001a is hereby amended to read as follows: 74-5001a. The purpose of the department of commerce shall be to develop and implement strategies to:

(a) Facilitate the growth, diversification and expansion of existing enterprises and the creation by Kansans of new wealth-generating enterprises;

(b) promote economic diversification and innovation within the basic industries and sectors of the state;

(c) promote increased productivity and value added products, processes and services among wealth-generating enterprises and the export of those goods and services created by small and large Kansas enterprises to the nation and world;

(d) maintain and revitalize economically depressed rural areas and urban neighborhoods by annually targeting scarce resources by size, sector and location to communities and enterprises of particular need and opportunity and by working in close collaboration with local communities;

(e) protect and enhance the environmental quality of the state in ways consistent with dynamic economic growth; and

(f) forge a supportive partnership with the standing committee on commerce of the senate, the standing committee on economic development of the house of representatives and the joint committee on economic development, ~~Kansas, Inc.~~, Kansas venture capital, Inc., Kansas certified development companies, Kansas small business development centers, Kansas public and private educational institutions, and other appropriate private and public sector organizations in achieving the economic goals of the state.

Sec. 4. K.S.A. 74-5007a is hereby amended to read as follows: 74-5007a. The purpose of the division of business development shall be to attract new business and industry from outside the state and promote and encourage the growth, diversification, innovation and retention of existing Kansas business and industry, in rural and urban Kansas, thereby creating quality jobs, attracting new capital investment, and expanding and diver-

sifying the state's economic tax base. In defining this purpose, the department and the state government shall recognize that the future of the Kansas economy depends largely on the creation of diversified, value added, primary economic activity that imports new quality jobs, income and wealth into the state. The division of business development is hereby authorized and empowered to:

(a) Foster a climate of agricultural and industrial development by providing incentives to businesses and industries located principally outside the state to expand, locate or relocate within the state;

(b) to engage in recruitment of such businesses and industries by identifying, contacting and informing them of the benefits of expanding, locating or relocating in Kansas;

(c) maintain and keep current all available information regarding the industrial opportunities and possibilities of the state, including raw materials and by-products; power and water resources; transportation facilities; available markets and the marketing limitations of the state; labor supply; banking and financing facilities; availability of industrial sites; and the advantages the state and its particular sections have as industrial locations; and such information shall be used for the encouragement of new industries in the state and the expansion of existing industries within the state;

(d) to assist counties and cities in industrial development through the establishment of industrial development corporations, including site surveys, small business administration problems, and render such other similar assistance as may be required; and in those instances where it is deemed appropriate, to contract with and make a service charge to the county or city involved for such services rendered; and

(e) to acquaint the people of this state with the industries within the state and encourage closer cooperation between the agriculture, commercial and industrial enterprises and the people of the state.

(f) Provide programs that facilitate the development of existing industries and startup industries;

(g) facilitate the availability of capital for business growth and quality job creation;

(h) foster the development of a coordinated statewide network of business assistance programs;

(i) encourage the development of minority and women-owned businesses;

(j) pursue initiatives that expand the market for Kansas products and services;

(k) assist small business by providing assistance in interpreting and applying the laws and administrative rules and regulations of the state applying to such businesses; and

(l) make performance grants available to certified development companies and small business development centers as key constituent ele-

ments of a “statewide risk capital system” subject to legislative appropriations. Such grants shall be made to provide secure base levels of funding and incentives for providing financial and technical assistance through the statewide risk capital system to primary, job creating enterprises. The method of distribution of the grants shall be developed by the division in consultation with the certified development companies and small business development centers ~~and reviewed and evaluated by Kansas, Inc.~~ Prior to establishing the method of distribution, the division in consultation with the certified development companies and small business development centers shall perform a survey and analysis of the effectiveness of existing methods of distribution for funding in other states. The method of distribution shall include provision for the establishment of performance standards and performance review prior to initial funding and for all subsequent refunding. The method of distribution shall also provide a formula for base levels of funding which considers all current levels of federal, state and other existing funding, and which recognizes different needs based upon differences in client populations and areas served. The method of distribution proposed shall give priority to the use of state funds for incentive funding where possible, and shall specifically encourage co-location of services essential to an effective and efficient statewide risk capital system.

Sec. 5. K.S.A. 2011 Supp. 74-5049 is hereby amended to read as follows: 74-5049. (a) In order to insure that the department of commerce is effectively administering this act, the department shall cooperate with the standing committee on commerce of the senate, the standing committee on new economy of the house of representatives and the joint committee on economic development ~~and Kansas, Inc.~~, in the performance of an independent performance review of the activities of the department and the departmental divisions. The review shall include, but not be limited to: (1) An assessment of the impacts of the department’s programs corresponding to the strategic plans of the department and the departmental divisions; (2) a comparative assessment of the relative impact of the department’s programs with similar programs in other states; and (3) a comparative assessment of the targeting of the department’s programs by size and sector of economic activity, and by location in different areas of the state. The review shall be completed or updated at least once every three years.

(b) On or before October 1, the department shall prepare and publish an annual report, which shall be made widely available, of its activities and expenditures for the information of the governor, the standing committee on commerce of the senate, the standing committee on new economy of the house of representatives ~~and~~, the joint committee on economic development, ~~Kansas, Inc.~~, and the public, and shall, from time to time, submit recommendations to the governor concerning legislation found to

be necessary or desirable in effecting the purposes of this act. The annual report shall include any information which the department is required to report by law. The annual report shall specifically account for the ways in which the purposes of the department and its divisions as described in this act have been achieved, and the recommendations shall specifically note what changes in the activities of the department and its divisions, and of state government are necessary to better address the purposes described in this act. The annual report to the standing committee on commerce of the senate, the standing committee on new economy of the house of representatives and the joint committee on economic development shall be made by the department either: (1) by publishing such report on the internet and by notifying each member of the committees that the report is available and providing, as part of such notice, the uniform resource locator (URL) at which such report is available; or (2) by submitting copies of such report on CD-ROM or other electronically readable media to such committees.

Sec. 6. K.S.A. 2011 Supp. 74-5089 is hereby amended to read as follows: 74-5089. (a) There is hereby established a state matching grant program to provide assistance in the promotion of tourism and development of quality tourist attractions within the state of Kansas. Grants awarded under this program shall be limited to not more than 40% of the cost of any proposed project. Applicants shall not utilize any state moneys to meet the matching requirements under the provisions of this program. Both public and private entities shall be eligible to apply for a grant under the provisions of this act. Not less than 75% of all moneys granted under this program shall be allocated to public entities or entities exempt from taxation under the provisions of 501(c)(3) of the federal internal revenue code of 1986 and amendments thereto. After July 1, 1994, no more than 20% of moneys granted to public or nonprofit entities shall be granted to any single such entity. Furthermore, after July 1, 1994, no more than 20% of moneys granted to private entities shall be granted to any single such entity. The secretary of commerce shall administer the provisions of this act and the secretary may adopt rules and regulations establishing criteria for qualification for a matching grant and such other matters deemed necessary by the secretary for the administration of this act.

(b) For the purpose of K.S.A. 74-5089 through 74-5091, and amendments thereto, "tourist attraction" means a site that is of significant interest to tourists as a historic, cultural, scientific, educational, recreational or architecturally unique site, or as a site of natural scenic beauty or an area naturally suited for outdoor recreation, however, under no circumstances shall "tourist attraction" mean a race track facility, as defined in K.S.A. 74-8802, and amendments thereto, or any casino or other estab-

lishment which operates class three games, as defined in the 1991 version of 25 USC 2703 U.S.C. § 2703.

~~(c) During the fiscal year 1997, Kansas Inc. shall commission an analysis of this program's impact on tourism. The analysis shall include a recommendation for continuation, discontinuation or alteration of the program.~~

Sec. 7. K.S.A. 2011 Supp. 74-5095 is hereby amended to read as follows: 74-5095. (a) There is hereby established the community strategic planning grant committee which is composed of the following:

(1) ~~The president of Kansas, Inc.~~ *secretary of commerce*, who shall act as chairperson;

(2) the director of the national institute for rural development or the director's designee;

(3) one member from the Kansas association of counties;

(4) one member from the Kansas league of municipalities;

(5) one member from the Kansas industrial developers association who is also from a metropolitan county; and

(6) one member with extensive knowledge of urban revitalization or public finance or both who shall be appointed by the secretary of commerce.

(b) Members designated in subsections (a)(3), (4) and (5) shall be appointed by the secretary of commerce in consultation with the respective associations named therein.

(c) The committee is hereby attached to the department of commerce as a part thereof. All budgeting, purchasing and related management functions of the committee shall be administered by the secretary of commerce. The secretary of commerce shall provide office and meeting space and such clerical and other staff assistance as may be necessary to assist the committee in carrying out its powers, duties and functions under this act.

(d) Members of the committee attending meetings of the committee, or attending a subcommittee meeting thereof authorized by the committee, may be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

Sec. 8. K.S.A. 74-50,101 is hereby amended to read as follows: 74-50,101. Two years after the last grant is awarded to an applicant from a nonmetropolitan county and, again, two years after the last grant is awarded to an applicant from a metropolitan county under this act, ~~Kansas, Inc.~~, *the secretary of commerce* shall evaluate each economic development strategic plan developed and determine the degree that such plan has been implemented and report such evaluations and determinations to the governor and the legislature.

Sec. 9. K.S.A. 2011 Supp. 74-50,151 is hereby amended to read as follows: 74-50,151. (a) There is hereby created in the state treasury the

Kansas economic opportunity initiatives fund. Subject to acts of the legislature applicable thereto, the moneys in the Kansas economic opportunity initiatives fund shall be used only for the purposes prescribed by this section.

(b) All expenditures made pursuant to this act shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the governor or the governor's designee. The governor may approve a warrant upon certification, by the secretary of commerce, that an economic emergency or unique opportunity exists which warrant funding for a strategic economic intervention by such state agency or agencies to address expenses involved in securing economic benefits or avoiding or remedying economic losses related to:

- (1) A major expansion of an existing Kansas commercial enterprise;
- (2) the potential location in Kansas of the operations of a major employer;
- (3) the award of a significant federal or private sector grant which has a financial matching requirement;
- (4) the departure from Kansas or the substantial reduction of the operations of a major employer; and
- (5) the closure or the substantial reduction of a major federal or state institution or facility.

(c) An intervention strategy may include financial assistance in the form of grants, loans or both. The department of commerce shall adopt written guidelines concerning the terms and conditions of any such loans. However, all repaid funds shall be credited to the Kansas economic opportunity initiatives fund. No intervention strategy approved pursuant to this act shall facilitate the moving of an existing Kansas firm to another location within the state unless such restriction is waived by the secretary of commerce. Every intervention strategy approved pursuant to this act shall identify the intended outcomes to be realized by the strategy for which funding is sought.

(d) The department of commerce ~~and Kansas, Inc.~~ shall make ~~joint~~ findings concerning the costs and benefits, on both a local and statewide basis, of projects proposed pursuant to this act. Prior to allocation of any funds pursuant to this act, the governor shall review the cost-benefit findings performed on each project.

(e) The director of the budget and the director of the legislative research department shall consult periodically and review the balance credited to and the estimated receipts to be credited to the state economic development initiatives fund during the fiscal year. During any period when the legislature is not in session, upon a finding by the director of the budget in consultation with the director of the legislative research department that the total of the unencumbered balance and estimated receipts to be credited to the state economic development initiatives fund

during a fiscal year are insufficient to fund the budgeted expenditures and transfers from the state economic development initiatives fund for the fiscal year in accordance with the provisions of appropriation acts, the director of the budget shall make a certification of such finding to the governor. Upon approval by the governor, the director of accounts and reports shall transfer the amount of moneys from the Kansas economic opportunity initiatives fund to the state economic development initiatives fund that is required, in accordance with a certification by the director of the budget under this subsection, to fund the budgeted expenditures and transfers from the state economic development initiatives fund for the fiscal year in accordance with the provisions of appropriation acts, as specified by the director of the budget pursuant to such certification.

(f) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the state economic development initiatives fund interest earnings based on:

(1) The average daily balance of moneys in the Kansas economic opportunity initiatives fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(g) ~~A three member panel consisting of~~ The secretary of commerce; ~~the president of Kansas, Inc. and the private sector chairperson of the board of Kansas, Inc.~~ shall review annually the propriety of projects funded under this section. ~~The panel shall~~ and report ~~its~~ the findings in writing to the governor, the new economy committee of the house of representatives, the senate commerce committee and the joint committee on economic development. The report to the new economy committee of the house of representatives, the commerce committee of the senate and the joint committee on economic development under this subsection shall be made either: (1) By ~~the panel by~~ publishing such report on the internet and by notifying each member of the committees that the report is available and providing, as part of such notice, the uniform resource locator (URL) at which such report is available; or (2) by submitting copies of such report on CD-ROM or other electronically readable media to such committees.

Sec. 10. K.S.A. 2011 Supp. 74-8004 is hereby amended to read as follows: 74-8004. (a) In order to achieve its purpose as provided in this act, ~~Kansas, Inc.~~ *the secretary of commerce* shall:

(1) Serve in an advisory capacity to the governor, ~~the Kansas department of commerce and~~ the standing committee on commerce of the senate, the standing committee on economic development of the house of representatives and the joint committee on economic development.

(2) Assume central responsibility to develop, with the guidance of both the private and public sectors, all facets of a comprehensive long term economic development strategy.

(3) Coordinate the strategy development with all other state and local agencies and offices and state educational institutions which do research work, develop materials and programs, gather statistics, or which perform functions related to economic development; and such state and local agencies and offices and state educational institutions shall advise and cooperate with ~~Kansas, Inc.~~ *the secretary of commerce* in the planning and accomplishment of the strategy.

(4) Evaluate and analyze the state's economy to guide the direction of future public and private actions, and report and make recommendations to the governor, ~~the department of commerce,~~ and the standing committee on commerce of the senate, the standing committee on economic development of the house of representatives and the joint committee on economic development with respect to the state's economy. The report to the committee on commerce of the senate, the committee on economic development of the house of representatives and the joint committee on economic development under this subsection shall be made by ~~Kansas, Inc.~~ *the secretary of commerce*, either: (A) By publishing such report on the internet and by notifying each member of the committees that the report is available and providing, as part of such notice, the uniform resource locator (URL) at which such report is available;; or (B) by submitting copies of such report on CD-ROM or other electronically readable media to such committees.

(5) Oversee and evaluate the state's economic development activities on an ongoing basis through the establishment of goals, priorities performance standards and the periodic program audit of those goals, priorities and performance standards.

(6) Oversee the implementation of the state's economic development plan and monitor updates of that plan.

(7) Provide appropriate oversight to ensure the successful implementation of Kansas Venture Capital, Inc.

(8) Oversee the targeting of scarce state resources by size and sector of economic activity and by geographic location within the state in order to enhance the state's potential comparative economic advantages.

(9) Review and evaluate the annual ~~reports of the department of commerce, Kansas technology enterprise corporation and report of Kansas Venture Capital, Inc. Kansas, Inc.,~~ *The secretary of commerce* shall transmit recommendations concerning the ~~agencies'~~ *Kansas Venture Capital, Inc.* activities to the governor and the legislature no later than September 1 of each year.

(10) Evaluate and report on the effectiveness of the activities of the Kansas bioscience authority as provided in K.S.A. 2011 Supp. 74-99b09.

(b) ~~Kansas, Inc.,~~ *The secretary of commerce* shall seek advice from the general public and from professional associations, academic groups and institutions and individuals with knowledge of and interest in areas of economic development and planning.

(c) ~~The department of commerce and~~ All other interested state agencies shall cooperate with ~~Kansas, Inc.,~~ *the secretary of commerce* in providing information and other assistance as may be requested for the performance of its duties with respect to the state's economic development plan.

Sec. 11. K.S.A. 2011 Supp. 74-8006 is hereby amended to read as follows: 74-8006. ~~Kansas, Inc.~~ *The secretary of commerce* shall publish an annual report for the governor, legislature, citizens and media of Kansas. The report shall include:

(a) An analysis of the current state of and emerging trends in the Kansas economy over the next decade.

(b) An evaluation of the effectiveness of state economic development policies and programs in meeting the goals of the state economic plan by size of enterprise, sector of economic activity and location within Kansas, and in comparison with other states.

(c) A listing in order of priority of recommendations for initiatives that will further the effective implementation of the state economic development plan.

(d) A synopsis of the activities of ~~Kansas, Inc.~~ *the secretary of commerce* during the previous fiscal year.

(e) The report shall be transmitted annually to the governor and the legislature on October 1 ~~in coordination with the Kansas technology enterprise corporation and the department of commerce.~~

Sec. 12. K.S.A. 74-8009a is hereby amended to read as follows: 74-8009a. (a) ~~Kansas, Inc. is a public-private partnership.~~ The state shall provide an annual appropriation to fund ~~the salaries and operating expenses of the agency, as well as~~ research and evaluation activities conducted at the request of the executive or legislative branches. Private funds shall be raised to support the economic development research and education programs and related activities.

(b) ~~Kansas, Inc.~~ *The secretary of commerce* is authorized to enter into contracts with, and to receive donations, contributions and grants from individuals, corporations, private foundations and other governmental and non-governmental entities for the purpose of fulfilling its mission and duties. ~~It~~ *The secretary of commerce* may also receive in-kind contributions in the form of personnel, services, equipment or other items of value.

(c) ~~The president of Kansas, Inc.~~ *secretary of commerce* shall provide a monthly report on the expenditure of private funds to the division of accounts and reports. An annual financial report shall be made to the ~~board of directors~~ *president of the senate and the speaker of the house of representatives* which itemizes and accounts for the receipt and expenditure of all non-state funds and contributions received.

Sec. 13. K.S.A. 2011 Supp. 74-8010 is hereby amended to read as

follows: 74-8010. (a) ~~Kansas, Inc.~~ *The secretary of commerce* shall review and evaluate the effectiveness of economic development programs and activities within the state, including, but not by way of limitation, ~~the Kansas technology enterprise corporation programs and activities~~; the major programs and activities of the department of commerce, the state-wide risk capital system, the venture capital tax credit, and the research and development activities tax credit. The effectiveness of the research and development activities tax credit shall be measured by the extent to which the tax credit encourages innovation and development of new value-added products and processes which will lead to the commercialization of new products and processes by primary job creating Kansas businesses.

(b) ~~Kansas, Inc.~~ *The secretary of commerce* shall periodically conduct a review and evaluation of economic development programs and activities. The review and evaluation should include:

(1) A performance analysis of the extent to which the purposes of the acts providing for the programs and activities have been achieved; and

(2) the economic and fiscal impact of the programs and activities on the state's economy and jobs created.

(c) Based on the findings of its review and evaluation, ~~Kansas, Inc.~~ *the secretary of commerce* will recommend to the legislature the continuation in effect, modification, or repeal of the acts providing for the programs and activities.

Sec. 14. K.S.A. 74-8013 is hereby amended to read as follows: 74-8013. (a) All state appropriations to or grants of state appropriations to ~~Kansas, Inc.~~ *the secretary of commerce* shall remain in the state treasury until expended or transferred to other state agencies ~~pursuant to the Kansas, Inc. act by the secretary of commerce.~~

(b) Except as provided in subsection (a), all moneys received by ~~Kansas, Inc.~~ *the secretary of commerce* from gifts, donations, grants or any other source outside the state treasury may be placed in the state treasury or may be maintained in interest-bearing accounts in Kansas banks or Kansas savings and loan associations until expended or otherwise disposed of ~~pursuant to the Kansas, Inc. act by the secretary of commerce.~~

Sec. 15. K.S.A. 74-8015 is hereby amended to read as follows: 74-8015. (a) As used in this section "state agency" means any state office or officer, department, board, commission, institution, bureau or any agency, division or unit within any office, department, board, commission or other state authority or any person requesting a state appropriation.

(b) On October 1, 1990, and annually thereafter, state agencies making community and economic development grants or loans shall submit to ~~Kansas, Inc.~~ *the secretary of commerce* in a form prescribed by ~~Kansas, Inc.~~ *the secretary of commerce* reports detailing community and economic development grants or loans made by such state agencies. Such

reports shall include the identity of the recipient of such loans or grants. ~~Kansas, Inc.~~, *The secretary of commerce* shall provide annually, to the governor and the legislature, a compilation of such reports.

Sec. 16. K.S.A. 74-8016 is hereby amended to read as follows: 74-8016. Subject to appropriations, ~~Kansas, Inc.~~ *the secretary of commerce* shall develop, adapt or adopt a uniform cost-benefit model for purposes of statewide data collection and for evaluating industrial revenue bond and economic development property tax exemptions. The model shall be made available to all cities and counties free of charge.

Sec. 17. K.S.A. 2011 Supp. 74-8106 is hereby amended to read as follows: 74-8106. (a) The purpose of this section is to authorize the establishment of three types of centers of excellence at educational institutions: Centers of excellence for basic research, centers of excellence for applied research and development, and centers of excellence for technology transfer.

(b) Centers of excellence for basic research will primarily undertake ongoing basic research with a particular focus that will have long-run potential for commercial development. The centers should build on institutional strengths and be in areas of research where the educational institution has achieved or has true promise of attaining a standard of excellence as recognized by national and international peers.

(1) The Kansas technology enterprise basic research fund is hereby created to which shall be credited any state funds specifically so designated. The fund is not to be used for applied research, technology transfer, technical assistance or training except as it is incidental to the basic research intended to be benefited by this section.

(2) The department of commerce may use the Kansas technology enterprise basic research fund to carry out the purposes of K.S.A. 74-8102, and amendments thereto, by awarding funds to establish new centers of excellence for basic research or to increase funding to such already established centers of excellence so long as those centers are determined to be primarily carrying out basic research and to meet the standards of excellence required by this section and K.S.A. 74-8102, and amendments thereto. Awards of funds shall be made on a competitive basis, and all proposals for new centers of excellence shall be subject to external peer review on the basis of scientific merit which meet national standards of excellence and subsequent potential for commercial application.

(c) Centers of excellence for applied research and development will primarily undertake applied research and development with a particular focus that will have long-run potential for commercial development. The centers should build on institutional strengths and be in areas of research where the educational institution has achieved or has true promise of attaining a standard of excellence in applied research and development.

(1) The Kansas technology enterprise applied research and devel-

opment fund is hereby created to which shall be credited any state funds specifically so designated. The fund is not to be used for basic research, technology transfer, technical assistance or training except as it is incidental to the applied research and development intended to be benefited by this section.

(2) The department of commerce may use the Kansas technology enterprise applied research and development fund to carry out the purposes of this act by awarding funds to establish new centers of excellence for applied research and development or to increase funding to such already established centers of excellence so long as those centers are determined to be carrying out primarily applied research and development, and to be meeting the standards of excellence required by this act. Awards of funds shall be made on a competitive basis, and all proposals for new centers of excellence shall be subject to external peer review on the basis of scientific merit which meets national standards of excellence and subsequent potential for commercial application.

(d) Centers of excellence for technology transfer will primarily undertake ongoing transfer of technology from educational institutions to Kansas business.

(1) The Kansas technology enterprise technology transfer fund is hereby created to which shall be credited any state funds specifically so designated. The fund is not to be used for basic research, applied research and development, technical assistance or training except as it is incidental to the technology transfer intended to be benefited by this section.

(2) The department of commerce may use the Kansas technology enterprise technology transfer fund to carry out the purposes of K.S.A. 74-8102, and amendments thereto, by awarding funds to establish new centers of technology transfer or to increase funding to such already established centers of excellence so long as those centers are determined to be carrying out primarily technology transfer.

(3) Awards of funds shall be made on a competitive basis and all proposals for new centers of excellence shall be subject to external peer review on the basis of merit which meets national standards of excellence and potential for increasing the competitiveness of Kansas business.

(e) The department of commerce shall award funding to centers of excellence in accordance with subsections (g) and (h).

(f) In carrying out its functions under this section, the board of regents is directed to create a centers of excellence committee to assist in evaluating the establishment of new centers of excellence and in evaluating increases in funding for already established centers of excellence. The membership of the centers of excellence committee may include employees of the department of commerce, and other persons drawn from sources other than the department of commerce who are recognized by their peers for outstanding knowledge and leadership in their fields.

(g) The department of commerce shall award funding for new centers and increased funding for established centers only after:

(1) Developing, adopting and publishing the criteria it shall use when evaluating centers of excellence;

(2) developing a level of core funding for each center of excellence; and

(3) receiving the recommendation of the centers of excellence committee which will review proposals for new or established centers of excellence containing:

(A) Documentation that not less than 50% of the center's funding above the established level of core funding will be matched by sources other than the department of commerce; machinery or equipment may be considered as part of the matching funds, but must be accompanied by a statement that the center of excellence has received the machinery or equipment, it is state of the art; and either:

(i) Verifying that the machinery or equipment is donated and has only been used in testing to insure quality control, or used by a wholesaler or retailer for demonstration purposes only; or

(ii) detailing the price paid by the center of excellence, with an invoice showing the amount paid for the equipment;

(B) a description of a potential for future benefit to industry;

(C) an itemized operations budget; and

(D) other information that may be required by the department of commerce.

(h) The department of commerce shall approve proposals to establish new centers of excellence after the department of commerce finds, based upon the proposal submitted, external peer reviews, and such additional investigation as the staff of the department of commerce shall make that:

(1) The proposed center of excellence has the potential to stimulate economic growth by bringing together educational institutions and businesses in partnerships to focus on basic research, applied research and development, and technology transfer;

(2) the center has the long-run potential for benefit to existing and new businesses through innovation and development of new technology; and

(3) approval of the proposal will not create or foster unnecessary duplication of programs, particularly at the graduate level of instruction.

(i) Each existing Kansas center of excellence is eligible for annual support from the department of commerce according to the same terms and conditions as provided in this section for new centers except that an external peer review to determine under what provision of this section and by what terms continuing funding is appropriate shall be conducted annually during the first three years after the center of excellence is established and shall be conducted biennially thereafter. In the years between external peer reviews conducted on a biennial basis, the depart-

ment of commerce shall conduct internal reviews to determine under what provision of this statute and under what terms continuing funding is appropriate.

(j) The department of commerce may require any educational institution where a center of excellence is located to oversee the operation of such center of excellence.

(k) ~~Kansas, Inc.~~ *The secretary of commerce* shall annually transmit to the governor and the legislature a report, based on information received from the board of regents, describing the funding and expenditures of each center of excellence for the preceding year, including the purposes for which such expenditures were made.

Sec. 18. K.S.A. 2011 Supp. 74-8111 is hereby amended to read as follows: 74-8111. (a) The secretary shall publish an annual report which shall include an audit in accordance with generally accepted accounting principles as of June 30 of each year, and present the report to the governor; *and* the legislature ~~and Kansas, Inc.~~, setting forth in detail the operations and transactions conducted by ~~it~~ *the secretary of commerce* pursuant to K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto, or to other legislation. The annual report shall specifically account for the ways in which the purposes and the programs described in K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto, have been carried out, and the recommendations shall specifically note what changes in the activities of the department and the programs it administers, and of state government are necessary to better address the purposes described in K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto. The secretary shall distribute its annual report by such means that will make it widely available to those innovative enterprises of special importance to the Kansas economy.

(b) The secretary shall annually review and prepare a report showing how and at what level other states fund the programs provided for under K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto. The secretary shall recommend an appropriate funding level for Kansas which will make these programs nationally competitive with those of other states. The secretary's findings and recommendations shall be submitted to the governor and the legislature.

(c) The secretary shall adopt a threshold funding level for each of the programs provided for under K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto. The threshold amount shall provide for funding that is great enough to have a significant impact and carry out the intent of K.S.A. 74-8102 through 74-8104 and 74-8107 through 74-8111, and amendments thereto. If the appropriation to fund these programs falls below the threshold, then no funding shall be provided by the department to the program funded below threshold level.

(d) ~~The corporation~~ *secretary and the department* shall be subject to an audit by the legislative division of post audit.

Sec. 19. K.S.A. 2011 Supp. 74-8136 is hereby amended to read as follows: 74-8136. (a) Tax credits for qualified Kansas businesses are a limited resource of the state for which the secretary is designated as the administrator. The purpose of such tax credits is to facilitate the availability of equity investment in businesses in the early stages of commercial development and to assist in the creation and expansion of Kansas businesses which are job and wealth creating enterprises. To achieve this purpose and to optimize the use of the limited resources of the state, the secretary is authorized to issue tax credits to qualified investors in qualified Kansas businesses. Such tax credits shall be awarded to those qualified Kansas businesses which, as determined by the secretary, are most likely to provide the greatest economic benefit to the state. The secretary may issue whole or partial tax credits based on an assessment of the qualified businesses. The secretary may consider numerous factors in such assessment, including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model and the quality and reasonableness of financial projections for the business.

(b) Each qualified Kansas business for which tax credits have been issued pursuant to this act shall report to the department on an annual basis, the following: (1) The name, address and taxpayer identification number of each angel investor who has made cash investment in the qualified securities of a qualified Kansas business and has received tax credits for this investment during the preceding year and all other preceding years; (2) the amounts of these cash investments by each angel investor and a description of the qualified securities issued in consideration of such cash investments; (3) the name, address and taxpayer identification number of each investor to which tax credits issued pursuant to this act have been transferred by the original angel investor; and (4) any additional information as the secretary may require pursuant to this act.

(c) The secretary shall transmit annually to the governor, the standing committee on commerce of the senate, the standing committee on economic development of the house of representatives; *and* the joint committee on economic development, ~~and Kansas, Inc.~~ a report, based upon information received from each qualified Kansas business for which tax credits have been issued during the preceding year, describing the following: (1) The manner in which the purpose, as described in this act, has been carried out; (2) the total cash investments made for the purchase of qualified securities of qualified Kansas businesses during the preceding year and cumulatively since the inception of this act; (3) an estimate of jobs created and jobs preserved by cash investments made in qualified

securities of qualified Kansas businesses; and (4) an estimate of the multiplier effect on the Kansas economy of the cash investments made pursuant to this act.

(d) The secretary shall provide the information specified in subsection (c) to the department of revenue on an annual basis. The secretary shall conduct an annual review of the activities undertaken pursuant to this act to ensure that tax credits issued pursuant to this act are issued in compliance with the provisions of this act or rules and regulations promulgated by the department with respect to this act.

(e) Any violation of the reporting requirements set forth in this section shall be grounds for undesignation of a qualified Kansas business under this section.

(f) If the secretary determines that a business is not in substantial compliance with the requirements of this act to maintain its designation, the secretary, by written notice, shall inform the officers of the qualified Kansas business and the business that such business will lose designation as a qualified Kansas business in 120 days from the date of mailing of the notice unless such business corrects the deficiencies and is once again in compliance with the requirements for designation.

(g) At the end of the 120-day period, if the qualified Kansas business is still not in substantial compliance, the secretary shall send a notice of loss of designation to the business, the secretary of the department of revenue and to all known investors in the business. Loss of designation of a qualified Kansas business shall preclude the issuance of any additional tax credits with respect to this business and the secretary shall not approve the application of such business as a qualified Kansas business. Upon loss of the designation as a qualified Kansas business or if a business loses its designation as a qualified Kansas business under this act by moving its operations outside Kansas within 10 years after receiving financial assistance under this act, such business shall repay such financial assistance to the department, in an amount determined by the secretary. Each qualified Kansas business that loses such designation shall enter into a repayment agreement with the secretary specifying the terms of such repayment obligation.

(h) Angel investors in a qualified Kansas business shall be entitled to keep all of the tax credits claimed under this act.

(i) The secretary shall adopt rules and regulations in accordance with the rules and regulations filing act necessary to implement the provisions of K.S.A. 2011 Supp. 74-8131 through 74-8136, and amendments thereto.

Sec. 20. K.S.A. 74-8204 is hereby amended to read as follows: 74-8204. (a) Kansas Venture Capital, Inc., shall prepare and publish an annual report of its activities for the information of the governor, the standing committee on commerce of the senate, the standing committee on new economy of the house of representatives and the joint committee on

economic development, securities commissioner of Kansas, attorney general, ~~Kansas, Inc.~~, and the public which shall be made widely available and shall specifically account for:

(1) The manner in which the purpose as described in this act has been carried out by Kansas Venture Capital, Inc.;

(2) the total investments made annually by Kansas Venture Capital, Inc., in Kansas businesses;

(3) an estimate of jobs created and jobs preserved by investments by Kansas Venture Capital, Inc., in Kansas businesses;

(4) an estimate of the multiplier effect on the Kansas economy of investments by Kansas Venture Capital, Inc., in Kansas businesses; and

(5) an analysis of the targeting of scarce resources by Kansas Venture Capital, Inc., by size, sector and location to enterprises of particular need and opportunity.

(b) The report to the standing committee on commerce of the senate, the standing committee on new economy of the house of representatives and the joint committee on economic development under this section shall be made by Kansas Venture Capital, Inc., either: (1) By publishing such report on the internet and by notifying each member of the committees that the report is available and providing, as part of such notice, the uniform resource locator (URL) at which such report is available; or (2) by submitting copies of such report on CD-ROM or other electronically readable media.

Sec. 21. K.S.A. 74-8310 is hereby amended to read as follows: 74-8310. (a) Pursuant to K.S.A. 74-5049, and amendments thereto, the secretary shall report the following:

(1) The number of Kansas venture capital companies;

(2) the total tax credit generated;

(3) the total investments made in Kansas venture capital companies;

(4) the total investments in Kansas businesses by Kansas venture capital companies;

(5) an estimate of jobs created or preserved under the program; and

(6) an estimate of the multiplier effect on the Kansas economy of the program.

(b) Additionally, in the report the secretary shall evaluate the success of the program in collaboration with ~~Kansas, Inc.~~ and the standing committee on commerce of the senate, the standing committee on economic development of the house of representatives and the joint committee on economic development, and may include specific recommendations for legislation.

Sec. 22. K.S.A. 2011 Supp. 74-8317 is hereby amended to read as follows: 74-8317. The secretary shall transmit annually to the governor, the standing committee on commerce of the senate, the standing com-

mittee on economic development of the house of representatives; *and* the joint committee on economic development ~~and Kansas, Inc.:~~

- (a) The annual statement of the fund; and
- (b) a report, based upon information received by the fund manager, which specifies the following:
  - (1) The manner in which the purpose as described in this act has been carried out by the fund.
  - (2) The total investments made annually by the fund in Kansas businesses.
  - (3) An estimate of jobs created and jobs preserved by investments by the fund in Kansas businesses.
  - (4) An estimate of the multiplier effect on the Kansas economy of investments by the fund in Kansas businesses.
  - (5) An analysis of the targeting of scarce resources by the fund by size, sector and location to enterprises of particular need and opportunity.

Sec. 23. K.S.A. 2011 Supp. 74-8405 is hereby amended to read as follows: 74-8405. (a) Pursuant to K.S.A. 74-5049, and amendments thereto, the secretary of commerce shall report the following:

- (1) The number of local seed capital pools;
- (2) the total tax credit generated;
- (3) the total investments made in Kansas venture capital companies;
- (4) the total investments in Kansas businesses by local seed capital pools;
- (5) an estimate of jobs created or preserved under the program; and
- (6) an estimate of the multiplier effect on the Kansas economy of the program.

(b) Additionally, in the report the secretary shall evaluate the success of the program in collaboration with ~~Kansas, Inc.~~ and the standing committee on commerce of the senate, the standing committee on economic development of the house of representatives and the joint committee on economic development, and may include specific recommendations for legislation.

Sec. 24. K.S.A. 74-9306 is hereby amended to read as follows: 74-9306. ~~Kansas, Inc.~~ and The division of information services and communications shall provide to INK such staff and other assistance as may be requested thereby, and the actual costs of such assistance shall be paid for by INK.

Sec. 25. K.S.A. 2011 Supp. 74-99b09 is hereby amended to read as follows: 74-99b09. (a) The authority shall have all of the powers necessary to carry out the purposes and provisions of this act, including, without limitation, the following powers to:

- (1) Make, amend and repeal bylaws, rules and regulations for the management of its affairs;
- (2) have the duties, privileges, immunities, rights, liabilities and dis-

abilities of a body politic and corporate and independent instrumentality of the state;

- (3) have perpetual existence and succession;
- (4) adopt, have and use a seal and to alter the same at its pleasure;
- (5) sue and be sued in its own name;
- (6) work with bioscience research institutions to identify and recruit eminent scholars and rising star scholars who shall become employed by bioscience research institutions or the authority, or both, to perform bioscience research, development and commercialization at bioscience research institutions or at authority facilities, or both;
- (7) transfer funds to bioscience research institutions in amounts to be determined by the board for the purpose of attracting and then supplementing the compensation of eminent scholars and rising star scholars;
- (8) work with and collaborate with bioscience research institutions to determine the types of bioscience research that will be conducted by eminent scholars and rising star scholars;
- (9) work with bioscience research institutions to determine the types of facilities that may be constructed at bioscience research institutions or at authority premises, or elsewhere, for eminent scholars and rising star scholars to perform bioscience research and development;
- (10) employ personnel to assist or complement the research of eminent scholars and rising star scholars;
- (11) establish policies and procedures to facilitate integrated bioscience research activities by the authority and bioscience research institutions;
- (12) make and execute contracts, guarantees or any other instruments and agreements necessary or convenient for the exercise of its powers and functions including, without limitation, to make and execute contracts with bioscience enterprises, including start-up companies, other public and private persons and entities, health care businesses, state universities and colleges, and to incur liabilities and secure the obligations of any entity or individual;
- (13) partner with the bioscience research institutions to provide matching funds for federal grants;
- (14) borrow money and to pledge all or any part of the authority's assets therefore;
- (15) purchase, lease, trade, exchange or otherwise acquire, maintain, hold, improve, mortgage, sell and dispose of personal property, whether tangible or intangible, and any interest therein; and to purchase, lease, trade, exchange or otherwise acquire real property or any interest therein, and to maintain, hold, improve, mortgage, sell, lease and otherwise transfer such real property to the universities, colleges, public institutions and private enterprises in the state, so long as such transactions do not conflict with the mission of the authority as specified in this act;
- (16) own, acquire, construct, renovate, equip, improve, operate,

maintain, sell or lease any land, buildings or facilities in the state that can be used in researching, developing, sponsoring or commercializing bioscience in the state including, without limitation, a state-of-the-art facility, laboratory or commercial wet lab space incubator to be used by the authority, and also to be made available for use by bioscience research institutions or Kansas companies conducting bioscience research and development for bioscience research, commercialization and technology transfer of bioscience products, processes and other intellectual property in accordance with the provisions of this act;

(17) incur or assume indebtedness to, and enter into contracts with the Kansas development finance authority, which is authorized to borrow money, issue bonds and provide financing for the authority;

(18) develop policies and procedures generally applicable to the procurement of goods, services and construction, based upon sound business practices;

(19) solicit, study and assist in the preparation of business plans and proposals of new or established businesses to advance the biosciences in the state;

(20) own and possess patents, copyrights, trademarks and proprietary technology and to enter into contracts for the purposes of commercializing and establishing charges for the use of such patents, copyrights, trademarks and proprietary technology involving bioscience;

(21) contract for and to accept any gifts, grants and loans of funds, property or any other aid in any form from the federal government, the state, any state agency or any other source, or any combination thereof, and to comply with the provisions of the terms and conditions thereof;

(22) acquire space, equipment, services, supplies and insurance necessary to carry out the purposes of this act;

(23) deposit any moneys of the authority in any banking institution within or without the state or in any depository authorized to receive such deposits, one or more persons to act as custodians of the moneys of the authority;

(24) procure such insurance, participate in such insurance plans or provide such self-insurance or both as it deems necessary or convenient to carry out the purposes and provisions of this act; the purchase of insurance, participation in an insurance plan or creation of a self-insurance fund by the authority shall not be deemed as a waiver or relinquishment of any sovereign immunity to which the authority or its officers, directors, employees or agents are otherwise entitled;

(25) appoint, supervise and set the salary and compensation of the president, who shall be appointed by and serve at the pleasure of the board;

(26) fix, revise, charge and collect rates, rentals, fees and other charges for the services or facilities furnished by or on behalf of the authority, and to establish policies and procedures regarding any such serv-

ice rendered for the use, occupancy or operation of any such facility; such charges and policies and procedures not to be subject to supervision or regulation by any commission, board, bureau or agency of the state; and

(27) do any and all things necessary or convenient to carry out the authority's purposes and exercise the powers given in this act.

(b) The authority may create, own in whole or in part, or otherwise acquire or dispose of any entity organized for a purpose related to or in support of the mission of the authority.

(c) The authority may participate in joint ventures and collaborate with any taxpayer, governmental body or agency, insurer, university and college of the state, or any other entity to facilitate any activities or programs consistent with the purpose and intent of this act.

(d) (1) The authority may create a nonprofit entity or entities for the purpose of soliciting, accepting and administering grants, outright gifts and bequests, endowment gifts and bequests, and gifts and bequests in trust, which entity or entities shall not engage in trust business. The nonprofit entity created in this subsection may expend such funds through grants or loans to further the purpose of bioscience authority activities including, but not limited to, issuing grants to high schools for the purpose of creating bioscience academies and to Kansas universities and colleges for the purpose of increasing the number of students majoring in bioscience, science education and math education. The authority may set requirements for curricula, teaching credentials and any other items and procedures incidental to establishing the grant programs.

(2) Grants made pursuant to this subsection shall be based on requirements established by the nonprofit entity and may include, but not be limited to, requirements for eligibility, grant applications, organizational characteristics and standards for eligibility and accountability as are deemed advisable by the nonprofit entity.

(3) The authority may not create any political action committee or contribute to any political action committee.

(e) In carrying out any activities authorized by this act, the authority may provide appropriate assistance, including the making of loans and providing time of employees, to any taxpayer, governmental body or agency, insurer, university and college of the state, or any other entity, whether or not any such taxpayer, governmental body or agency, insurer, university and college of the state, or any other entity is owned or controlled in whole or in part, directly or indirectly, by the authority.

(f) Notwithstanding any provision of law to the contrary, the authority may invest the funds received from gifts, grants, donations and other operations of the authority in such investments as would be lawful for a private corporation having purposes similar to the authority including preseed, seed capital and venture capital funds whose purpose is to commercialize bioscience intellectual property, and in any obligations or se-

curities as authorized by the board. Prior to making any investments, the board shall adopt written investment guidelines.

(g) Except as provided in this act, all moneys earned or received by the authority, including all funds derived from the commercialization of bioscience products by the authority, or any affiliate or subsidiary thereof, or from the Kansas bioscience development and investment fund, shall belong exclusively to the authority.

(h) In accordance with subsection (i) below, the authority shall direct and manage the commercialization of bioscience intellectual property created by eminent scholars and rising star scholars who are employed by bioscience research institutions or the authority or both. Prior to the authority providing any financial support or funding to the bioscience research institutions, the authority and the bioscience research institutions must enter into an agreement that will govern each party's respective duties and responsibilities with respect to technology transfer and commercialization of any such bioscience intellectual property. Such agreements between the authority and the bioscience research institutions shall address the sharing of revenue from any such bioscience intellectual property, the technology transfer of such bioscience intellectual property, patent application filing and maintenance fees, assumption of risks and the terms of ownership of such bioscience intellectual property. The authority and the bioscience research institutions shall have authority to freely negotiate. If conflicts arise, all terms and provisions of such agreement shall prevail and govern over any policy of a bioscience research institution or the Kansas board of regents.

(i) The authority will take steps to reasonably ensure that it does not duplicate existing commercialization efforts already located in the state. After the five-year period from the effective date of this act, the authority may sell, license, contribute or provide bioscience intellectual property to any third party, or provide services, facilities or assistance to any third party, for a fee, for an ownership interest in the third party, or other consideration, so as to commercialize bioscience technology. The authority may take all such actions necessary to commercialize any technology in which the authority has an interest.

(j) The authority shall prepare an annual report to the legislature and the governor on all distributions from the bioscience development and investment fund, and income, investment and income tax credits and exemptions attributed to bioscience authority activity. The authority with assistance from the department of revenue shall prepare an annual report summarizing the growth of bioscience research and industry in Kansas.

(k) The authority shall be subject to review by ~~Kansas, Inc.~~ *the secretary of commerce*. In the review, ~~Kansas, Inc.~~ *the secretary of commerce* shall evaluate and report on the effectiveness of the activities of the bioscience authority in the manner provided in K.S.A. 74-8010, and amendments thereto.

Sec. 26. K.S.A. 2011 Supp. 74-99c07 is hereby amended to read as follows: 74-99c07. (a) The Kansas center for entrepreneurship shall transmit annually to the governor, the secretary, the standing committee on commerce in the senate, the standing committee on economic development in the house of representatives, *and* the joint committee on economic development ~~and Kansas, Inc.~~ a report stating what tax credits have been issued during the preceding year and based on information provided by the regional or local community seed capital fund or economic development agency, describing the following: (1) the manner in which the purpose, as described in this act, has been carried out, (2) the total grants given to community seed capital funds or economic development agencies during the preceding year and cumulatively since the inception of this act, (3) the number of companies and jobs created or preserved by the grants given under this act and their location, and (4) an estimate of the multiplier effect on the Kansas economy of the grants made pursuant to this act.

(b) The center shall be subject to an audit by the legislative division of post audit.

Sec. 27. K.S.A. 2011 Supp. 74-99e02 is hereby amended to read as follows: 74-99e02. (a) There is hereby established a body politic and corporate to be known as the Kansas commission on rural policy. The commission shall be an independent instrumentality of the state. The exercise by the commission of the powers conferred by this act shall be deemed and held to be the performance of an essential governmental function.

(b) (1) The Kansas commission on rural policy shall consist of ~~12~~ 11 members.

(2) Nine members of the commission shall be voting members appointed as follows: Three shall be appointed by the governor, two shall be appointed by the speaker of the house of representatives, two shall be appointed by the president of the senate, one shall be appointed by the minority leader of the house of representatives and one shall be appointed by the minority leader of the senate. Each person appointed to the commission shall be recognized for outstanding knowledge and leadership in one of the following business sectors or key areas:

- (A) Agriculture;
- (B) oil and gas;
- (C) aviation;
- (D) finance and banking;
- (E) tourism;
- (F) any other primary, job creating, value added business sector;
- (G) fostering leadership;
- (H) encouraging wealth retention and generation;
- (I) developing entrepreneurship;
- (J) retaining youth in rural communities; and

(K) health care.

(3) (A) Except as provided by paragraph (B) for members first appointed to the commission, voting members shall be appointed for terms of four years and until a successor is appointed and qualified.

(B) The terms of the voting members first appointed to the commission shall expire as follows: The terms of members appointed by the governor shall expire on June 30, 2012; the terms of members appointed by the president and minority leader of the senate shall expire on June 30, 2011; and the terms of members appointed by the speaker and minority leader of the house of representatives shall expire on June 30, 2010.

(4) The other ~~three~~ two members of the commission shall serve *ex officio*: The secretary of commerce; ~~and the secretary of agriculture and the president of Kansas, Inc.~~ Each *ex officio* member of the commission may designate an officer or employee of the state agency or organization of the *ex officio* member to serve on the commission in place of the *ex officio* member. The *ex officio* members of the commission, or their designees, shall be nonvoting members of the commission and shall provide information and advice to the commission.

(c) The commission shall elect annually from among its voting members a chairperson, vice-chairperson and secretary. Five voting members of the commission shall constitute a quorum and the affirmative vote of five members shall be necessary for any action taken by the commission. No vacancy in the membership of the commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the commission.

(d) Members of the commission attending any meeting of the commission or any subcommittee meeting authorized by the commission shall be paid amounts as provided in K.S.A. 75-3223, and amendments thereto.

(e) All resolutions and orders of the commission shall be recorded and authenticated by the signature of the secretary or a person designated by the secretary. The book of resolutions, orders, minutes of open meetings, annual reports and annual financial statements of the commission shall be public records as defined by K.S.A. 45-215 *et seq.*, and amendments thereto. All public records shall be subject to regular audit as provided in K.S.A. 46-1106, and amendments thereto.

(f) The commission is hereby authorized to engage legal counsel, expert advisers or executive staff to carry out the duties of the commission. Compensation for such counsel, advisers or staff shall be determined by the commission within the limits of available funds.

(g) The commission is hereby authorized to accept grants, gifts, bequests and other financial or in-kind contributions.

(h) To facilitate the organization and start-up of the commission, the department of commerce shall provide administrative assistance until such time as the commission has resources to provide staffing on its own. In no event shall such assistance continue beyond September 1, 2010.

Sec. 28. K.S.A. 2011 Supp. 75-2935 is hereby amended to read as follows: 75-2935. The civil service of the state of Kansas is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

- (a) Chosen by election or appointment to fill an elective office;
- (b) members of boards and commissions, heads of departments required by law to be appointed by the governor or by other elective officers, and the executive or administrative heads of offices, departments, divisions and institutions specifically established by law;
- (c) except as otherwise provided under this section, one personal secretary to each elective officer of this state, and in addition thereto, 10 deputies, clerks or employees designated by such elective officer;
- (d) all employees in the office of the governor;
- (e) officers and employees of the senate and house of representatives of the legislature and of the legislative coordinating council and all officers and employees of the office of revisor of statutes, of the legislative research department, of the division of legislative administrative services, of the division of post audit and the legislative counsel;
- (f) chancellor, president, deans, administrative officers, student health service physicians, pharmacists, teaching and research personnel, health care employees and student employees in the institutions under the state board of regents, the executive officer of the board of regents and the executive officer's employees other than clerical employees, and, at the discretion of the state board of regents, directors or administrative officers of departments and divisions of the institution and county extension agents, except that this subsection (1)(f) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors; as used in this subsection (1)(f), "health care employees" means employees of the university of Kansas medical center who provide health care services at the university of Kansas medical center and who are medical technicians or technologists or respiratory therapists, who are licensed professional nurses or licensed practical nurses, or who are in job classes which are designated for this purpose by the chancellor of the university of Kansas upon a finding by the chancellor that such designation is required for the university of Kansas medical center to recruit or retain personnel for positions in the designated job classes; and employees of any institution under the state board of regents who are medical technologists;
- (g) operations, maintenance and security personnel employed to implement agreements entered into by the adjutant general and the federal national guard bureau, and officers and enlisted persons in the national guard and the naval militia;
- (h) persons engaged in public work for the state but employed by

contractors when the performance of such contract is authorized by the legislature or other competent authority;

(i) persons temporarily employed or designated by the legislature or by a legislative committee or commission or other competent authority to make or conduct a special inquiry, investigation, examination or installation;

(j) officers and employees in the office of the attorney general and special counsel to state departments appointed by the attorney general, except that officers and employees of the division of the Kansas bureau of investigation shall be in the classified or unclassified service as provided in K.S.A. 75-711, and amendments thereto;

(k) all employees of courts;

(l) client, patient and inmate help in any state facility or institution;

(m) all attorneys for boards, commissions and departments;

(n) the secretary and assistant secretary of the Kansas state historical society;

(o) physician specialists, dentists, dental hygienists, pharmacists, medical technologists and long-term care workers employed by the department of social and rehabilitation services;

(p) physician specialists, dentists and medical technologists employed by any board, commission or department or by any institution under the jurisdiction thereof;

(q) student employees enrolled in public institutions of higher learning;

(r) administrative officers, directors and teaching personnel of the state board of education and the state department of education and of any institution under the supervision and control of the state board of education, except that this subsection (1)(r) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors;

(s) all officers and employees in the office of the secretary of state;

(t) one personal secretary and one special assistant to the following: The secretary of administration, the secretary of aging, the secretary of agriculture, the secretary of commerce, the secretary of corrections, the secretary of health and environment, the superintendent of the Kansas highway patrol, the secretary of labor, the secretary of revenue, the secretary of social and rehabilitation services, the secretary of transportation, the secretary of wildlife and parks and the commissioner of juvenile justice;

(u) one personal secretary and one special assistant to the chancellor and presidents of institutions under the state board of regents;

(v) one personal secretary and one special assistant to the executive vice chancellor of the university of Kansas medical center;

(w) one public information officer and one chief attorney for the fol-

lowing: The department of administration, the department on aging, the department of agriculture, the department of commerce, the department of corrections, the department of health and environment, the department of labor, the department of revenue, the department of social and rehabilitation services, the department of transportation, the Kansas department of wildlife ~~and~~, parks *and tourism* and the commissioner of juvenile justice;

(x) civil service examination monitors;

(y) one executive director, one general counsel and one director of public affairs and consumer protection in the office of the state corporation commission;

(z) specifically designated by law as being in the unclassified service;

(aa) ~~all officers and employees of Kansas, Inc.~~;

~~(bb)~~ any position that is classified as a position in the information resource manager job class series, that is the chief position responsible for all information resources management for a state agency, and that becomes vacant on or after the effective date of this act. Nothing in this section shall affect the classified status of any employee in the classified service who is employed on the date immediately preceding the effective date of this act in any position that is a classified position in the information resource manager job class series and the unclassified status as prescribed by this subsection shall apply only to a person appointed to any such position on or after the effective date of this act that is the chief position responsible for all information resources management for a state agency; and

~~(cc)~~(bb) positions at state institutions of higher education that have been converted to unclassified positions pursuant to K.S.A. 2011 Supp. 76-715a, and amendments thereto.

(2) The classified service comprises all positions now existing or hereafter created which are not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness from eligible pools which so far as practicable shall be competitive. No person shall be appointed, promoted, reduced or discharged as an officer, clerk, employee or laborer in the classified service in any manner or by any means other than those prescribed in the Kansas civil service act and the rules adopted in accordance therewith.

(3) For positions involving unskilled, or semiskilled duties, the secretary of administration, as provided by law, shall establish rules and regulations concerning certifications, appointments, layoffs and reemployment which may be different from the rules and regulations established concerning these processes for other positions in the classified service.

(4) Officers authorized by law to make appointments to positions in the unclassified service, and appointing officers of departments or institutions whose employees are exempt from the provisions of the Kansas civil service act because of the constitutional status of such departments

or institutions shall be permitted to make appointments from appropriate pools of eligibles maintained by the division of personnel services.

Sec. 29. K.S.A. 2011 Supp. 75-2935b is hereby amended to read as follows: 75-2935b. Salaries and other compensation of all persons who are within the unclassified service of the Kansas civil service act, and which salaries and other compensation are not fixed by statute, shall be subject to the approval of the governor and such salaries or other compensation shall not be paid until approved by the governor. The provisions of this section shall not apply to the salaries and other compensation of any officer or employee when such salary or other compensation is specifically prescribed by law, nor to officers and employees of elected state officials, officers and employees under the jurisdiction of the state board of regents, the executive secretary and other employees of the Kansas public employees retirement system that are in the unclassified service as specified under K.S.A. 74-4908, and amendments thereto, ~~officers and employees of Kansas, Inc.~~, officers and employees under the jurisdiction of the supreme court, legislative officers and employees or officers and employees of any agency performing functions and duties primarily for the legislative branch.

Sec. 30. K.S.A. 2011 Supp. 75-3702k is hereby amended to read as follows: 75-3702k. (a) The secretary of ~~administration~~ *commerce*, for the sole purpose of efficiently wrapping up and concluding the affairs of Kansas, Inc. and satisfying any outstanding liabilities or commitments of Kansas, Inc., shall be the successor in every way to the powers, duties, and functions of the Kansas, Inc., and its chief executive officer and president, hereinafter referred to as president, in which the same were vested prior to the effective date of this order. Every act performed in the exercise of such abolished powers, duties, and functions by or under the authority of the secretary of ~~administration~~ *commerce* shall be performed by the existing employees of the department of ~~administration~~ *commerce* and shall be deemed to have the same force and effect as if performed by Kansas, Inc., or its president in which such powers, duties, and functions were vested prior to the effective date of K.S.A. 2011 Supp. 74-8001a and 75-3702k through 75-3702p, and amendments thereto.

(b) In furtherance of the sole purpose set forth in subsection (a) above, whenever Kansas, Inc., or words of like effect are referred to or designated by a statute, contract, memorandum of agreement or other document, such reference or designation shall be deemed to apply to the secretary of ~~administration~~ *commerce*.

(c) In furtherance of the sole purpose set forth in subsection (a) above, whenever the president of Kansas Inc., or words of like effect are referred to or designated by a statute, contract, memorandum of agreement or other document, such reference or designation shall be deemed to apply to the secretary of ~~administration~~ *commerce*.

(d) In furtherance of the sole purpose set forth in subsection (a) above, all rules and regulations, orders, and directives of Kansas, Inc., or its president which are in effect on the effective date of K.S.A. 2011 Supp. 74-8001a and 75-3702k through 75-3702p, and amendments thereto, shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of ~~administration~~ *commerce*, until revised, amended, revoked or nullified pursuant to law.

(e) In furtherance of the sole purpose set forth in subsection (a) above, all orders and directives of the Kansas, Inc., or its president in existence on the effective date of K.S.A. 2011 Supp. 74-8001a and 75-3702k through 75-3702p, and amendments thereto, shall continue to be effective and shall be deemed to be orders and directives of the secretary of ~~administration~~ *commerce*, until revised, amended or nullified pursuant to law.

Sec. 31. K.S.A. 2011 Supp. 75-3702l is hereby amended to read as follows: 75-3702l. (a) The secretary of ~~administration~~ *commerce* shall succeed to whatever right, title or interest that Kansas, Inc., has acquired in any real property in this state, and the secretary of ~~administration~~ *commerce* shall hold the same for and in the name of the state of Kansas.

(b) Whenever any statute, contract, deed or other document concerns the power or authority of Kansas, Inc., or its president to acquire, hold or dispose of real property or any interest therein, the secretary of ~~administration~~ *commerce* shall succeed to such power or authority.

Sec. 32. K.S.A. 2011 Supp. 75-3702m is hereby amended to read as follows: 75-3702m. The secretary of ~~administration~~ *commerce* shall have the legal custody of all records, memoranda, writings, entries, prints, representations, electronic data or combinations thereof of any act, transaction, occurrence or event of Kansas, Inc., or its president.

Sec. 33. K.S.A. 2011 Supp. 75-3702n is hereby amended to read as follows: 75-3702n. (a) The balances of all funds or accounts thereof appropriated or reappropriated for Kansas, Inc., relating to the powers, duties, and functions abolished by K.S.A. 2011 Supp. 74-8001a and 75-3702k through 75-3702p, and amendments thereto, are hereby transferred within the state treasury to the department of ~~administration~~ *commerce* and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are employees of Kansas, Inc., during the period commencing on the first day of the first payroll period chargeable to fiscal year 2012 and ending in on June 30, 2011, shall be assumed and paid by the department of ~~administration~~ *commerce*.

Sec. 34. K.S.A. 74-5007a, 74-50,101, 74-8003, 74-8009a, 74-8011, 74-8012, 74-8013, 74-8014, 74-8015, 74-8016, 74-8204, 74-8310 and 74-9306 and K.S.A. 2011 Supp. 12-17,169, 12-17,177, 74-5001a, 74-5049, 74-5089,

74-5095, 74-50,134, 74-50,151, 74-8001, 74-8002, 74-8004, 74-8005, 74-8006, 74-8007, 74-8010, 74-8102, 74-8106, 74-8111, 74-8136, 74-8317, 74-8405, 74-99b09, 74-99c07, 74-99c10, 74-99e02, 75-2935, 75-2935b, 75-3702k, 75-3702l, 75-3702m and 75-3702n are hereby repealed.

Sec. 35. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 3, 2012.

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## CHAPTER 66

SENATE BILL No. 322  
(Amended by Chapter 150)

AN ACT concerning courts; relating to court fees and costs; relating to the judicial branch surcharge fund; amending K.S.A. 65-409 and K.S.A. 2011 Supp. 8-2107, 8-2110, 21-6614, 22-2410, 23-2510, 28-170, 28-172a, 28-177, 28-178, 28-179, 32-1049a, 38-2215, 38-2312, 38-2314, 59-104, 60-2001, 60-2203a, 61-2704 and 61-4001 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 21-6614a, 21-6614b, 21-6614c, 22-2410a, 28-177a, 38-2312a and 38-2312b.

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

Section 1. K.S.A. 2011 Supp. 8-2107 is hereby amended to read as follows: 8-2107. (a) (1) Notwithstanding any other provisions of the uniform act regulating traffic on highways, when a person is stopped by a police officer for any of the offenses described in subsection (d) and such person is not immediately taken before a judge of the district court, the police officer may require the person stopped, subject to the provisions of subsection (c), to deposit with the officer a valid Kansas driver's license in exchange for a receipt therefor issued by such police officer, the form of which shall be approved by the division of vehicles. Such receipt shall be recognized as a valid temporary Kansas driver's license authorizing the operation of a motor vehicle by the person stopped until the date of the hearing stated on the receipt. The driver's license and a written copy of the notice to appear shall be delivered by the police officer to the court having jurisdiction of the offense charged as soon as reasonably possible. If the hearing on such charge is continued for any reason, the judge may note on the receipt the date to which such hearing has been continued and such receipt shall be recognized as a valid temporary Kansas driver's license until such date, but in no event shall such receipt be recognized as a valid Kansas driver's license for a period longer than 30 days from the date set for the original hearing. Any person who has deposited a driver's license with a police officer under this subsection (a) shall have such license returned upon final determination of the charge against such person.

(2) In the event the person stopped deposits a valid Kansas driver's

license with the police officer and fails to appear in the district court on the date set for appearance, or any continuance thereof, and in any event within 30 days from the date set for the original hearing, the court shall forward such person's driver's license to the division of vehicles with an appropriate explanation attached thereto. Upon receipt of such person's driver's license, the division shall suspend such person's privilege to operate a motor vehicle in this state until such person appears before the court having jurisdiction of the offense charged, the court makes a final disposition thereof and notice of such disposition is given by the court to the division. No new or replacement license shall be issued to any such person until such notice of disposition has been received by the division. The provisions of K.S.A. 8-256, and amendments thereto, limiting the suspension of a license to one year, shall not apply to suspensions for failure to appear as provided in this subsection (a).

(b) No person shall apply for a replacement or new driver's license prior to the return of such person's original license which has been deposited in lieu of bond under this section. Violation of this subsection (b) is a class C misdemeanor. The division may suspend such person's driver's license for a period of not to exceed one year from the date the division receives notice of the disposition of the person's charge as provided in subsection (a).

(c) (1) In lieu of depositing a valid Kansas driver's license with the stopping police officer as provided in subsection (a), the person stopped may elect to give bond in the amount specified in subsection (d) for the offense for which the person was stopped. When such person does not have a valid Kansas driver's license, such person shall give such bond. Such bond shall be subject to forfeiture if the person stopped does not appear at the court and at the time specified in the written notice provided for in K.S.A. 8-2106, and amendments thereto.

(2) Such bond may be a cash bond, a bank card draft from any valid and unexpired credit card approved by the division of vehicles or superintendent of the Kansas highway patrol or a guaranteed arrest bond certificate issued by either a surety company authorized to transact such business in this state or an automobile club authorized to transact business in this state by the commissioner of insurance. If any of the approved bank card issuers redeem the bank card draft at a discounted rate, such discount shall be charged against the amount designated as the fine for the offense. If such bond is not forfeited, the amount of the bond less the discount rate shall be reimbursed to the person providing the bond by the use of a bank card draft. Any such guaranteed arrest bond certificate shall be signed by the person to whom it is issued and shall contain a printed statement that such surety company or automobile club guarantees the appearance of such person and will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfei-

ture imposed on such person not to exceed an amount to be stated on such certificate.

(3) Such cash bond shall be taken in the following manner: The police officer shall furnish the person stopped a stamped envelope addressed to the judge or clerk of the court named in the written notice to appear and the person shall place in such envelope the amount of the bond, and in the presence of the police officer shall deposit the same in the United States mail. After such cash payment, the person stopped need not sign the written notice to appear, but the police officer shall note the amount of the bond mailed on the notice to appear form and shall give a copy of such form to the person. If the person stopped furnishes the police officer with a guaranteed arrest bond certificate or bank card draft, the police officer shall give such person a receipt therefor and shall note the amount of the bond on the notice to appear form and give a copy of such form to the person stopped. Such person need not sign the written notice to appear, and the police officer shall present the notice to appear and the guaranteed arrest bond certificate or bank card draft to the court having jurisdiction of the offense charged as soon as reasonably possible.

(d) The offenses for which appearance bonds may be required as provided in subsection (c) and the amounts thereof shall be as follows:

On and after July 1, 1996:

Reckless driving .....	\$82
Driving when privilege is canceled, suspended or revoked....	82
Failure to comply with lawful order of officer.....	57
Registration violation (registered for 12,000 pounds or less).....	52
Registration violation (registered for more than 12,000 pounds).....	92
No driver's license for the class of vehicle operated or violation of restrictions .....	52
Spilling load on highway.....	52
Transporting open container of alcoholic liquor or cereal malt beverage accessible while vehicle in motion .....	223

(e) In the event of forfeiture of any bond under this section, \$75 of the amount forfeited shall be regarded as a docket fee in any court having jurisdiction over the violation of state law.

(f) None of the provisions of this section shall be construed to conflict with the provisions of the nonresident violator compact.

(g) When a person is stopped by a police officer for any traffic infraction and the person is a resident of a state which is not a member of the nonresident violator compact, K.S.A. 8-1219 et seq., and amendments thereto, or the person is licensed to drive under the laws of a foreign country, the police officer may require a bond as provided for under subsection (c). The bond shall be in the amount specified in the uniform

fine schedule in subsection (c) of K.S.A. 8-2118, and amendments thereto, plus \$75 which shall be regarded as a docket fee in any court having jurisdiction over the violation of state law.

(h) When a person is stopped by a police officer for failure to provide proof of financial security pursuant to K.S.A. 40-3104, and amendments thereto, and the person is a resident of another state or the person is licensed to drive under the laws of a foreign country, the police officer may require a bond as provided for under subsection (c). The bond shall be in the amount of \$75, plus \$75 which shall be regarded as a docket fee in any court having jurisdiction over the violation of state law.

(i) Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

Sec. 2. K.S.A. 2011 Supp. 8-2110 is hereby amended to read as follows: 8-2110. (a) Failure to comply with a traffic citation means failure either to: (1) Appear before any district or municipal court in response to a traffic citation and pay in full any fine and court costs imposed; or (2) otherwise comply with a traffic citation as provided in K.S.A. 8-2118, and amendments thereto. Failure to comply with a traffic citation is a misdemeanor, regardless of the disposition of the charge for which such citation was originally issued.

(b) (1) In addition to penalties of law applicable under subsection (a), when a person fails to comply with a traffic citation, except for illegal parking, standing or stopping, the district or municipal court in which the person should have complied with the citation shall mail notice to the person that if the person does not appear in district or municipal court or pay all fines, court costs and any penalties within 30 days from the date of mailing notice, the division of vehicles will be notified to suspend the person's driving privileges. The district or municipal court may charge an additional fee of \$5 for mailing such notice. Upon the person's failure to comply within such 30 days of mailing notice, the district or municipal court shall electronically notify the division of vehicles. Upon receipt of a report of a failure to comply with a traffic citation under this subsection, pursuant to K.S.A. 8-255, and amendments thereto, the division of vehicles shall notify the violator and suspend the license of the violator until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the informing court. When the court determines the person has complied with the terms of the traffic citation, the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the

informing court, the division of vehicles shall terminate the suspension or suspension action.

(2) (A) In lieu of suspension under paragraph (1), the driver may submit to the division of vehicles a written request for restricted driving privileges, with a non-refundable \$25 application fee, to be applied by the division of vehicles for additional administrative costs to implement restricted driving privileges. The division shall remit all restricted driving privilege application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund.

(B) Upon review and approval of the driver's eligibility, the driving privileges will be restricted by the division of vehicles for a period up to one year or until the terms of the traffic citation have been complied with and the court shall immediately electronically notify the division of vehicles of such compliance. If the driver fails to comply with the traffic citation within the one year restricted period, the driving privileges will be suspended by the division of vehicles until the court determines the person has complied with the terms of the traffic citation and the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension action. When restricted driving privileges are approved pursuant to this section, the person's driving privileges shall be restricted to driving only under the following circumstances: (i) In going to or returning from the person's place of employment or schooling; (ii) in the course of the person's employment; (iii) during a medical emergency; and (iv) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go by a court. The provisions of this paragraph shall expire on January 1, 2012.

(c) Except as provided in subsection (d), when the district or municipal court notifies the division of vehicles of a failure to comply with a traffic citation pursuant to subsection (b), the court shall assess a reinstatement fee of \$59 for each charge on which the person failed to make satisfaction regardless of the disposition of the charge for which such citation was originally issued and regardless of any application for restricted driving privileges. Such reinstatement fee shall be in addition to any fine, restricted driving privilege application fee, district or municipal court costs and other penalties. The court shall remit all reinstatement fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit 42.37% of such moneys to the division of vehicles operating fund, 31.78% to the community alcoholism and intoxication pro-

grams fund created by K.S.A. 41-1126, and amendments thereto, 10.59% to the juvenile detention facilities fund created by K.S.A. 79-4803, and amendments thereto, and 15.26% to the judicial branch nonjudicial salary adjustment fund created by K.S.A. 2011 Supp. 20-1a15, and amendments thereto.

(d) The district court or municipal court shall waive the reinstatement fee provided for in subsection (c), if the failure to comply with a traffic citation was the result of such person enlisting in or being drafted into the armed services of the United States, being called into service as a member of a reserve component of the military service of the United States, or volunteering for such active duty, or being called into service as a member of the state of Kansas national guard, or volunteering for such active duty, and being absent from Kansas because of such military service. In any case of a failure to comply with a traffic citation which occurred on or after August 1, 1990, and prior to the effective date of this act, in which a person was assessed and paid a reinstatement fee and the person failed to comply with a traffic citation because the person was absent from Kansas because of any such military service, the reinstatement fee shall be reimbursed to such person upon application therefor. The state treasurer and the director of accounts and reports shall prescribe procedures for all such reimbursement payments and shall create appropriate accounts, make appropriate accounting entries and issue such appropriate vouchers and warrants as may be required to make such reimbursement payments.

(e) Except as provided further, the reinstatement fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such reinstatement. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per reinstatement fee, to fund the costs of non-judicial personnel.

Sec. 3. K.S.A. 2011 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c) ~~and~~, (d) *and* (e), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c) ~~and~~, (d) *and* (e), any

person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in subsections (c) ~~and~~ (d) *and* (e), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(d) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

(7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2011 Supp. 21-5604, and amendments thereto;

(8) endangering a child or aggravated endangering a child as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2011 Supp. 21-5601, and amendments thereto;

(9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2011 Supp. 21-5602, and amendments thereto;

(10) capital murder as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2011 Supp. 21-5401, and amendments thereto;

(11) murder in the first degree as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto;

(12) murder in the second degree as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto;

(13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto;

(14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto;

(15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto;

(17) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(18) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(e) *Notwithstanding any other law to the contrary, for any offender*

*who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.*

~~(e)~~(f) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

- (A) Defendant's full name;
- (B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;
- (C) defendant's sex, race and date of birth;
- (D) crime for which the defendant was arrested, convicted or diverted;
- (E) date of the defendant's arrest, conviction or diversion; and
- (F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after ~~April 15, 2010 through June 30, 2011~~ *the effective date of this act through June 30, 2013*, the supreme court may impose a charge, not to exceed ~~\$15~~ \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

~~(f)~~(g) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

- (1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;
- (2) the circumstances and behavior of the petitioner warrant the expungement;
- (3) the expungement is consistent with the public welfare.

~~(g)~~(h) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send

a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2011 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, in-

vestment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2011 Supp. 75-7c01 *et seq.*, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

~~(h)~~(i) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

~~(i)~~(j) Subject to the disclosures required pursuant to subsection ~~(h)~~(i), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

~~(j)~~(k) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a

broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 *et seq.*, and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; ~~or~~

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act; *or*

(17) *the Kansas bureau of investigation for the purposes of:*

(A) *Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or*

(B) *providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.*

(l) *The provisions of subsection (k)(17) shall apply to records created prior to, on and after July 1, 2011.*

Sec. 4. K.S.A. 2011 Supp. 22-2410 is hereby amended to read as follows: 22-2410. (a) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court

may impose an additional charge, not to exceed \$19 per docket fee, to fund the costs of non-judicial personnel. The petition shall state:

- (1) The petitioner's full name;
- (2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) the petitioner's sex, race and date of birth;
- (4) the crime for which the petitioner was arrested;
- (5) the date of the petitioner's arrest; and
- (6) the identity of the arresting law enforcement agency.

No surcharge or fee shall be imposed to any person filing a petition pursuant to this section, who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-6107, and amendments thereto, *or who has had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings or the charges have been dismissed*. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding:

- (1) The arrest occurred because of mistaken identity;
- (2) a court has found that there was no probable cause for the arrest;
- (3) the petitioner was found not guilty in court proceedings; or
- (4) the expungement would be in the best interests of justice and:  
(A) Charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined in K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) *The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:*

(1) *Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or*

(2) *providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.*

~~(g)~~ Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

~~(g)~~(h) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

~~(h)~~(i) The docket fee collected at the time the petition for expungement is filed shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

Sec. 5. K.S.A. 2011 Supp. 23-2510 is hereby amended to read as

follows: 23-2510. (a) The judge or clerk of the district court shall collect from the applicant for a marriage license a fee of \$59.

(b) The clerk of the court shall remit all fees prescribed by this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Of each remittance, the state treasurer shall credit 38.98% to the protection from abuse fund, 15.19% to the family and children trust account of the family and children investment fund created by K.S.A. 38-1808, and amendments thereto, 16.95% to the crime victims assistance fund created by K.S.A. 74-7334, and amendments thereto, 15.25% to the judicial branch nonjudicial salary adjustment fund created by K.S.A. 2011 Supp. 20-1a15, and amendments thereto, and the remainder to the state general fund.

(c) Except as provided further, the marriage license fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for a marriage license. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$26.50 per marriage license fee, to fund the costs of non-judicial personnel.

Sec. 6. K.S.A. 2011 Supp. 28-170 is hereby amended to read as follows: 28-170. (a) The docket fee prescribed by K.S.A. 60-2001, and amendments thereto, and the fees for service of process, shall be the only costs assessed for services of the clerk of the district court and the sheriff in any case filed under chapter 60 or chapter 61 of the Kansas Statutes Annotated, and amendments thereto, except that no fee shall be charged for an action filed under K.S.A. 60-3101 *et seq.*, and under K.S.A. 60-31a01 *et seq.*, and amendments thereto. For services in other matters in which no other fee is prescribed by statute, the following fees shall be charged and collected by the clerk. Only one fee shall be charged for each bond, lien or judgment:

- 1. For filing, entering and releasing a bond, mechanic's lien, notice of intent to perform, personal property tax judgment or any judgment on which execution process cannot be issued ..... \$14
- 2. For filing, entering and releasing a judgment of a court of this state on which execution or other process can be issued ..... \$24
- 3. For a certificate, or for copying or certifying any paper or writ, such fee as shall be prescribed by the district court.

(b) The fees for entries, certificates and other papers required in naturalization cases shall be those prescribed by the federal government and, when collected, shall be disbursed as prescribed by the federal gov-

ernment. The clerk of the court shall remit to the state treasurer at least monthly all moneys received from fees prescribed by subsection (a) or (b) or received for any services performed which may be required by law. The state treasurer shall deposit the remittance in the state treasury and credit the entire amount to the state general fund.

(c) In actions pursuant to the revised Kansas code for care of children ~~§~~ K.S.A. 2011 Supp. 38-2201 *et seq.*, and amendments thereto, the revised Kansas juvenile justice code ~~§~~ K.S.A. 2011 Supp. 38-2301 *et seq.*, and amendments thereto, the act for treatment of alcoholism ~~§~~ K.S.A. 65-4001 *et seq.*, and amendments thereto, the act for treatment of drug abuse ~~§~~ K.S.A. 65-5201 *et seq.*, and amendments thereto, or the care and treatment act for mentally ill persons ~~§~~ K.S.A. 59-2945 *et seq.*, and amendments thereto, the clerk shall charge an additional fee of \$1 which shall be deducted from the docket fee and credited to the prosecuting attorneys’ training fund as provided in K.S.A. 28-170a, and amendments thereto.

(d) In actions pursuant to the revised Kansas code for care of children ~~§~~ K.S.A. 2011 Supp. 38-2201 *et seq.*, and amendments thereto, the revised Kansas juvenile justice code ~~§~~ K.S.A. 2011 Supp. 38-2301 *et seq.*, and amendments thereto, the act for treatment of alcoholism ~~§~~ K.S.A. 65-4001 *et seq.*, and amendments thereto, the act for treatment of drug abuse ~~§~~ K.S.A. 65-5201 *et seq.*, and amendments thereto, or the care and treatment act for mentally ill persons ~~§~~ K.S.A. 59-2945 *et seq.*, and amendments thereto, the clerk shall charge an additional fee of \$.50 which shall be deducted from the docket fee and credited to the indigents’ defense services fund as provided in K.S.A. 28-172b, and amendments thereto.

(e) Except as provided further, the bond, lien or judgment fee established in subsection (a) shall be the only fee collected or moneys in the nature of a fee collected for such bond, lien or judgment. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per bond, lien or judgment fee, to fund the costs of non-judicial personnel.

Sec. 7. K.S.A. 2011 Supp. 28-172a is hereby amended to read as follows: 28-172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

(1) On and after July 1, 2009 through June 30, 2013:

Murder or manslaughter .....	\$182.50
Other felony .....	173.00
Misdemeanor.....	138.00
Forfeited recognizance.....	74.50
Appeals from other courts .....	74.50

(2) On and after July 1, 2013:

Murder or manslaughter .....	\$180.50
Other felony .....	171.00
Misdemeanor.....	136.00
Forfeited recognizance.....	72.50
Appeals from other courts .....	72.50

(b) (1) Except as provided in paragraph (2), in actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), a cigarette or tobacco infraction, any act declared a crime pursuant to the statutes contained in chapter 32 of the Kansas Statutes Annotated, and amendments thereto, or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, on and after July 1, 2009 through June 30, 2013, a docket fee of \$76 shall be charged, and on and after July 1, 2013, a docket fee of \$74 shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and amendments thereto, on and after July 1, 2009 through June 30, 2013, the docket fee to be paid as court costs shall be \$76, and on and after July 1, 2013, the docket fee to be paid as court costs shall be \$74.

(2) In actions involving the violation of a moving traffic violation under K.S.A. 8-2118, and amendments thereto, as defined by rules and regulations adopted under K.S.A. 8-249, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, on and after July 1, 2009 through June 30, 2013, a docket fee of \$76 shall be charged, and on and after July 1, 2013, a docket fee of \$74 shall be charged. When an action is disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amendments thereto, on and after July 1, 2009 through June 30, 2013, the docket fee to be paid as court costs shall be \$76, and on and after July 1, 2013, the docket fee to be paid as court costs shall be \$74.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, the emergency medical services operating fund and the judiciary technology fund shall be paid from the docket fee; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees. All other fees and expenses to be assessed as

additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for detention facility processing pursuant to K.S.A. 12-16,119, and amendments thereto, fees for the sexual assault evidence collection kit, fees for conducting an examination of a sexual assault victim, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of \$2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be \$3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and \$2 of any bond so forfeited shall be regarded as court costs.

(f) Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

Sec. 8. K.S.A. 2011 Supp. 28-177 is hereby amended to read as follows: 28-177. (a) Except as provided ~~further in this section and K.S.A. 2011 Supp. 28-178, and amendments thereto,~~ the fees established by legislative enactment shall be the only fee collected or moneys in the nature of a fee collected for court procedures. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. Court procedures shall include docket fees, filing fees or other fees related to access to court procedures. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$26.50 per fee or the amount established by the applicable statute, whichever amount is less, to fund the costs of non-judicial personnel.

(b) ~~Any~~ Such additional charge imposed by the court pursuant to K.S.A. 8-2107, 8-2110, ~~21-4619, prior to its repeal,~~ 22-2410, 23-108a, 28-170, 28-172a, 59-104, ~~60-1621,~~ 60-2001, 60-2203a, 61-2704 ~~and~~, 61-4001 ~~and~~ 65-409 and K.S.A. 2011 Supp. 21-6614, 28-178, 28-179, 32-1049a,

38-2215, 38-2312 and 38-2314 and ~~K.S.A. 2011 Supp. 21-6614~~, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the judicial branch surcharge fund, which is hereby created in the state treasury.

(c) All moneys credited to the judicial branch surcharge fund shall be used for compensation of non-judicial personnel and shall not be expended for compensation of judges or justices of the judicial branch.

(d) All expenditures from the judicial branch surcharge fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to payrolls approved by the chief justice of the Kansas supreme court or by a person or persons designated by the chief justice.

Sec. 9. K.S.A. 2011 Supp. 28-178 is hereby amended to read as follows: 28-178. (a) In addition to any other fees specifically prescribed by law, on and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose a charge, not to exceed \$12.50 per fee, to fund the costs of non-judicial personnel, on the following:

(1) A person who requests an order or writ of execution pursuant to K.S.A. 60-2401 or 61-3602, and amendments thereto.

(2) Persons who request a hearing in aid of execution pursuant to K.S.A. 60-2419, and amendments thereto.

(3) A person requesting an order for garnishment pursuant to article 7 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, or article 35 of chapter 61 of the Kansas Statutes Annotated, and amendments thereto.

(4) Persons who request a writ or order of sale pursuant to K.S.A. 60-2401 or 61-3602, and amendments thereto.

(5) A person who requests a hearing in aid of execution pursuant to K.S.A. 61-3604, and amendments thereto.

(6) A person who requests an attachment against the property of a defendant or any one or more of several defendants pursuant to K.S.A. 60-701 or 61-3501, and amendments thereto.

(b) The clerk of the district court shall remit all revenues received from the fees imposed pursuant to subsection (a) to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the judicial branch surcharge fund.

(c) The fees established in this section shall be the only fee collected or moneys in the nature of a fee collected for such court procedures. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

Sec. 10. K.S.A. 2011 Supp. 28-179 is hereby amended to read as follows: 28-179. (a) No post-decree motion petitioning for a modification or termination of separate maintenance, for a change in legal custody, residency, visitation rights or parenting time or for a modification of child support shall be filed or docketed in the district court without payment of a docket fee in the amount of \$42 on and after July 1, 2009 through June 30, 2013, and \$40 on and after July 1, 2013, to the clerk of the district court.

(b) A poverty affidavit may be filed in lieu of a docket fee as established in K.S.A. 60-2001, and amendments thereto.

(c) The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with subsection (f) of K.S.A. 20-362, and amendments thereto.

(d) Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

Sec. 11. K.S.A. 2011 Supp. 32-1049a is hereby amended to read as follows: 32-1049a. (a) Failure to comply with a wildlife ~~and parks~~, *parks and tourism* citation means failure to:

(1) Appear before any district court in response to a wildlife ~~and parks~~, *parks and tourism* citation and pay in full any fine, court costs, assessments or fees imposed;

(2) fully pay or satisfy all fines, court costs, assessments or fees imposed as a part of the sentence of any district court for violation of the wildlife ~~and parks~~, *parks and tourism* laws of this state; or

(3) otherwise comply with a wildlife ~~and parks~~, *parks and tourism* citation as provided in K.S.A. 32-1049, and amendments thereto.

Failure to comply with a wildlife ~~and parks~~, *parks and tourism* citation is a class C misdemeanor, regardless of the disposition of the charge for which such citation, complaint or charge was originally issued.

(b) The term “citation” means any complaint, summons, notice to appear, ticket, warrant, penalty assessment or other official document issued for the prosecution of the wildlife ~~and parks~~, *parks and tourism* laws or rules and regulations of this state.

(c) In addition to penalties of law applicable under subsection (a) when a person fails to comply with a wildlife ~~and parks~~, *parks and tourism* citation or sentence for a violation of wildlife ~~and parks~~, *parks and tourism* laws or rules and regulations, the district court in which the person should have complied shall mail a notice to the person that if the person does

not appear in the district court or pay all fines, court costs, assessments or fees, and any penalties imposed within 30 days from the date of mailing, the *Kansas* department of wildlife ~~and parks,~~ *parks and tourism* shall be notified to forfeit or suspend any license, permit, stamp or other issue of the department. Upon receipt of a report of a failure to comply with a wildlife ~~and parks,~~ *parks and tourism* citation under this section, and amendments thereto, the department shall notify the violator and suspend or forfeit the license, permit, stamp or other issue of the department held by the violator until satisfactory evidence of compliance with the wildlife ~~and parks,~~ *parks and tourism* citation or sentence of the district court for violation of the wildlife ~~and parks,~~ *parks and tourism* laws or rules and regulations of this state are furnished to the informing court. Upon receipt of notification of such compliance from the informing court, the department shall terminate the suspension action, unless the violator is otherwise suspended.

(d) Except as provided in subsection (e), when the district court notifies the department of a failure to comply with a wildlife ~~and parks,~~ *parks and tourism* citation or failure to comply with a sentence of the district court imposed on violation of a wildlife ~~and parks,~~ *parks and tourism* law or rule and regulation, the court shall assess a reinstatement fee of \$50 for each charge or sentence on which the person failed to make satisfaction, regardless of the disposition of the charge for which such citation was originally issued. Such reinstatement fee shall be in addition to any fine, court costs and other assessments, fees or penalties. The court shall remit all reinstatement fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit such moneys to the state general fund.

(e) The district court shall waive the reinstatement fee provided for in subsection (d), if the failure to comply with a wildlife ~~and parks,~~ *parks and tourism* citation was the result of such person enlisting in or being drafted into the armed services of the United States of America, being called into service as a member of a reserve component of the military service of the United States of America, or volunteering for such active duty or being called into service as a member of the Kansas national guard or volunteering for such active duty and being absent from Kansas because of such military service. The state treasurer and the director of accounts and reports shall prescribe procedures for all such reimbursement payments and shall create appropriate accounts, make appropriate accounting entries and issue such appropriate vouchers and warrants as may be required to make such reimbursement payments.

(f) *Except as provided further, the reinstatement fee established in subsection (d) shall be the only fee collected or moneys in the nature of a fee collected for such reinstatement. Such fee shall only be established by an act of the legislature and no other authority is established by law or*

*otherwise to collect a fee. On and after the effective date of this act through June 30, 2013, the supreme court may impose an additional charge, not to exceed \$22 per reinstatement fee, to fund the costs of non-judicial personnel.*

Sec. 12. K.S.A. 2011 Supp. 38-2215 is hereby amended to read as follows: 38-2215. (a) *Docket fee.* The docket fee for proceedings under this code, if one is assessed as provided in this section, shall be \$34. Only one docket fee shall be assessed in each case. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

(b) *Expenses.* The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

(c) *Assessment of docket fee and expenses.* (1) *Docket fee.* The docket fee may be assessed or waived by the court conducting the initial dispositional hearing and the docket fee may be assessed against the complaining witness or person initiating the proceedings or a party or interested party other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state, or a person acting in the capacity of an employee of the state or of a political subdivision of the state. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362, and amendments thereto.

(2) *Expenses.* Expenses may be assessed against the complaining witness, a person initiating the proceedings, a party or an interested party, other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state. When expenses are recovered from a person against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery. If it appears to the court in any proceedings under this code that expenses were unreasonably incurred at the request of any party the court may assess that portion of the expenses against the party.

(d) *Cases in which venue is transferred.* If venue is transferred from one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending

court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall not be an obligation of the receiving county except to the extent that the sending county's proportion of the expenses is collected by the receiving court. All amounts collected shall first be applied toward payment of the docket fee.

Sec. 13. K.S.A. 2011 Supp. 38-2312 is hereby amended to read as follows: 38-2312. (a) Except as provided in subsection (b) *and* (c), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or K.S.A. 2011 Supp. 21-5401, and amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs; K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, aggravated indecent liberties with a child; K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, aggravated criminal sodomy; K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5508, and amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and amendments thereto, aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto, sexual exploitation; K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto, aggravated incest; K.S.A. 21-3608, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5601, and amendments thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A. 2011 Supp. 21-5602, and amendments

thereto, abuse of a child; or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

*(c) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.*

~~(d)~~ When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

~~(d)~~(e) (1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge;

(B) since the final discharge of the juvenile, the juvenile has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) The court may require that all court costs, fees and restitution shall be paid.

~~(e)~~(f) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the juvenile. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The

inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

~~(f)~~(g) Copies A certified copy of any order made pursuant to subsection (a) or ~~(c)~~(d) shall be sent to each public officer and agency in the county having possession of any the Kansas bureau of investigation, which shall notify every juvenile or criminal justice agency which may possess records or files ordered to be expunged. If the officer or agency fails to comply with the order within a reasonable time after its receipt, the officer or such agency may be adjudged in contempt of court and punished accordingly.

~~(g)~~(h) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

~~(h)~~(i) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

~~(i)~~(j) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

~~(j)~~(k) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive

director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission; ~~or~~

(8) the Kansas sentencing commission; *or*

(9) *the Kansas bureau of investigation, for the purposes of:*

(A) *Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or*

(B) *providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.*

(l) *The provisions of subsection (k)(9) shall apply to all records created prior to, on and after July 1, 2011.*

Sec. 14. K.S.A. 2011 Supp. 38-2314 is hereby amended to read as follows: 38-2314. (a) *Docket fee.* The docket fee for proceedings under this code, if one is assessed as provided by this section, shall be \$34. Only one docket fee shall be assessed in each case. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

(b) *Expenses.* The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

(c) *Assessment of docket fee and expenses.* (1) *Docket fee.* The docket fee may be assessed or waived by the court conducting the initial sentencing hearing and may be assessed against the juvenile or the parent of the juvenile. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362, and amendments thereto.

(2) *Expenses.* Expenses may be waived or assessed against the juvenile or a parent of the juvenile. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery.

(3) *Prohibited assessment.* Docket fees or expenses shall not be assessed against the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state.

(d) *Cases in which venue is transferred.* If venue is transferred from

one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall not be an obligation of the receiving county except to the extent that the sending county's proportionate share of the expenses is collected by the receiving court. Unless otherwise ordered by the court, all amounts collected shall first be applied toward payment of restitution, then toward the payment of the docket fee.

Sec. 15. K.S.A. 2011 Supp. 59-104 is hereby amended to read as follows: 59-104. (a) *Docket fee.* (1) Except as otherwise provided by law, no case shall be filed or docketed in the district court under the provisions of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, or of articles 40 and 52 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, without payment of an appropriate docket fee as follows:

(A) On and after July 1, 2009 through June 30, 2013:

Treatment of mentally ill .....	\$59.00
Treatment of alcoholism or drug abuse.....	36.50
Determination of descent of property.....	51.50
Termination of life estate.....	50.50
Termination of joint tenancy .....	50.50
Refusal to grant letters of administration .....	50.50
Adoption.....	50.50
Filing a will and affidavit under K.S.A. 59-618a .....	50.50
Guardianship .....	71.50
Conservatorship .....	71.50
Trusteeship .....	71.50
Combined guardianship and conservatorship .....	71.50
Certified probate proceedings under K.S.A. 59-213, and amendments thereto.....	25.50
Decrees in probate from another state .....	110.50
Probate of an estate or of a will .....	111.50
Civil commitment under K.S.A. 59-29a01 <i>et seq.</i> .....	35.50

(B) On and after July 1, 2013:

Treatment of mentally ill .....	34.50
Treatment of alcoholism or drug abuse.....	34.50
Determination of descent of property.....	49.50
Termination of life estate.....	48.50
Termination of joint tenancy .....	48.50
Refusal to grant letters of administration .....	48.50
Adoption .....	48.50

Filing a will and affidavit under K.S.A. 59-618a .....	48.50
Guardianship .....	69.50
Conservatorship .....	69.50
Trusteeship .....	69.50
Combined guardianship and conservatorship .....	69.50
Certified probate proceedings under K.S.A. 59-213, and amendments thereto .....	23.50
Decrees in probate from another state .....	108.50
Probate of an estate or of a will .....	109.50
Civil commitment under K.S.A. 59-29a01 <i>et seq.</i> .....	33.50

(2) Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

(b) *Poverty affidavit in lieu of docket fee and exemptions.* The provisions of subsection (b) of K.S.A. 60-2001 and K.S.A. 60-2005, and amendments thereto, shall apply to probate docket fees prescribed by this section.

(c) *Disposition of docket fee.* Statutory charges for the law library and for the prosecuting attorneys' training fund shall be paid from the docket fee. The remainder of the docket fee shall be paid to the state treasurer in accordance with K.S.A. 20-362, and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, transcripts and publication of legal notice, executor or administrator fees, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties or estate as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

Sec. 16. K.S.A. 2011 Supp. 60-2001 is hereby amended to read as follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of \$156 on and after July 1, 2009 through June 30, 2013, and \$154 on and after July 1, 2013, to the clerk of the district court. Except as provided further, the docket fee established in this subsection shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority

is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement disclosing the average account balance, or the total deposits, whichever is less, in the inmate's trust fund for each month in: (A) The six-month period preceding the filing of the action; or (B) the current period of incarceration, whichever is shorter. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the initial fee to be assessed for filing the action and in no event shall the court require an inmate to pay less than \$3. The secretary of corrections is hereby authorized to disburse money from the inmate's account to pay the costs as determined by the court. If the inmate has a zero balance in such inmate's account, the secretary shall debit such account in the amount of \$3 per filing fee as established by the court until money is credited to the account to pay such docket fee. Any initial filing fees assessed pursuant to this subsection shall not prevent the court, pursuant to subsection (d), from taxing that individual for the remainder of the amount required under subsection (a) or this subsection.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, \_\_\_\_\_ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of fees.* The docket fees and the fees for service of process shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. For every person to be served by the sheriff, the persons requesting service of process shall provide proper payment to the clerk and the clerk of the district court shall forward the service of process fee to the sheriff in accordance with K.S.A. 28-110, and amendments thereto. The service of process fee, if paid by check or money order, shall be made payable to the sheriff. Such service of process fee shall be submitted by the sheriff at least monthly to the county treasurer for deposit in the county treasury and credited to the county general fund. The docket fee shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically

fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process, fees for depositions, alternative dispute resolution fees, transcripts and publication, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any mileage for serving any papers or process.

Sec. 17. K.S.A. 2011 Supp. 60-2203a is hereby amended to read as follows: 60-2203a. (a) After the commencement of any action in any district court of this state, or the courts of the United States in the state of Kansas or in any action now pending heretofore commenced in such courts, which does not involve title to real estate, any party to such action may give notice in any other county of the state of the pendency of the action by filing for record with the clerk of the district court of such other county a verified statement setting forth the parties to the action, the nature of the action, the court in which it is pending, and the relief sought, which shall impart notice of the pendency of the action and shall result in the same lien rights as if the action were pending in that county. The lien shall be effective from the time the statement is filed, but not to exceed four months prior to the entry of judgment except as provided in subsection (c). The party filing such notice shall within 30 days after any satisfaction of the judgment entered in such action, or any other final disposition thereof, cause to be filed with such clerk of the district court a notice that all claims in such action are released. If the party filing fails or neglects to do so after reasonable demand by any party in interest, such party shall be liable in damages in the same amounts and manner as is provided by law for failure of a mortgagee to enter satisfaction of a mortgage. Upon the filing of such a notice of the pendency of an action the clerk shall charge a fee of \$14 and shall enter and index the action in the same manner as for the filing of an original action. Upon the filing of a notice of release, the notice shall likewise be entered on the docket. Except as provided further, the fee established in this subsection shall be the only fee collected or moneys in the nature of a fee collected for the court procedure. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$22 per fee, to fund the costs of non-judicial personnel.

(b) Any notice of the type provided for in subsection (a) which was filed on or after January 10, 1977, and prior to the effective date of this act shall be deemed to impart notice of the pendency of the action in the same manner as if the provisions of subsection (a) were in force and effect on and after January 10, 1977.

(c) Notwithstanding the foregoing provisions of this section, the filing

of a notice of the pendency of an action pursuant to subsection (a) shall create no lien rights against the property of an employee of the state or a municipality prior to the date judgment is rendered if the pleadings in the pending action allege a negligent or wrongful act or omission of the employee while acting within the scope of such employee's employment, regardless of whether or not it is alleged in the alternative that the employee was acting outside of such employee's employment. A judgment against an employee shall become a lien upon such employee's property in the county where notice is filed pursuant to subsection (a) when the judgment is rendered only if it is found that: (1) The employee's negligent or wrongful act or omission occurred when the employee was acting outside the scope of such employee's employment; or (2) the employee's conduct which gave rise to the judgment was because of actual fraud or actual malice of the employee. In such cases the lien shall not be effective prior to the date judgment was rendered. As used in this subsection (c), "employee" shall have the meaning ascribed to such term in K.S.A. 75-6102, and amendments thereto.

Sec. 18. K.S.A. 2011 Supp. 61-2704 is hereby amended to read as follows: 61-2704. (a) An action seeking the recovery of a small claim shall be considered to have been commenced at the time a person files a written statement of the person's small claim with the clerk of the court if, within 90 days after the small claim is filed, service of process is obtained or the first publication is made for service by publication. Otherwise, the action is deemed commenced at the time of service of process or first publication. An entry of appearance shall have the same effect as service.

(b) Upon the filing of a plaintiff's small claim, the clerk of the court shall require from the plaintiff a docket fee of \$39 on and after July 1, 2009 through June 30, 2013, and \$37 on and after July 1, 2013, if the claim does not exceed \$500; or \$59 on and after July 1, 2009 through June 30, 2013, and \$57 on and after July 1, 2013, if the claim exceeds \$500; unless for good cause shown the judge waives the fee. The docket fee shall be the only costs required in an action seeking recovery of a small claim. No person may file more than 20 small claims under this act in the same court during any calendar year.

(c) Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$12.50 per docket fee, to fund the costs of non-judicial personnel.

Sec. 19. K.S.A. 2011 Supp. 61-4001 is hereby amended to read as follows: 61-4001. (a) *Docket fee.* (1) No case shall be filed or docketed

pursuant to the code of civil procedure for limited actions without the payment of a docket fee in the amount of \$37 on and after July 1, 2009, through June 30, 2013, and \$35 on and after July 1, 2013, if the amount in controversy or claimed does not exceed \$500; \$57 on and after July 1, 2009, through June 30, 2013, and \$55 on and after July 1, 2013, if the amount in controversy or claimed exceeds \$500 but does not exceed \$5,000; or \$103 on and after July 1, 2009, through June 30, 2013, and \$101 on and after July 1, 2013, if the amount in controversy or claimed exceeds \$5,000. If judgment is rendered for the plaintiff, the court also may enter judgment for the plaintiff for the amount of the docket fee paid by the plaintiff.

~~(b) Poverty affidavit, additional court costs, exemptions for the state and municipalities. The provisions of subsections (b), (c) and (d) of K.S.A. 60-2001 and 60-2005, and amendments thereto, shall be applicable to lawsuits brought under the code of civil procedure for limited actions.~~

~~(c)(2)~~ Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, ~~2012~~ 2013, the supreme court may impose an additional charge, not to exceed \$19 per docket fee, to fund the costs of non-judicial personnel.

*(b) Poverty affidavit; additional court costs; exemptions for the state and municipalities. The provisions of subsections (b), (c) and (d) of K.S.A. 60-2001 and 60-2005, and amendments thereto, shall be applicable to lawsuits brought under the code of civil procedure for limited actions.*

Sec. 20. K.S.A. 65-409 is hereby amended to read as follows: 65-409.

*(a)* The clerk of the district court shall charge a fee of ~~\$5~~ \$14 for entering and filing a lien statement under this act.

*(b) Except as provided further, the lien fee established in subsection (a) shall be the only fee collected or moneys in the nature of a fee collected for such lien. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, 2013, the supreme court may impose an additional charge, not to exceed \$22 per lien fee, to fund the costs of non-judicial personnel.*

Sec. 21. K.S.A. 65-409 and K.S.A. 2011 Supp. 8-2107, 8-2110, 21-6614, 21-6614a, 21-6614b, 21-6614c, 22-2410, 22-2410a, 23-2510, 28-170, 28-172a, 28-177, 28-177a, 28-178, 28-179, 32-1049a, 38-2215, 38-2312, 38-2312a, 38-2312b, 38-2314, 59-104, 60-2001, 60-2203a, 61-2704 and 61-4001 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 3, 2012.

Published in the *Kansas Register* April 12, 2012.

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## CHAPTER 67

### SENATE BILL No. 330

AN ACT concerning civil procedure; relating to malpractice liability screening panels; amending K.S.A. 2011 Supp. 60-3502, 60-3503, 60-3505, 65-4901, 65-4902 and 65-4904 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 60-3502 is hereby amended to read as follows: 60-3502. (a) If a professional malpractice liability action is filed in a district court of this state and one of the parties to the action requests, by filing a memorandum with the court, that a professional malpractice screening panel be convened, the judge of the district court ~~or, if the district court has more than one division, the chief judge of such court~~ shall convene a professional malpractice screening panel, hereafter referred to as the screening panel. If a claim for damages arising out of the rendering of or failure to render services by a professional licensee has not been formalized by the filing of a petition, any party affected by such claim may request, by filing a memorandum with the court, that a screening panel be convened and, if such request is made, the judge of the district court ~~or the chief judge of such court~~ shall convene a screening panel. If a petition or claim is filed naming more than one defendant or more than one person against whom a claim is being made, each defendant or person is entitled to request a separate screening panel.

(b) The membership of the screening panel shall be selected as follows: (1) A person licensed in the same profession as the defendant or person against whom the claim is filed, designated by the defendant or by the person against whom the claim is made if no petition has been filed; (2) a person licensed in the same profession as the defendant or person against whom the claim is filed, designated by the plaintiff or by the claimant if no petition has been filed; (3) a person licensed in the same profession as the defendant or person against whom the claim is filed, selected jointly by the plaintiff and the defendant or by the claimant and the person against whom the claim is made, if no petition has been filed; and (4) an attorney selected by the judge of the district court ~~or the chief judge of such court~~ from a list of attorneys maintained by the judge of the district court for such purpose. Such attorney shall be a nonvoting

member of the screening panel but shall act as chairperson of the screening panel.

(c) The state agency which licenses, registers, certifies or otherwise is responsible for the practice of any group of professional licensees shall maintain and make available to the parties to the proceeding a current list of professional licensees who are willing and available to serve on the screening panel. The persons appointed shall constitute the screening panel for the particular professional malpractice claim to be heard.

Sec. 2. K.S.A. 2011 Supp. 60-3503 is hereby amended to read as follows: 60-3503. The district judge ~~or the chief judge of such court~~ shall notify the parties to the action that a screening panel has been convened. The plaintiff or claimant and the defendant or respondent shall each designate a person licensed in the same profession as the defendant or respondent within 21 days of such party's receipt of notice of the convening of the screening panel. The parties shall jointly designate a person licensed in the same profession as the defendant or respondent within 14 days after the individual designations have been made. If the parties are unable to jointly select a professional licensee within such 14 days, the judge of the district court ~~or the chief judge of such court~~ shall select such professional licensee.

Sec. 3. K.S.A. 2011 Supp. 60-3505 is hereby amended to read as follows: 60-3505. (a) Within 180 days after the screening panel is commenced, such panel shall make written recommendations on the issue of whether the professional licensee departed from the standard of conduct in a way which caused the plaintiff or claimant damage. A concurring or dissenting member of the screening panel may file a written concurring or dissenting opinion. All written opinions shall be supported by corroborating references to published literature and other relevant documents.

(b) The screening panel shall notify all parties when its determination is to be handed down, and, within seven days of its decision, shall provide a copy of its opinion and any concurring or dissenting opinion to each party and each attorney of record and to the judge of the district court ~~or the chief judge of such court~~.

(c) The written report of the screening panel shall be admissible in any subsequent legal proceeding, and either party may subpoena any and all members of the panel as witnesses for examination relating to the issues at trial.

Sec. 4. K.S.A. 2011 Supp. 65-4901 is hereby amended to read as follows: 65-4901. (a) If a petition is filed in a district court of this state claiming damages for personal injury or death on account of alleged medical malpractice of a health care provider and one of the parties to the action requests, by filing a memorandum with the court, that a medical malpractice screening panel be convened, the judge of the district court ~~or, if the district court has more than one division, the chief judge of such~~

~~court~~ shall convene a medical malpractice screening panel, hereafter referred to as the “screening panel.” If a petition is filed in a district court of this state claiming damages for personal injury or death on account of alleged medical malpractice of a health care provider and none of the parties to the action requests that a screening panel be convened, the judge may convene a screening panel upon the judge’s own motion. If a claim for damages for personal injury or death on account of alleged medical malpractice of a health care provider has not been formalized by the filing of a petition, any party affected by such claim may request, by filing a memorandum with the court, that a screening panel be convened, and if such request is made the judge of the district court ~~or, if the district court has more than one division, the chief judge of such court~~ shall convene a screening panel. If a petition or claim is filed naming more than one defendant or more than one person against whom a claim is being made, each defendant or person is entitled to request a screening panel.

(b) The membership of the screening panel shall be selected as follows: (1) A health care provider designated by the defendant or by the person against whom the claim is made if no petition has been filed; (2) a health care provider designated by the plaintiff or by the claimant if no petition has been filed; (3) a health care provider selected jointly by the plaintiff and the defendant or by the claimant and the person against whom the claim is made if no petition has been filed; and (4) an attorney selected by the judge of the district court ~~or, if the district court has more than one division, the chief judge of such court~~ from a list of attorneys maintained by the judge of the district court ~~or, if the district court has more than one division, the chief judge of such court~~ for such purpose. Such attorney shall be a nonvoting member of the screening panel but shall act as chairperson of the screening panel.

(c) The state agency which licenses, registers, certifies or otherwise is responsible for the practice of any group of health care providers shall maintain and make available to the parties to the proceeding a current list of health care providers who are willing and available to serve on the screening panel. The persons appointed shall constitute the screening panel for the particular medical malpractice claim to be heard.

Sec. 5. K.S.A. 2011 Supp. 65-4902 is hereby amended to read as follows: 65-4902. ~~The district judge or, if the district court has more than one division, the chief judge of such court~~ *judge of the district court* shall notify the parties to the action that a screening panel has been convened. The plaintiff or claimant and the defendant or respondent shall each designate a health care provider licensed in the same profession as the defendant or respondent within 21 days of such party’s receipt of notice of the convening of the screening panel. The parties shall jointly designate a health care provider licensed in the same profession as the defendant

or respondent within 14 days after the individual designations have been made. If the parties are unable to jointly select a health care provider within such 14 days, the judge of the district court ~~or, if the district court has more than one division, the chief judge of such court~~ shall select such health care provider.

Sec. 6. K.S.A. 2011 Supp. 65-4904 is hereby amended to read as follows: 65-4904. (a) Within 180 days after the screening panel is commenced, such panel shall make written recommendations on the issue of whether the health care provider departed from the standard of care in a way which caused the plaintiff or claimant damage. A concurring or dissenting member of the screening panel may file a written concurring or dissenting opinion. All written opinions shall be supported by corroborating references to published literature and other relevant documents.

(b) The screening panel shall notify all parties when its determination is to be handed down, and, within seven days of its decision, shall provide a copy of its opinion and any concurring or dissenting opinion to each party and each attorney of record and to the judge of the district court ~~or, if the district court has more than one division, the chief judge of such court~~.

(c) The written report of the screening panel shall be admissible in any subsequent legal proceeding, and either party may subpoena any and all members of the panel as witnesses for examination relating to the issues at trial, provided the panel member or members otherwise meet the qualifications of K.S.A. 60-3412, and amendments thereto.

Sec. 7. K.S.A. 2011 Supp. 60-3502, 60-3503, 60-3505, 65-4901, 65-4902 and 65-4904 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 3, 2012.

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## CHAPTER 68

SENATE BILL No. 366

AN ACT concerning civil procedure; relating to attachment and garnishment; amending K.S.A. 60-733 and 61-3506 and K.S.A. 2011 Supp. 60-736, 60-738, 60-739, 61-3509, 61-3511 and 61-3512 and repealing the existing sections.

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

Section 1. K.S.A. 60-733 is hereby amended to read as follows: 60-733. (a) The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be

withheld, which shall be 110% of the amount of the judgment creditor's claim, in the case of prejudgment garnishment, or 110% of the amount of the current balance due under the judgment, in the case of postjudgment garnishment. The garnishee, without prior agreement, may withhold and retain to defray the garnishee's costs, an administrative fee of ~~\$10~~ \$15 for each order of garnishment that attaches funds, credits or indebtedness. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment, except that if the amount required to be withheld under the order for garnishment is greater than the amount of the funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company, the fee shall be deducted from the amount withheld.

(b) All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the judgment debtor's address and tax identification number, if known, and shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee, which shall be 110% of the amount of the judgment creditor's claim or 110% of the amount of the current balance due under the judgment, as stated in the written direction of the party seeking the order.

(c) The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the judgment debtor, the amount to be withheld by you pursuant to this order of garnishment is not to exceed

\$ \_\_\_\_\_."

(amount stated in direction)

(d) (1) The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the judgment debtor which I shall hold shall not exceed

\$ \_\_\_\_\_."

(amount stated in order)

(2) The answer shall further include information that such account is owned in joint tenancy with one or more individuals who are not subject to the garnishment, if applicable.

(e) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

(f) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in an account which judgment debtor owns in joint tenancy with one or more individuals who are not subject to the garnishment, the garnishee shall withhold the entire amount sought by the garnishment. Neither the garnishor nor the garnishee shall be liable to the joint owners if the ownership of the funds is later proven not to be the judgment debtor's.

(g) No party shall seek an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, savings bank, credit union or finance company except on good faith belief of the party seeking garnishment that the party to be served with the garnishment order has, or will have, assets of the judgment debtor. Except as provided further, not more than two garnishments shall be issued by a party seeking an order of garnishment applicable to the same claim or claims and against the same judgment debtor in any 30-day period. A judge may order an exception to this subsection in any case in which the party seeking the garnishment shall in person or by attorney: (1) Certify that the garnishment is not for the purpose of harassment of the debtor, and (2) state facts demonstrating to the satisfaction of the judge that there is reason to believe that the garnishee has property or credits of the debtor which are not exempt from execution.

Sec. 2. K.S.A. 2011 Supp. 60-736 is hereby amended to read as follows: 60-736. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

(a) The answer of the garnishee shall be substantially in compliance with the forms set forth by the judicial council.

(b) Within 14 days after service, other than that required pursuant to K.S.A. 40-218, and amendments thereto, upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order and ~~file~~ send the completed answer with the clerk of the court. ~~The clerk shall cause a copy of the answer to be mailed promptly~~ to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

Sec. 3. K.S.A. 2011 Supp. 60-738 is hereby amended to read as follows: 60-738. (a) No later than 14 days after the garnishee makes the answer and ~~the clerk or the garnishee~~ sends it to the judgment creditor and judgment debtor, the judgment creditor or judgment debtor, or both, may file a reply disputing any statement in the answer of the garnishee. A copy of the reply shall be sent by the party filing same to the other party, to any other judgment creditors affected and to the garnishee. The

party filing the reply shall notify the court and schedule a hearing on the reply to be held within 30 days after filing of the reply.

(b) At the hearing, the court shall determine and rule on all issues related to the reply. The burden of proof shall be upon the party filing the reply to disprove the statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the judgment debtor to the garnishee, or liens asserted by the garnishee against personal property of the judgment debtor. The provisions of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by the garnishee shall be applicable to lawsuits filed pursuant to the code of civil procedure for limited actions.

Sec. 4. K.S.A. 2011 Supp. 60-739 is hereby amended to read as follows: 60-739. (a) The court shall direct the garnishee to pay to the ~~court~~ judgment creditor such amount that the garnishee is holding, as indicated by the answer, or such lesser amount as warranted, if:

(1) The garnishment has attached to *intangible* property other than earnings of the judgment debtor;

(2) fourteen days have passed since receipt of the answer of the garnishee by the ~~court~~ judgment creditor; and

(3) no reply to the answer has been filed.

(b) The ~~court~~ judgment creditor shall promptly refund to the judgment debtor any overpayment of the claim. The garnishee may release the funds, credits or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the ~~court~~ judgment creditor has been received within 60 days following the receipt of the answer of the garnishee by the ~~court~~ judgment creditor.

(c) *The garnishee shall not be liable to any judgment creditor or judgment debtor and shall not be assessed any penalty by reason of any action taken in good faith by the garnishee in accordance with the provisions of article 7 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.*

Sec. 5. K.S.A. 61-3506 is hereby amended to read as follows: 61-3506.

(a) The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be withheld, which shall be 110% of the amount of the judgment creditor's claim, in the case of prejudgment garnishment, or 110% of the amount of the current balance due under the judgment, in the case of postjudgment garnishment. The garnishee, without prior agreement, may withhold and retain to defray the garnishee's costs, an administrative fee of ~~\$10~~ \$15 for each order of garnishment that attaches funds, credits or indebtedness. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment, except that if the amount required to be withheld under the order for garnishment is

greater than the amount of the funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company, the fee shall be deducted from the amount withheld.

(b) All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the judgment debtor's address and tax identification number, if known, and shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee, which shall be 110% of the amount of the judgment creditor's claim or 110% of the amount of the current balance due under the judgment, as stated in the written direction of the party seeking the order.

(c) The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the judgment debtor, the amount to be withheld by you pursuant to this order of garnishment is not to exceed

\$ \_\_\_\_\_."

(amount stated in direction)

(d) (1) The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the judgment debtor which I shall hold shall not exceed

\$ \_\_\_\_\_."

(amount stated in order)

(2) The answer shall further include information that such account is owned in joint tenancy with one or more individuals who are not subject to the garnishment, if applicable.

(e) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

(f) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in an account which judgment debtor owns in joint tenancy with one or more individuals who are not subject to the garnishment, the garnishee shall withhold the entire amount sought by the garnishment. Neither the garnishor nor the garnishee shall be liable to the joint owners if the ownership of the funds is later proven not to be the judgment debtor's.

(g) No party shall seek an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, savings bank, credit union or finance company except on good faith belief of the party seeking garnishment that the party to be served with the garnishment order has, or will have, assets of the judgment debtor. Except as provided further, not more than two garnishments shall be issued by a party seeking an order of garnishment applicable to the same claim or claims and against the same judgment debtor in any 30-day period. A judge may order an exception to this subsection in any case in which the party seeking the garnishment shall in person or by attorney: (1) Certify that the garnishment is not for the purpose of harassment of the debtor, and (2) state facts demonstrating to the satisfaction of the judge that there is reason to believe that the garnishee has property or credits of the debtor which are not exempt from execution.

Sec. 6. K.S.A. 2011 Supp. 61-3509 is hereby amended to read as follows: 61-3509. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

Within 14 days after service upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order and ~~file~~ send the completed answer ~~with the clerk of the court. The clerk shall cause a copy of the answer to be mailed promptly~~ to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

Sec. 7. K.S.A. 2011 Supp. 61-3511 is hereby amended to read as follows: 61-3511. (a) No later than 14 days after the garnishee makes the answer and ~~the clerk or the garnishee~~ sends it to the judgment creditor and judgment debtor, the judgment creditor or judgment debtor, or both, may file a reply disputing any statement in the answer of the garnishee. A copy of the reply shall be sent by the party filing same to the other party, to any other judgment creditors affected and to the garnishee. The party filing the reply shall notify the court and schedule a hearing on the reply to be held within 30 days after filing of the reply.

(b) At the hearing, the court shall determine and rule on all issues related to the reply. The burden of proof shall be upon the party filing the reply to disprove the statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the judgment debtor to the garnishee, or liens asserted by the garnishee against personal property of the judgment debtor. The provisions of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by the garnishee shall be applicable to lawsuits filed pursuant to the code of civil procedure for limited actions.

Sec. 8. K.S.A. 2011 Supp. 61-3512 is hereby amended to read as

follows: 61-3512. (a) The court shall direct the garnishee to pay to the ~~court judgment creditor~~ such amount that the garnishee is holding, as indicated by the answer, or such lesser amount as warranted, if:

(1) The garnishment has attached to *intangible* property other than earnings of the judgment debtor;

(2) fourteen days have passed since receipt of the answer of the garnishee by the ~~court judgment creditor~~; and

(3) no reply to the answer has been filed.

(b) The ~~court judgment creditor~~ shall promptly refund to the judgment debtor any overpayment of the claim. The garnishee may release the funds, credits or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the ~~court judgment creditor~~ has been received within 60 days following the receipt of the answer of the garnishee by the ~~court judgment creditor~~.

(c) *The garnishee shall not be liable to any judgment creditor or judgment debtor and shall not be assessed any penalty by reason of any action taken in good faith by the garnishee in accordance with the provisions of article 35 of chapter 61 of the Kansas Statutes Annotated, and amendments thereto.*

Sec. 9. K.S.A. 60-733 and 61-3506 and K.S.A. 2011 Supp. 60-736, 60-738, 60-739, 61-3509, 61-3511 and 61-3512 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 3, 2012.

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## CHAPTER 69

### SENATE BILL No. 320

AN ACT concerning the revised Kansas juvenile justice code; relating to probable cause determinations; amending K.S.A. 2011 Supp. 38-2331, 38-2343 and 38-2354 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 38-2331 is hereby amended to read as follows: 38-2331. (a) If no prior order removing a juvenile from the juvenile's home pursuant to K.S.A. 2011 Supp. 38-2334 or 38-2335, and amendments thereto, has been made, the court shall not enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds probable cause that:

(1) (A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile. The court shall state the basis for each finding in writing.

(b) Except as provided in subsection (c), a juvenile may be placed in a juvenile detention facility pursuant to subsection (c) or (d) of K.S.A. 2011 Supp. 38-2330 or subsection (e) of K.S.A. 2011 Supp. 38-2343, and amendments thereto, if one or more of the following conditions are met:

(1) There is oral or written verification that the juvenile is a fugitive sought for an offense in another jurisdiction, that the juvenile is currently an escapee from a juvenile detention facility or that the juvenile has absconded from a placement that is court ordered or designated by the juvenile justice authority.

(2) ~~The juvenile is alleged to have~~ *There is probable cause to believe that the juvenile has* committed an offense which if committed by an adult would constitute a felony or any crime described in article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6419 through 21-6421, and amendments thereto.

(3) The juvenile has been adjudicated for a nonstatus offense and is awaiting final court action on that offense.

(4) The juvenile has a record of failure to appear in court or there is probable cause to believe that the juvenile will flee the jurisdiction of the court.

(5) The juvenile has a history of violent behavior toward others.

(6) The juvenile exhibited seriously assaultive or destructive behavior or self-destructive behavior at the time of being taken into custody.

(7) The juvenile has a record of adjudication or conviction of one or more offenses which if committed by an adult would constitute a felony.

(8) The juvenile is a juvenile offender who has been expelled from placement in a nonsecure facility as a result of the current alleged offense.

(9) The juvenile has been taken into custody by any court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code pursuant to subsection (b) of K.S.A. 2011 Supp. 38-2330, and amendments thereto.

(10) The juvenile has violated probation or conditions of release.

(c) No person 18 years of age or more shall be placed in a juvenile detention center.

Sec. 2. K.S.A. 2011 Supp. 38-2343 is hereby amended to read as follows: 38-2343. (a) ~~Length of detention~~ *Basis for extended detention; findings and placement.* Whenever a juvenile is taken into custody, the

juvenile shall not remain in detention for more than 48 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, from the time the initial detention was imposed, unless the court determines after hearing, within the 48-hour period, that further detention is necessary *because detention is warranted in light of all relevant factors, including, but not limited to, the criteria listed in K.S.A. 2011 Supp. 38-2331, and amendments thereto, and the juvenile is dangerous to self or others or is not likely to appear for further proceedings.*

(1) *If the juvenile is in custody on the basis of a new offense which would be a felony or misdemeanor if committed by an adult and no prior judicial determination of probable cause has been made, the court shall determine whether there is probable cause to believe that the juvenile has committed the alleged offense.*

(2) *If the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate.*

(3) *If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.*

(4) *In the absence of the necessary findings, the court shall order the juvenile released or placed in temporary custody as provided in subsection (g).*

(b) *Waiver of detention hearing.* The detention hearing may be waived in writing by the juvenile and the juvenile's attorney with approval of the court. The right to a detention hearing may be reasserted in writing by the juvenile or the juvenile's attorney or parent at anytime not less than 48 hours prior to trial.

(c) *Notice of hearing.* Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Except as otherwise provided by subsection (c)(1) of K.S.A. 2011 Supp. 38-2332, and amendments thereto, notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived.

~~(d) *Oral notice.* When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a certificate of oral notice with the clerk.~~

~~(e)~~ (d) *Hearing, finding, bond.* Attorney for juvenile. At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney, and may recess the hearing for 24 hours, excluding Saturdays, Sundays and legal holidays, to obtain attendance of the attorney appointed. ~~At the detention hearing, if the~~

~~court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate. If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto. In the absence of either finding, the court shall order the juvenile released or placed in temporary custody as provided in subsection (f).~~

~~In determining whether to place a juvenile in a juvenile detention facility pursuant to this subsection, the court shall consider all relevant factors, including, but not limited to, the criteria listed in K.S.A. 2011 Supp. 38-2331, and amendments thereto.~~

~~(e) *Hearing.* The detention hearing is an informal procedure to which the ordinary rules of evidence do not apply. The court may consider affidavits, professional reports and representations of counsel to make the necessary findings, if the court determines that these materials are sufficiently reliable. If probable cause to believe that the juvenile has committed an alleged offense is contested, the court shall allow the opportunity to present contrary evidence or information upon request. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.~~

~~(f) *Rehearing.* (1) If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.~~

~~(2) *Within 14 days of the detention hearing, if the juvenile had not previously presented evidence regarding the determination of probable cause to believe that the juvenile has committed an offense, the juvenile may request a rehearing to contest the determination of probable cause to believe that the juvenile has committed an offense. The rehearing request shall identify evidence or information that the juvenile could not reasonably produce at the detention hearing. If the court determines that the evidence or information could not reasonably be produced at the detention hearing, the court shall rehear the matter without unnecessary delay.*~~

~~(g) *Temporary custody.* If the court determines that detention is not necessary but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of a youth residential facility, some other suitable person willing to accept temporary custody or the commissioner. Such finding shall be made in accordance with K.S.A. 2011 Supp. 38-2334 and 38-2335, and amendments thereto.~~

~~(h) *Audio-video communications.* Detention hearings may be con-~~

ducted by two-way electronic audio-video communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

Sec. 3. K.S.A. 2011 Supp. 38-2354 is hereby amended to read as follows: 38-2354. ~~In all hearings pursuant to the code~~ *Except as provided in K.S.A. 2011 Supp. 38-2343 and 38-2360, and amendments thereto*, the rules of evidence of the code of civil procedure shall apply *in all hearings pursuant to this code*. The presiding judge shall not consider, read or rely upon any report not properly admitted according to the rules of evidence.

Sec. 4. K.S.A. 2011 Supp. 38-2331, 38-2343 and 38-2354 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 3, 2012.

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## CHAPTER 70

HOUSE Substitute for Substitute for SENATE BILL No. 159  
(Amended by Chapter 150)

AN ACT concerning crimes, punishment and criminal procedure; relating to conditions of release; conditions for persons on probation; searches of parolees and persons on post-release supervision; conditions for sex offenders; amending K.S.A. 2011 Supp. 21-6607 and 22-3717 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 21-6607 is hereby amended to read as follows: 21-6607. (a) Except as required by subsection (c), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program. The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such conditions, after notice to the court services

officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community corrections participant, as the case may be. The provisions of K.S.A. 75-5291, and amendments thereto, shall be applicable to any assignment to a community correctional services program pursuant to this section.

(b) The court may impose any conditions of probation, suspension of sentence or assignment to a community correctional services program that the court deems proper, including, but not limited to, requiring that the defendant:

(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;

(3) report to the court services officer or community correctional services officer as directed;

(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days, determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) participate in a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto;

(13) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court; or

(14) in felony cases, except for violations of K.S.A. 8-1567, and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.

(c) In addition to any other conditions of probation, suspension of sentence or assignment to a community correctional services program, the court shall order the defendant to comply with each of the following conditions:

(1) The defendant shall obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject;

(2) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefore;

(3) (A) pay a correctional supervision fee of \$60 if the person was convicted of a misdemeanor or a fee of \$120 if the person was convicted of a felony. In any case the amount of the correctional supervision fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount;

(B) the correctional supervision fee imposed by this paragraph shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this paragraph from correctional supervision fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, a sum equal to 41.67% of such remittance, and to the correctional supervision fund, a sum equal to 58.33% of such remittance;

(C) this paragraph shall apply to persons placed on felony or misdemeanor probation or released on misdemeanor parole to reside in Kansas and supervised by Kansas court services officers under the interstate compact for offender supervision; and

(D) this paragraph shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision; ~~and~~

(4) reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate

family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less;

(5) *be subject to searches of the defendant's person, effects, vehicle, residence and property by a court services officer, a community correctional services officer and any other law enforcement officer based on reasonable suspicion of the defendant violating conditions of probation or criminal activity; and*

(6) *be subject to random, but reasonable, tests for drug and alcohol consumption as ordered by a court services officer or community correctional services officer.*

(d) *Any law enforcement officer conducting a search pursuant to subsection (c)(5) shall submit a written report to the appropriate court services officer or community correctional services officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.*

~~(d)~~(e) There is hereby established in the state treasury the correctional supervision fund. All moneys credited to the correctional supervision fund shall be used for the implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument as specified by the Kansas sentencing commission, pursuant to K.S.A. 75-5291, and amendments thereto, and for evidence-based offender supervision programs by judicial branch personnel. If all expenditures for the program have been paid and moneys remain in the correctional supervision fund for a fiscal year, remaining moneys may be expended from the correctional supervision fund to support offender supervision by court services officers. All expenditures from the correctional supervision fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the Kansas supreme court or by a person or persons designated by the chief justice.

Sec. 2. K.S.A. 2011 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638, prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642, prior to its repeal; K.S.A. 2011 Supp. 21-6617, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011 Supp. 21-6707, and

amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2011 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, prior to its repeal, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or K.S.A. 2011 Supp. 21-6606, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments

thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d)(1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 1 through 4 crimes and drug severity levels 1 and 2 crimes must serve 36 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes and drug severity level 3 crimes must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on post-release supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 12 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2011 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(D)(i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the post-release supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, prior to its repeal, or K.S.A. 2011 Supp. 21-6820, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection

(e) of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2011 Supp. 21-6813, and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the ~~parole~~ *prisoner review* board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2011 Supp. 21-6817, and amendments thereto.

(vi) Upon petition, the ~~parole~~ *prisoner review* board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the ~~parole~~ board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of post-release supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto; or

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section.

“Sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the ~~Kansas parole prisoner review~~ board may postpone the inmate’s parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate’s parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, prior to its repeal, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender’s conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the ~~Kansas parole prisoner review~~ board or reaches the maximum sentence expiration

tion date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of post-release supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the ~~Kansas parole~~ *prisoner review* board.

(g) Subject to the provisions of this section, the ~~Kansas parole~~ *prisoner review* board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The ~~Kansas parole~~ *prisoner review* board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of

action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the ~~Kansas parole~~ board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the ~~parole prisoner review~~ board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a, and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) (1) Before ordering the parole of any inmate, the ~~Kansas parole prisoner review~~ board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the ~~Kansas parole~~ board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and

amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the ~~parole~~ board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the ~~parole~~ board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the ~~parole~~ board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the ~~parole~~ board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a ~~parole~~ board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the ~~parole~~ board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the ~~parole~~ board determines that such resources are insufficient. If the ~~parole~~ board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) (1) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(2) *Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer or a department of corrections enforcement, apprehension and investigation*

*officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment.*

(3) *Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity. Any law enforcement officer who conducts such a search shall submit a written report to the appropriate parole officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.*

(1) ~~The Kansas parole prisoner review board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.~~

(m) ~~Whenever the Kansas parole prisoner review board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:~~

(1) ~~Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;~~

(2) ~~to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;~~

(3) ~~may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;~~

(4) ~~may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amend-~~

ments thereto, unless the board finds compelling circumstances which would render payment unworkable; ~~and~~

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the ~~parole prisoner review~~ board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services;

(6) *shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment; and*

(7) *shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity.*

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the ~~Kansas parole prisoner review~~ board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the ~~Kansas parole prisoner review~~ board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to May 25, 2000, who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the ~~Kansas parole prisoner review~~ board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the ~~Kansas parole prisoner review~~ board or the court orders a person to be electronically monitored, the board or court shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board or court shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

*(w)(1) On and after July 1, 2012, for any inmate who is a sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the prisoner review board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to not possess pornographic materials.*

*(A) As used in this subsection, "pornographic materials" means: Any obscene material or performance depicting sexual conduct, sexual contact*

*or a sexual performance; and any visual depiction of sexually explicit conduct.*

*(B) As used in this subsection, all other terms have the meanings provided by K.S.A. 2011 Supp. 21-5510, and amendments thereto.*

*(2) The provisions of this subsection shall be applied retroactively to every sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2012. The prisoner review board shall obtain the written agreement required by this subsection from such offenders as soon as practicable.*

Sec. 3. K.S.A. 2011 Supp. 21-6607 and 22-3717 are hereby repealed.

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

Approved April 3, 2012.

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## CHAPTER 71

### HOUSE BILL No. 2489\*

AN ACT concerning certain natural gas public utilities cooperatives; deregulation.

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

Section 1. (a) Except as otherwise provided in subsection (f), a natural gas cooperative public utility may elect to be exempt from the jurisdiction, regulation, supervision and control of the state corporation commission by complying with the provisions of subsection (b).

(b) To be exempt under subsection (a), a cooperative shall poll its members as follows: (1) An election under this subsection may be called by the board of trustees or shall be called not less than 180 days after receipt of a valid petition signed by not less than 10% of the members of the cooperative.

(2) The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than 21 nor more than 45 days before the date of the meeting.

(3) If the cooperative mails information to its members regarding the proposition for deregulation other than notice of the election and the ballot, the cooperative shall also include in such mailing any information in opposition to the proposition that is submitted by petition signed by not less than 1% of the cooperative's members. All expenses incidental to mailing the additional information, including any additional postage required to mail such additional information, must be paid by the signatories to the petition.

(4) If the proposition for deregulation is approved by the affirmative vote of not less than a majority of the members voting on the proposition, the cooperative shall notify the state corporation commission in writing of the results within 10 days after the date of the election.

(5) Voting on the proposition for deregulation shall be by mail ballot.

(c) A cooperative exempt under this section may elect to terminate its exemption in the same manner as prescribed in subsection (b).

(d) An election under subsection (b) or (c) may be held not more often than once every two years.

(e) Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to service territory, charges, fees or tariffs.

(f) (1) Notwithstanding a cooperative's election to be exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of rates of such cooperative if there is filed with the commission, not more than one year after a change in such cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates, a petition in the case of a cooperative signed by not less than 5% of all the cooperative's customers or 3% of the cooperative's customers from any one rate class. If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges and exactions, classifications or schedules of rates as are just and reasonable.

(2) The cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates complained of shall remain in effect subject to change or refund pending the state corporation commission's investigation and final order.

(3) Any customer of a cooperative wishing to petition the commission pursuant to subsection (f)(1) may request from the cooperative the names, addresses and rate classifications of all the cooperative's customers or of the cooperative's customers from any one or more rate classes. The cooperative, within 21 days after receipt of the request, shall furnish to the customer the requested names, addresses and rate classifications and may require the customer to pay the reasonable costs thereof.

(g) (1) If a cooperative is exempt under this section, not less than 10 days notice of the time and place of any meeting of the board of trustees at which rate changes are to be discussed and voted on shall be given to all members of the cooperative and such meeting shall be open to all members.

(2) Violations of subsection (g)(1) shall be subject to civil penalties and enforcement in the same manner as provided by K.S.A. 75-4320 and

75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 *et seq.*, and amendments thereto.

(h) (1) Any cooperative exempt under this section shall maintain a schedule of rates and charges at the cooperative headquarters and shall make copies of such schedule of rates and charges available to the general public during regular business hours.

(2) Any cooperative which fails, neglects or refuses to maintain such copies of schedule of rates and charges under this subsection shall be subject to a civil penalty of not more than \$500.

(i) A cooperative that has elected to be exempt under the provisions of subsection (a) shall include a provision in its notice to customers, either before or after a rate change, of the customer's right to request the commission to review the rate change, as allowed in subsection (f).

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

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## CHAPTER 72

HOUSE BILL No. 2486

AN ACT concerning insurance; relating to examination of organizations and providers; amending K.S.A. 40-3211 and repealing the existing section.

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

Section 1. K.S.A. 40-3211 is hereby amended to read as follows: 40-3211. (a) The commissioner may make an examination of the affairs of any health maintenance organization or medicare provider organization and providers with whom such organization has contracts, agreements or other arrangements as often as the commissioner deems it necessary for the protection of the interests of the people of this state but not less frequently than once every ~~three~~ *five* years.

(b) At least once every three years and at such other times as the commissioner may require, a health maintenance organization or medicare provider organization shall obtain an on-site quality of care assessment by an independent quality review organization acceptable to the commissioner for the purpose of evaluating levels of health care delivery according to industry standards as prevailing from time to time. The findings of ~~said~~ *such* independent quality review organization shall be expressed by it in a written opinion relating to the general quality of care provided by the health maintenance organization or medicare provider organization and its related contractors of health care services. Failure to obtain such quality of care assessment or the rendering of an unfavorable

opinion by the independent quality review organization shall give the commissioner cause to institute action in accordance with K.S.A. 40-3205, 40-3206 or 40-3207, and amendments thereto.

(c) Every health maintenance organization or medicare provider organization and any of the medicare provider organization providers shall submit its books and records relating its operation to such examinations. Medical records of individuals and records of providers under a contract to the health maintenance organization or medicare provider organization shall be subject to such examination, but the identity of patients shall not be disclosed in any report to the commissioner or the commissioner's agents or representatives. For the purpose of examinations, the commissioner may administer oaths to, and examine the officers and agents of the health maintenance organization or medicare provider organization and the principals of such providers.

(d) The fees and expenses of examinations under this section shall be assessed against the organization being examined and remitted to the commissioner. The fees and expenses of the commissioner shall be in accordance with K.S.A. 40-223, and amendments thereto.

(e) In lieu of such examination, the commissioner may accept the report of an examination made by the appropriate examining agency or official of another state or agency of the federal government.

Sec. 2. K.S.A. 40-3211 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

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## CHAPTER 73

Substitute for HOUSE BILL No. 2455\*

AN ACT concerning the motor fuel tax.

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

Section 1. The department of transportation is directed to organize a discussion with the public and all interested stakeholders about the long-term feasibility of relying on the motor fuel tax as the primary mechanism of funding the state's highway maintenance and construction program and as the major contributor of state aid to local government transportation budgets. The department is to report its findings and policy recommendations to the governor and the legislature by January 1, 2014.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

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CHAPTER 74

HOUSE BILL No. 2414

AN ACT concerning the division of post audit; amending K.S.A. 2011 Supp. 46-1118 and 46-1121 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 46-1118 is hereby amended to read as follows: 46-1118. (a) (1) Except as otherwise provided by statute, whenever the post auditor performs any additional audit work for any state agency ~~either to satisfy federal government requirements or to satisfy financial compliance audit requirements prescribed by or pursuant to any statute other than K.S.A. 46-1106 through 46-1117, and amendments thereto,~~ and incurs costs in addition to those attributable to the operations of the division of post audit in performance of other duties and responsibilities, the post auditor shall make charges for such additional costs.

(2) *Except as otherwise provided by statute, whenever the post auditor performs any audit work for any state agency to satisfy financial-compliance audit requirements prescribed by or pursuant to subsection (a)(1) of K.S.A. 46-1106, and amendments thereto, and incurs costs in addition to those attributable to the operations of the division of post audit in performance of other duties and responsibilities, the post auditor shall make charges for such additional costs.*

~~(2)~~(3) The legislative post audit committee may authorize the post auditor to perform additional financial-related audit work at the request of a state agency. Upon the authorization and in accordance with the direction of the legislative post audit committee, the post auditor may make charges for costs incurred for the performance of such financial-related audit work.

~~(3)~~(4) The furnishing of any such audit services by the division of post audit shall be a transaction between the post auditor and the state agency receiving such services and such transaction shall be settled in accordance with the provisions of K.S.A. 75-5516, and amendments thereto.

(b) All moneys received for reimbursement of the division of post audit under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the audit services fund, which fund is hereby created in the state treasury. All expenditures

from the audit services fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the post auditor or a person or persons designated by the post auditor.

Sec. 2. K.S.A. 2011 Supp. 46-1121 is hereby amended to read as follows: 46-1121. (a) Each state agency awarded a federal grant or other federal financial assistance which is subject to a financial-compliance audit as a condition of such grant or assistance shall notify the post auditor immediately of the award of such grant or assistance. Based on the amount and nature of federal money received by the state agency, the post auditor shall compute annually the amount of federal money reasonably anticipated to be required to provide audit coverage in accordance with federal requirements. The amounts determined for such audits shall be reviewed and approved by the contract audit committee. Upon such approval, the state agency, in accordance with K.S.A. 46-1118, and amendments thereto, shall reimburse the division of post audit for the amount approved by the contract audit committee.

(b) The post auditor shall compute the amount of money reasonably anticipated to be required to provide an audit of any state agency subject to a financial-compliance audit as required pursuant to any statute other than ~~K.S.A. 46-1106 through 46-1117, and amendments thereto, or K.S.A. 74-4007, and amendments thereto.~~ The amounts determined for such audits shall be reviewed and approved by the contract audit committee. Upon such approval, the state agency, in accordance with K.S.A. 46-1118, and amendments thereto, shall reimburse the division of post audit for the amount approved by the contract audit committee.

(c) The post auditor shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the audit services fund.

(d) In addition to expenditures which may be made from the audit services fund under K.S.A. 46-1118, and amendments thereto, expenditures shall be made from such fund, and from other available appropriations, to pay for the cost of financial-compliance audits performed to comply with federal government audit requirements.

Sec. 3. K.S.A. 2011 Supp. 46-1118 and 46-1121 are hereby repealed.

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

Approved April 4, 2012.

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## CHAPTER 75

HOUSE BILL No. 2703

AN ACT repealing K.S.A. 75-4602, 75-4607, 75-4615 and 75-4616 and K.S.A. 2011 Supp. 75-4603; relating to establishment and operation of a motor pool for state agencies.

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

Section 1. K.S.A. 75-4602, 75-4607, 75-4615 and 75-4616 and K.S.A. 2011 Supp. 75-4603 are hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

## CHAPTER 76

Substitute for HOUSE BILL No. 2477

AN ACT concerning compulsory school attendance laws; relating to educational alternatives; amending K.S.A. 2011 Supp. 72-1111 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 72-1111 is hereby amended to read as follows: 72-1111. (a) Subject to the other provisions of this section, every parent or person acting as parent in the state of Kansas, who has control over or charge of any child who has reached the age of seven years and is under the age of 18 years and has not attained a high school diploma or a general educational development (GED) credential, shall require such child to be regularly enrolled in and attend continuously each school year (1) a public school for the duration of the school term provided for in K.S.A. 72-1106, and amendments thereto; or (2) a private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained in the school district in which the private, denominational or parochial school is located. If the child is 16 or 17 years of age, the parent or person acting as parent, by written consent, or the court, pursuant to a court order, may allow the child to be exempt from the compulsory attendance requirements of this section.

(b) If the child is 16 or 17 years of age, the child shall be exempt from the compulsory attendance requirements of this section if: (1) The child is regularly enrolled in and attending a program recognized by the local board of education as an approved alternative educational program; (2) the child and the parent or person acting as parent attend a final counseling session conducted by the school during which a disclaimer to encourage the child to remain in school or to pursue educational alter-

natives is presented to and signed by the child and the parent or person acting as parent. The disclaimer shall include information regarding the academic skills that the child has not yet achieved, the difference in future earning power between a high school graduate and a high school drop out, and a listing of educational alternatives that are available for the child; or (3) the child is regularly enrolled in a school as required by subsection (a) and is concurrently enrolled in a postsecondary educational institution, as defined by K.S.A. 74-3201b, and amendments thereto. The provisions of this clause (3) shall be applicable to children from and after July 1, 1997, and shall relate back to such date.

(c) Any child who is under the age of seven years, but who is enrolled in school, is subject to the compulsory attendance requirements of this section. Any such child may be withdrawn from enrollment in school at any time by a parent or person acting as parent of the child and thereupon the child shall be exempt from the compulsory attendance requirements of this section until the child reaches the age of seven years or is re-enrolled in school.

(d) Any child who is determined to be an exceptional child, except for an exceptional child who is determined to be a gifted child, under the provisions of the special education for exceptional children act is subject to the compulsory attendance requirements of such act and is exempt from the compulsory attendance requirements of this section.

(e) Any child who has been admitted to, and is attending, the Kansas academy of mathematics and science, as provided in K.S.A. 72-9711 *et seq.*, and amendments thereto, is exempt from the compulsory attendance requirements of this section.

(f) No child attending public school in this state shall be required to participate in any activity which is contrary to the religious teachings of the child if a written statement signed by one of the parents or a person acting as parent of the child is filed with the proper authorities of the school attended requesting that the child not be required to participate in such activities and stating the reason for the request.

(g) When a recognized church or religious denomination that objects to a regular public high school education provides, offers and teaches, either individually or in cooperation with another recognized church or religious denomination, a regularly supervised program of instruction, which is approved by the state board of education, for children of compulsory school attendance age who have successfully completed the eighth grade, participation in such a program of instruction by any such children whose parents or persons acting as parents are members of the sponsoring church or religious denomination shall be regarded as acceptable school attendance within the meaning of this act. Approval of such programs shall be granted by the state board of education, for two-year periods, upon application from recognized churches and religious denominations, under the following conditions:

(1) Each participating child shall be engaged, during each day on which attendance is legally required in the public schools in the school district in which the child resides, in at least five hours of learning activities appropriate to the adult occupation that the child is likely to assume in later years;

(2) acceptable learning activities, for the purposes of this subsection, shall include parent (or person acting as parent) supervised projects in agriculture and homemaking, work-study programs in cooperation with local business and industry, and correspondence courses from schools accredited by the national home study council, recognized by the United States office of education as the competent accrediting agency for private home study schools;

(3) at least 15 hours per week of classroom work under the supervision of an instructor shall be provided, at which time students shall be required to file written reports of the learning activities they have pursued since the time of the last class meeting, indicating the length of time spent on each one, and the instructor shall examine and evaluate such reports, approve plans for further learning activities, and provide necessary assignments and instruction;

(4) regular attendance reports shall be filed as required by law, and students shall be reported as absent for each school day on which they have not completed the prescribed minimum of five hours of learning activities;

(5) the instructor shall keep complete records concerning instruction provided, assignments made, and work pursued by the students, and these records shall be filed on the first day of each month with the state board of education and the board of education of the school district in which the child resides;

(6) the instructor shall be capable of performing competently the functions entrusted thereto; and

(7) in applying for approval under this subsection a recognized church or religious denomination shall certify its objection to a regular public high school education and shall specify, in such detail as the state board of education may reasonably require, the program of instruction that it intends to provide and no such program shall be approved unless it fully complies with standards therefor which shall be specified by the state board of education.

If the sponsors of an instructional program approved under this subsection fail to comply at any time with the provisions of this subsection, the state board of education shall rescind, after a written warning has been served and a period of three weeks allowed for compliance, approval of the programs, even though the two-year approval period has not elapsed, and thereupon children attending such program shall be admitted to a high school of the school district.

(h) As used in this section:

(1) “Educational alternatives” means an alternative learning plan for the student that identifies educational programs that are located in the area where the student resides, and are designed to aid the student in obtaining a high school diploma, general educational development credential or other certification of completion, such as a career technical education industry certification. Such alternative learning plans may include extended learning opportunities such as independent study, private instruction, performing groups, internships, community service, apprenticeships and online coursework.

(1)(2) “Parent” and “person acting as parent” have the meanings respectively ascribed thereto in K.S.A. 72-1046, and amendments thereto.

(2)(3) “Regularly enrolled” means enrolled in five or more hours of instruction each school day. For the purposes of subsection (b)(3), hours of instruction received at a postsecondary educational institution shall be counted.

Sec. 2. K.S.A. 2011 Supp. 72-1111 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

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## CHAPTER 77

### HOUSE BILL No. 2687

AN ACT concerning the state building advisory commission; relating to reports and recommendations on state capital improvement budget estimates; amending K.S.A. 46-1702 and K.S.A. 2011 Supp. 75-3717b and repealing the existing sections.

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

Section 1. K.S.A. 46-1702 is hereby amended to read as follows: 46-1702. In addition to other powers and duties authorized or prescribed by law or by the legislative coordinating council, the joint committee on state building construction shall:

(a) Study all five-year capital improvement and facilities plans and capital improvement budget estimates which are submitted to the joint committee by state agencies in accordance with K.S.A. 75-3717b, and amendments thereto ~~and the reports on such budget estimates submitted to the joint committee by the state building advisory commission;~~

(b) make recommendations on all such five-year capital improvement and facilities plans and capital improvement budget estimates to the ways and means committee of the senate and the committee on appropriations of the house of representatives;

(c) study the progress and results of all capital improvement projects

for the construction of buildings or for major repairs or improvements to buildings for state agencies; and

(d) make an annual report to the legislative coordinating council as provided in K.S.A. 46-1207, and amendments thereto, and such special reports to committees of the house of representatives and senate as are deemed appropriate by the joint committee.

Sec. 2. K.S.A. 2011 Supp. 75-3717b is hereby amended to read as follows: 75-3717b. (a) Whenever a state agency proposes a capital improvement project for the construction of a building or for major repairs or improvements to a building, such state agency shall prepare a capital improvement budget estimate to be submitted to the division of the budget in such form as may be required by the director of the budget and this section. Such state agency shall prepare and include as a part of such capital improvement budget estimate a written program statement describing the project. Such program statement shall: (1) Include a detailed justification for the project including an analysis of the programs, activities and other needs and intended uses for the additional or improved space and an analysis of the alternative means by which such space needs and uses could be satisfied; (2) request appropriations for the project in the three phases of preliminary planning, final planning and construction; (3) describe in detail each such phase of the project; and (4) include cost estimates for land, site surveys, soil investigations, equipment, buildings or major repairs or improvements to buildings and other items necessary for the project.

(b) Not later than July 1 of each year, such state agency shall submit to the division of the budget a copy of such capital improvement budget estimate, and all amendments and revisions thereof, and at the same time such state agency shall submit copies of such capital improvement budget estimate, and all amendments and revisions thereof, directly to the state building advisory commission and to the joint committee on state building construction.

~~(c) On or before November 15 each year, the state building advisory commission shall report and make recommendations on each capital improvement budget estimate received pursuant to this section regarding the project costs, projected scheduling of funding for such costs, and such other matters as are deemed appropriate by the state building advisory commission, to: (1) The division of the budget, (2) the joint committee on state building construction, and (3) the legislative research department.~~

~~(d)~~—Not later than July 1 of each year, each state agency submitting such budget estimates shall prepare and submit to the division of the budget, to the state building advisory commission and to the joint committee on state building construction copies of a five-year capital improvement program and facilities plan which shall set forth the current and

future space needs and utilization plans for the next five ensuing fiscal years for that state agency in such form and containing such additional information as prescribed by the secretary of administration.

~~(c)~~(d) Except as provided in this subsection, the provisions of this section do not apply to any capital improvement project for the adjutant general that is funded entirely by moneys from the federal government. During the month of January each year, the adjutant general shall present a report to the joint committee on state building construction on all capital improvement projects that are funded entirely by moneys from the federal government and that are proposed for the current and ensuing fiscal years.

~~(f)~~(e) The provisions of this section do not apply to any capital improvement project for Kansas correctional industries of the department of corrections as provided in subsection (d) of K.S.A. 75-5282, and amendments thereto.

Sec. 3. K.S.A. 46-1702 and K.S.A. 2011 Supp. 75-3717b are hereby repealed.

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

Approved April 4, 2012.

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## CHAPTER 78

HOUSE BILL No. 2668

AN ACT repealing K.S.A. 19-322; concerning the recording of farm names.

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

Section 1. K.S.A. 19-322 is hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

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## CHAPTER 79

HOUSE BILL No. 2626

AN ACT repealing K.S.A. 83-139 and 83-140; concerning fraudulent practices selling grain, seed, hay or coal; relating to penalties, civil liability and attorney fees.

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

Section 1. K.S.A. 83-139 and 83-140 are hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

## CHAPTER 80

HOUSE BILL No. 2614\*

AN ACT designating the junction of interstate 70 and United States highway 183 as the CW2 Bryan J. Nichols fallen veterans memorial interchange.

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

Section 1. The junction of interstate 70 and United States highway 183 is hereby designated as the CW2 Bryan J. Nichols fallen veterans memorial interchange. The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the junction of interstate 70 and United States highway 183 is the CW2 Bryan J. Nichols fallen veterans memorial interchange, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and an additional 50% of the initial cost to defray future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

## CHAPTER 81

HOUSE BILL No. 2605

AN ACT repealing K.S.A. 2-2465; concerning the pest control operators' fee fund.

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

Section 1. K.S.A. 2-2465 is hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 2012.

## CHAPTER 82

HOUSE BILL No. 2769  
(Amended by Chapter 166)

AN ACT concerning property taxation; relating to exemptions; certain housing on military installations; amending K.S.A. 2011 Supp. 79-201a and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 79-201a is hereby amended to read as follows: 79-201a. The following described property, to the extent herein specified, shall be exempt from all property or *ad valorem* taxes levied under the laws of the state of Kansas:

*First.* All property belonging exclusively to the United States, except property which congress has expressly declared to be subject to state and local taxation.

*Second.* All property used exclusively by the state or any municipality or political subdivision of the state. All property owned, being acquired pursuant to a lease-purchase agreement or operated by the state or any municipality or political subdivision of the state, including property which is vacant or lying dormant, which is used or is to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be used exclusively by the state, municipality or political subdivision for the purposes of this section. The lease by a municipality or political subdivision of the state of any real property owned or being acquired pursuant to a lease-purchase agreement for the purpose of providing office space necessary for the performance of medical services by a person licensed to practice medicine and surgery or osteopathic medicine by the board of healing arts pursuant to K.S.A. 65-2801 *et seq.*, and amendments thereto, dentistry services by a person licensed by the Kansas dental board pursuant to K.S.A. 65-1401 *et seq.*, and amendments thereto, optometry services by a person licensed by the board of examiners in optometry pursuant to K.S.A. 65-1501 *et seq.*, and amendments thereto, or K.S.A. 74-1501 *et seq.*, and amend-

ments thereto, podiatry services by a person licensed by the board of healing arts pursuant to K.S.A. 65-2001 *et seq.*, and amendments thereto, or the practice of psychology by a person licensed by the behavioral sciences regulatory board pursuant to K.S.A. 74-5301 *et seq.*, and amendments thereto, shall be construed to be a governmental function, and such property actually and regularly used for such purpose shall be deemed to be used exclusively for the purposes of this paragraph. The lease by a municipality or political subdivision of the state of any real property, or portion thereof, owned or being acquired pursuant to a lease-purchase agreement to any entity for the exclusive use by it for an exempt purpose, including the purpose of displaying or exhibiting personal property by a museum or historical society, if no portion of the lease payments include compensation for return on the investment in such leased property shall be deemed to be used exclusively for the purposes of this paragraph. All property leased, other than motor vehicles leased for a period of at least one year and property being acquired pursuant to a lease-purchase agreement, to the state or any municipality or political subdivision of the state by any private entity shall not be considered to be used exclusively by the state or any municipality or political subdivision of the state for the purposes of this section except that the provisions of this sentence shall not apply to any such property subject to lease on the effective date of this act until the term of such lease expires but property taxes levied upon any such property prior to tax year 1989, shall not be abated or refunded. Any property constructed or purchased with the proceeds of industrial revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 12-1740 ~~to~~ through 12-1749, and amendments thereto, or purchased with proceeds of improvement district bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-2776, and amendments thereto, or with proceeds of bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-3815a and 19-3815b, and amendments thereto, or any property improved, purchased, constructed, reconstructed or repaired with the proceeds of revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 13-1238 to 13-1245, inclusive, and amendments thereto, or any property improved, reimproved, reconstructed or repaired with the proceeds of revenue bonds issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-1245, inclusive, and amendments thereto, which had previously been improved, reconstructed or repaired with the proceeds of revenue bonds issued under such act on or before July 1, 1963, shall be exempt from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid. Any property constructed or purchased with the proceeds of any revenue bonds authorized by K.S.A. 13-1238 to 13-1245, inclusive, 19-2776, 19-3815a and 19-3815b, and amendments thereto, issued on or after July 1, 1963, shall be exempt from taxation only for a period of 10 calendar years after the calendar

year in which the bonds were issued. Any property, all or any portion of which is constructed or purchased with the proceeds of revenue bonds authorized by K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, issued on or after July 1, 1963 and prior to July 1, 1981, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased wholly with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79-2301 *et seq.*, and amendments thereto. Property constructed or purchased in whole or in part with the proceeds of revenue bonds issued on or after January 1, 1995, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, and used in any retail enterprise identified under NAICS sectors 44 and 45, except facilities used exclusively to house the headquarters or back office operations of such retail enterprises identified thereunder, shall not be exempt from taxation. For the purposes of the preceding provision "NAICS" means the North American industry classification system, as developed under the authority of the office of management and budget of the office of the president of the United States. "Headquarters or back office operations" means a facility from which the enterprise is provided direction, management, administrative services, or distribution or warehousing functions in support of transactions made by the enterprise. Property purchased, constructed, reconstructed, equipped, maintained or repaired with the proceeds of industrial revenue bonds issued under the authority of K.S.A. 12-1740 *et seq.*, and amendments thereto, which is located in a redevelopment project area established under the authority of K.S.A. 12-1770 *et seq.*, and amendments thereto, shall not be exempt from taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for any poultry confinement facility on agricultural land which is owned, acquired, obtained or

leased by a corporation, as such terms are defined by K.S.A. 17-5903, and amendments thereto, shall not be exempt from such taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under the authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for a rabbit confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903, and amendments thereto, shall not be exempt from such taxation.

*Third.* All works, machinery and fixtures used exclusively by any rural water district or township water district for conveying or production of potable water in such rural water district or township water district, and all works, machinery and fixtures used exclusively by any entity which performed the functions of a rural water district on and after January 1, 1990, and the works, machinery and equipment of which were exempted hereunder on March 13, 1995.

*Fourth.* All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof, and for the meeting of fire companies, whether belonging to any rural fire district, township fire district, town, city or village, or to any fire company organized therein or therefor.

*Fifth.* All property, real and personal, owned by county fair associations organized and operating under the provisions of K.S.A. 2-125 *et seq.*, and amendments thereto.

*Sixth.* Property acquired and held by any municipality under the municipal housing law, (K.S.A. 17-2337 *et seq.*), and amendments thereto, except that such exemption shall not apply to any portion of the project used by a nondwelling facility for profit making enterprise.

*Seventh.* All property of a municipality, acquired or held under and for the purposes of the urban renewal law, (K.S.A. 17-4742 *et seq.*), and amendments thereto, except that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

*Eighth.* All property acquired and held by the Kansas armory board for armory purposes under the provisions of K.S.A. 48-317, and amendments thereto.

*Ninth.* All property acquired and used by the Kansas turnpike authority under the authority of K.S.A. 68-2001 *et seq.*, and amendments thereto, K.S.A. 68-2030 *et seq.*, and amendments thereto, K.S.A. 68-2051 *et seq.*, and amendments thereto, and K.S.A. 68-2070 *et seq.*, and amendments thereto.

*Tenth.* All property acquired and used for state park purposes by the Kansas department of wildlife and parks.

*Eleventh.* The state office building constructed under authority of

K.S.A. 75-3607 *et seq.*, and amendments thereto, and the site upon which such building is located.

*Twelfth.* All buildings erected under the authority of K.S.A. 76-6a01 *et seq.*, and amendments thereto, and all other student union buildings and student dormitories erected upon the campus of any institution mentioned in K.S.A. 76-6a01, and amendments thereto, by any other non-profit corporation.

*Thirteenth.* All buildings, as the same is defined in subsection (c) of K.S.A. 76-6a13, and amendments thereto, which are erected, constructed or acquired under the authority of K.S.A. 76-6a13 *et seq.*, and amendments thereto, and building sites acquired therefor.

*Fourteenth.* All that portion of the waterworks plant and system of the city of Kansas City, Missouri, now or hereafter located within the territory of the state of Kansas pursuant to the compact and agreement adopted by K.S.A. 79-205, and amendments thereto.

*Fifteenth.* All property, real and personal, owned by a groundwater management district organized and operating pursuant to K.S.A. 82a-1020, and amendments thereto.

*Sixteenth.* All property, real and personal, owned by the joint water district organized and operating pursuant to K.S.A. 80-1616 *et seq.*, and amendments thereto.

*Seventeenth.* All property, including interests less than fee ownership, acquired for the state of Kansas by the secretary of transportation or a predecessor in interest which is used in the administration, construction, maintenance or operation of the state system of highways, regardless of how or when acquired.

*Eighteenth.* Any building used primarily as an industrial training center for academic or vocational education programs designed for and operated under contract with private industry, and located upon a site owned, leased or being acquired by or for an area vocational school, an area vocational-technical school, a technical college, or a community college, as defined by K.S.A. 72-4412, and amendments thereto, and the site upon which any such building is located.

*Nineteenth.* For all taxable years commencing after December 31, 1997, all buildings of an area vocational school, an area vocational-technical school, a technical college or a community college, as defined by K.S.A. 72-4412, and amendments thereto, which are owned and operated by any such school or college as a student union or dormitory and the site upon which any such building is located.

*Twentieth.* For all taxable years commencing after December 31, 1997, all personal property which is contained within a dormitory that is exempt from property taxation and which is necessary for the accommodation of the students residing therein.

*Twenty-First.* All real property from and after the date of its transfer by the city of Olathe, Kansas, to the Kansas state university foundation,

all buildings and improvements thereafter erected and located on such property, and all tangible personal property, which is held, used or operated for educational and research purposes at the Kansas state university Olathe innovation campus located in the city of Olathe, Kansas.

*Twenty-Second.* All real property, and all tangible personal property, owned by postsecondary educational institutions, as that term is defined in K.S.A. 74-3201b, and amendments thereto, or by the board of regents on behalf of the postsecondary educational institutions, which is leased by a for profit company and is actually and regularly used exclusively for research and development purposes so long as any rental income received by such postsecondary educational institution or the board of regents from such a company is used exclusively for educational or scientific purposes. Any such lease or occupancy described in this section shall be for a term of no more than five years.

*Twenty-Third.* Any and all housing developments and related improvements located on United States department of defense military installations in the State of Kansas, which are developed pursuant to the military housing privatization initiative, 10 U.S.C. § 2871 et seq., or any successor thereto, and which are provided exclusively or primarily for use by military personnel of the United States and their families.

Except as otherwise specifically provided, the provisions of this section shall apply to all taxable years commencing after December 31, ~~2009~~2010.

Sec. 2. K.S.A. 2011 Supp. 79-201a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 4, 2012.

Published in the *Kansas Register* April 12, 2012.

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## CHAPTER 83

### HOUSE BILL No. 2593

AN ACT concerning interstate banking; relating to commission approval; amending K.S.A. 9-532, 9-533 and 9-534 and K.S.A. 2011 Supp. 9-535 and repealing the existing sections.

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

Section 1. K.S.A. 9-532 is hereby amended to read as follows: 9-532. With prior approval of the commissioner, any bank holding company may acquire, directly or indirectly, ownership or control of, or power to vote, any of the voting shares of, an interest in, or all or substantially all of the assets of a Kansas state chartered bank or of a ~~Kansas~~ bank holding company that has an ownership interest in a Kansas state chartered bank.

Request for approval shall be made by filing an application in such

form as required by the commissioner, containing the information prescribed by K.S.A. 9-533, and amendments thereto, and by rules and regulations adopted by the commissioner. At the time of filing the application, the applicant shall pay to the commissioner a fee in an amount established by rules and regulations adopted by the commissioner.

Sec. 2. K.S.A. 9-533 is hereby amended to read as follows: 9-533. An application filed pursuant to K.S.A. 9-532, and amendments thereto, shall provide the following information and include the following documents:

(a) A copy of any application by applicant seeking approval by a federal agency of the acquisition of the voting shares or assets of a *Kansas state chartered bank* or of a ~~Kansas~~-bank holding company *that has an ownership interest in a Kansas state chartered bank*, and of any supplemental material or amendments filed with the application.

(b) Copies of the public sections of the most recent CRA performance evaluations for all banks which are subsidiaries of the applicant which were assigned a rating of “needs to improve record of meeting community credit needs” or “substantial noncompliance in meeting community needs” under the federal community reinvestment act of 1977, 12 U.S.C. § 2901 *et seq.*

(c) Statements of the financial condition and future prospects, including current and projected capital positions and levels of indebtedness, of the applicant and the *Kansas state chartered bank* or ~~Kansas~~-bank holding company *that has an ownership interest in a Kansas state chartered bank* which is the subject of the application filed pursuant to K.S.A. 9-532, and amendments thereto.

(d) Information as to how the applicant proposes to adequately meet the convenience and needs of the community served by the *Kansas state chartered bank* or ~~Kansas~~-bank holding company *that has an ownership interest in a Kansas state chartered bank* which is the subject of the application filed pursuant to K.S.A. 9-532, and amendments thereto, and the communities served by other Kansas banks which are subsidiaries of *the* applicant, in accordance with the federal community reinvestment act of 1977, 12 U.S.C. § 2901 *et seq.*

(e) A list of the name and location of each subsidiary bank of the applicant, together with each subsidiary’s most recent examination date, and assigned composite CAMEL rating, and information reflecting each subsidiary’s total assets, capital ratios, return on assets ratio and loan to deposit ratios.

(f) Any additional information the commissioner deems necessary.

Sec. 3. K.S.A. 9-534 is hereby amended to read as follows: 9-534. In determining whether to approve an application filed pursuant to K.S.A. 9-532, and amendments thereto, the commissioner shall consider the following factors:

(a) Whether the banks already subsidiaries of the applicant are operated in a safe, sound and prudent manner.

(b) Whether banks already subsidiaries of the applicant have provided adequate and appropriate services to their communities, including services contemplated by the federal community reinvestment act of 1977, 12 U.S.C. § 2901 *et seq.*

(c) Whether the applicant proposes to provide adequate and appropriate services, including services contemplated by the federal community reinvestment act of 1977, 12 U.S.C. § 2901 *et seq.*, in the communities served by the ~~Kansas~~ *state chartered* bank or by the ~~Kansas~~ bank subsidiaries of the ~~Kansas~~ bank holding company *that has an ownership interest in a Kansas state chartered bank.*

(d) Whether the proposed acquisition will result in a *Kansas state chartered* bank or ~~Kansas~~ bank holding company *that has an ownership interest in a Kansas state chartered bank* that has adequate capital and good earnings prospects.

(e) Whether the financial condition of the applicant or any of its subsidiary banks would jeopardize the financial stability of the *Kansas state chartered* bank or ~~Kansas~~ bank holding company *that has an ownership interest in a Kansas state chartered bank* which is the subject of the application.

Sec. 4. K.S.A. 2011 Supp. 9-535 is hereby amended to read as follows: 9-535. (a) The commissioner shall approve the application if the commissioner determines that the application favorably meets each and every factor prescribed in K.S.A. 9-534, and amendments thereto, the proposed acquisition is in the interest of the depositors and creditors of the *Kansas state chartered* bank or ~~Kansas~~ bank holding company *that has an ownership interest in a Kansas state chartered bank* which is the subject of the proposed acquisition and in the public interest generally. Otherwise, the application shall be denied.

(b) Within 15 days after the commissioner's approval or denial, the applicant shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The state banking board shall fix a date for hearing, which hearing shall be held within 45 days after such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance with the Kansas judicial review act. An applicant who files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and

amendments thereto, to defray the board's expenses associated with conducting the appeal.

Sec. 5. K.S.A. 9-532, 9-533 and 9-534 and K.S.A. 2011 Supp. 9-535 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 6, 2012.

Published in the *Kansas Register* April 12, 2012.

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## CHAPTER 84

### HOUSE BILL No. 2621

AN ACT concerning the uniform commercial code; relating to secured transactions; amending K.S.A. 2011 Supp. 84-9-102, 84-9-105, 84-9-307, 84-9-311, 84-9-316, 84-9-317, 84-9-326, 84-9-406, 84-9-408, 84-9-502, 84-9-503, 84-9-507, 84-9-515, 84-9-516, 84-9-518, 84-9-607 and 84-9-625 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 84-9-102 is hereby amended to read as follows: 84-9-102. (a) **Article 9 definitions.** In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (B) for services rendered or to be rendered, (C) for a policy of insurance issued or to be issued, (D) for a secondary obligation incurred or to be incurred, (E) for energy provided or to be provided, (F) for the use or hire of a vessel under a charter or other contract, (G) arising out of the use of a credit or charge card or information contained on or for use with the card, or (H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include: (A) Rights to payment evidenced by chattel paper or an instrument, (B) commercial tort claims, (C) deposit accounts, (D) investment property, (E) letter-of-credit rights or letters of credit, or (F) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated

to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting,” except as used in “accounting for,” means a record:

(A) Authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest, other than a security interest, in farm products: (A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor’s farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or

(ii) leased real property to a debtor in connection with the debtor’s farming operation; and

(C) whose effectiveness does not depend on the person’s possession of the personal property. Agricultural ~~lien~~ *liens* shall not include statutory liens.

(6) “As-extracted collateral” means: (A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) “Authenticate” means:

(A) To sign; or

(B) ~~to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol or process.~~

(8) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(10) “Certificate of title” means a certificate of title with respect to

which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. *The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.*

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or mar-

ket, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) To send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in subsection (b) of K.S.A. 84-7-201, and amendments thereto.

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are: (A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to subsection (a) of K.S.A. 2011 Supp. 84-9-519, and amendments thereto.

(37) “Filing office” means an office designated in K.S.A. 2011 Supp.

84-9-501, and amendments thereto as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to K.S.A. 2011 Supp. 84-9-526, and amendments thereto.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections (a) and (b) of K.S.A. 2011 Supp. 84-9-502, and amendments thereto. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) Reserved.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (A) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (B) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim

under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) “Instrument” means a negotiable instrument, a writing that would otherwise qualify as a certificate of deposit ~~(defined in subsection (j) of as defined by K.S.A. 84-3-104(j), and amendments thereto)~~, but for the fact that the writing contains a limitation on transfer, or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

- (A) Are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization,” with respect to a registered organization, means the jurisdiction under whose law the organization is *formed or organized*.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

- (A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
  - (B) an assignee for benefit of creditors from the time of assignment;
  - (C) a trustee in bankruptcy from the date of the filing of the petition;
- or
- (D) a receiver in equity from the time of appointment.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The

term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States code.

(54) “Manufactured-home transaction” means a secured transaction:

- (A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as a debtor under ~~subsection (d) of~~ K.S.A. 2011 Supp. 84-9-203(d), and amendments thereto, by a security agreement previously entered into by another person.

(57) “New value” means (A) money, (B) money’s worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor” except as used in K.S.A. 2011 Supp. 84-9-310(c), and amendments thereto, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under ~~subsection (d) of~~ K.S.A. 2011 Supp. 84-9-203(d), and amendments thereto.

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to,” with respect to an individual, means:

- (A) The spouse of the individual;
- (B) a brother, brother-in-law, sister; or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual’s spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(63) “Person related to,” with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by; or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) the spouse of an individual described in subparagraph (A), (B); or (C); or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C); or (D) and shares the same home with the individual.

(64) “Proceeds” except as used in K.S.A. 2011 Supp. 84-9-609(b), and amendments thereto, means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange; or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to K.S.A. 2011 Supp. 84-9-620, 84-9-621 and 84-9-622, and amendments thereto.

(67) “Public organic record” means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) a record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation and any record filed

*with or issued by the state or the United States which amends or restates the name of the organization.*

~~(67)~~(68) “Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

~~(68)~~(69) “Record,” except as used in “for record,” “of record,” “record or legal title,” and “record owner,” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

~~(69)~~(70) “Registered organization” means an organization *formed or organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by, the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a law of the state governing business trusts requires that the business trust’s organic record be filed with the state.*

~~(70)~~(71) “Secondary obligor” means an obligor to the extent that:

- (A) The obligor’s obligation is secondary; or
- (B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

~~(71)~~(72) “Secured party” means:

- (A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (B) a person that holds an agricultural lien;
- (C) a consignor;
- (D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (F) a person that holds a security interest arising under K.S.A. 84-2-401, 84-2-505, ~~subsection (3) of 84-2-711(3), subsection (5) of 84-2a-508(5), 84-4-210 and 84-5-118, and amendments thereto.~~

~~(72)~~(73) “Security agreement” means an agreement that creates or provides for a security interest.

~~(73)~~(74) “Send,” in connection with a record or notification, means:

- (A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of trans-

mission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

~~(74)~~(75) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

~~(75)~~(76) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands; or any territory or insular possession subject to the jurisdiction of the United States.

~~(76)~~(77) “Statutory lien” means liens created by K.S.A. 2-1319, 2-2608, 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220, 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527 and 58-2528, and K.S.A. 2011 Supp. 84-7-209, and amendments thereto.

~~(77)~~(78) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

~~(78)~~(79) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

~~(79)~~(80) “Termination statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

~~(80)~~(81) “Transmitting utility” means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** The following definitions in other articles apply to this article:

“Applicant” K.S.A. 84-5-102,  
and amendments thereto

“Beneficiary” K.S.A. 84-5-102,  
and amendments thereto

“Broker”	K.S.A. 84-8-102, and amendments thereto
“Certificated security”	K.S.A. 84-8-102, and amendments thereto
“Check”	K.S.A. 84-3-104, and amendments thereto
“Clearing corporation”	K.S.A. 84-8-102, and amendments thereto
“Contract for sale”	K.S.A. 84-2-106, and amendments thereto
“Customer”	K.S.A. 84-4-104, and amendments thereto
“Entitlement holder”	K.S.A. 84-8-102, and amendments thereto
“Financial asset”	K.S.A. 84-8-102, and amendments thereto
“Holder in due course”	K.S.A. 84-3-302, and amendments thereto
“Issuer” (with respect to a letter of credit or letter-of-credit right)	K.S.A. 84-5-102, and amendments thereto
“Issuer” (with respect to a security)	K.S.A. 84-8-102, and amendments thereto
“Issuer” (with respect to documents of title)	K.S.A. 2011 Supp. 84-7-102, and amendments thereto
“Lease”	K.S.A. 84-2a-103, and amendments thereto
“Lease agreement”	K.S.A. 84-2a-103, and amendments thereto
“Lease contract”	K.S.A. 84-2a-103, and amendments thereto
“Leasehold interest”	K.S.A. 84-2a-103, and amendments thereto
“Lessee”	K.S.A. 84-2a-103, and amendments thereto
“Lessee in ordinary course of business”	K.S.A. 84-2a-103, and amendments thereto

“Lessor”	K.S.A. 84-2a-103, and amendments thereto
“Lessor’s residual interest”	K.S.A. 84-2a-103, and amendments thereto
“Letter of credit”	K.S.A. 84-5-102, and amendments thereto
“Merchant”	K.S.A. 84-2-104, and amendments thereto
“Negotiable instrument”	K.S.A. 84-3-104, and amendments thereto
“Nominated person”	K.S.A. 84-5-102, and amendments thereto
“Note”	K.S.A. 84-3-104, and amendments thereto
“Proceeds of a letter of credit”	K.S.A. 84-5-114, and amendments thereto
“Prove”	K.S.A. 84-3-103, and amendments thereto
“Sale”	K.S.A. 84-2-106, and amendments thereto
“Securities account”	K.S.A. 84-8-501, and amendments thereto
“Securities intermediary”	K.S.A. 84-8-102, and amendments thereto
“Security”	K.S.A. 84-8-102, and amendments thereto
“Security certificate”	K.S.A. 84-8-102, and amendments thereto
“Security entitlement”	K.S.A. 84-8-102, and amendments thereto
“Uncertificated security”	K.S.A. 84-8-102, and amendments thereto

(c) **Article 1 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto, definitions and principles.** Article 1 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto, contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 2. K.S.A. 2011 Supp. 84-9-105 is hereby amended to read as follows: 84-9-105. (a) **General rule: Control of electronic chattel pa-**

**per.** A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to whom the chattel paper was assigned.

(b) **Specific facts giving control. A system satisfies subsection (a) if** the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or ~~revisions~~ **amendments** that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~ **consent** of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any ~~revision~~ **amendment** of the authoritative copy is readily identifiable as ~~an~~ authorized or unauthorized ~~revision~~.

Sec. 3. K.S.A. 2011 Supp. 84-9-307 is hereby amended to read as follows: 84-9-307. (a) **“Place of business.”** In this section, “place of business” means a place where a debtor conducts its affairs.

(b) **Debtor’s location: General rules.** Except as otherwise provided in this section, the following rules determine a debtor’s location:

(1) A debtor who is an individual is located at the individual’s principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **Limitation of applicability of subsection (b).** Subsection (b) applies only if a debtor’s residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) **Continuation of location: Cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business

continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) **Location of registered organization organized under state law.** A registered organization that is organized under the law of a state is located in that state.

(f) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, *including by designating its main office, home office or other comparable office*; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) **Continuation of location: Change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) **Location of United States.** The United States is located in the District of Columbia.

(i) **Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) **Location of foreign air carrier.** A foreign air carrier under the federal aviation act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) **Section applies only to this part.** This section applies only for purposes of this part.

Sec. 4. K.S.A. 2011 Supp. 84-9-311 is hereby amended to read as follows: 84-9-311. (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose require-

ments for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt K.S.A. 2011 Supp. 84-9-310(a), and amendments thereto;

(2) any ~~certificate of title~~ law of this state covering automobiles, trailers, mobile homes, boats or the like, which provides for a security interest to be indicated on ~~the~~ a *certificate of title*. Such security interest shall be deemed perfected upon the mailing or delivery of the notice of security interest and tender of the required fee to the appropriate state agency as prescribed by subsection (c)(5) of K.S.A. 8-135 and subsection (g) of 58-4204, and amendments thereto, or the delivery of the documents appropriate under any such law to the appropriate state agency and tender of the required fee to the state agency, as prescribed in subsection (c)(6) of K.S.A. 8-135 and subsection (i) of 58-4204, and amendments thereto; or

(3) a ~~certificate of title statute~~ law of another jurisdiction which provides for a security interest to be indicated on ~~the~~ a *certificate of title* as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and K.S.A. 2011 Supp. 84-9-313 and 84-9-316(d) and (e), and amendments thereto, for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) and K.S.A. 2011 Supp. 84-9-316(d) and (e), and amendments thereto, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation; or treaty described in subsection (a) are governed by the statute, regulation; or treaty. In other respects, the security interest is subject to this article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Sec. 5. K.S.A. 2011 Supp. 84-9-316 is hereby amended to read as follows: 84-9-316. (a) **General rule: Effect on perfection of change in governing law.** A security interest perfected pursuant to the law of

the jurisdiction designated in K.S.A. 2011 Supp. 84-9-301(1) or 84-9-305(c), and amendments thereto, remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under K.S.A. 2011 Supp. 84-9-311(b) or 84-9-313, and amendments thereto, are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) the expiration of four months after the goods had become so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person,**

**securities intermediary**; or commodity intermediary. A security interest in deposit accounts, letter-of-credit rights; or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) **Subsection (f) security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) **Effect on filed financing statement of change in governing law.** *The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:*

(1) *A financing statement filed before the change pursuant to law of the jurisdiction designated in K.S.A. 2011 Supp. 84-9-301(1) or 84-9-305(c), and amendments thereto, is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.*

(2) *If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in K.S.A. 2011 Supp. 84-9-301(1) or 84-9-305(c), and amendments thereto, or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.*

(i) **Effect of change in governing law on financing statement filed against original debtor.** *If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in K.S.A. 2011 Supp. 84-9-301(1) or 84-9-305(c), and amendments thereto, and the new debtor is located in another jurisdiction, the following rules apply:*

(1) *The financing statement is effective to perfect a security interest*

*in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under K.S.A. 2011 Supp. 84-9-203(d), and amendments thereto, if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.*

(2) *A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in K.S.A. 2011 Supp. 84-9-301(1) or 84-9-305(c), and amendments thereto, or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.*

Sec. 6. K.S.A. 2011 Supp. 84-9-317 is hereby amended to read as follows: 84-9-317. (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under K.S.A. 2011 Supp. 84-9-322, and amendments thereto; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) on the conditions specified in K.S.A. 2011 Supp. 84-9-203(b)(3), and amendments thereto, is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a ~~security certificate-~~*certificated security* takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, electronic documents, general intangibles, or investment property collateral~~ other than *tangible chattel paper, tangible documents, goods, instruments* or a certificated security takes free of a

security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in K.S.A. 2011 Supp. 84-9-320 and 84-9-321, and amendments thereto, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 7. K.S.A. 2011 Supp. 84-9-326 is hereby amended to read as follows: 84-9-326. (a) **Subordination of security interest created by new debtor.** Subject to subsection (b), a security interest *that is* created by a new debtor ~~which is in collateral in which the new debtor has or acquires rights and is~~ perfected *solely* by a filed financing statement ~~that is effective solely under K.S.A. 2011 Supp. 84-9-508 and amendments thereto, in collateral in which a new debtor has or acquires rights would be ineffective to perfect the security interest but for the application of K.S.A. 2011 Supp. 84-9-316(i)(1) or 84-9-508, and amendments thereto,~~ is subordinate to a security interest in the same collateral which is perfected other than by *such* a filed financing statement ~~that is effective solely under K.S.A. 2011 Supp. 84-9-508 and amendments thereto.~~

(b) **Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~that are effective solely under K.S.A. 2011 Supp. 84-9-508, and amendments thereto~~ *described in subsection (a)*. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Sec. 8. K.S.A. 2011 Supp. 84-9-406 is hereby amended to read as follows: 84-9-406. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge the account debtor's obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge the account debtor's obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h), notification is ineffective under subsection (a):

- (1) If it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e), K.S.A. 84-2a-303 and K.S.A. 2011 Supp. 84-9-407, and amendments thereto, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) does not apply to the sale of a payment intangible or promissory note, *other than a sale pursuant to a disposition under K.S.A. 2011 Supp. 84-9-610, and amendments thereto, or an acceptance of collateral under K.S.A. 2011 Supp. 84-9-620, and amendments thereto.*

(f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in K.S.A. 84-2a-303 and K.S.A. 2011 Supp. 84-9-407, and amendments thereto, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations.

Sec. 9. K.S.A. 2011 Supp. 84-9-408 is hereby amended to read as follows: 84-9-408. (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) to sales of certain rights to payment.** Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, *other than a sale pursuant to a disposition under K.S.A. 2011 Supp. 84-9-610, and amendments*

*thereto, or an acceptance of collateral under K.S.A. 2011 Supp. 84-9-620, and amendments thereto.*

(c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c).** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) **Section prevails over specified inconsistent law.** This section

prevails over any inconsistent provisions of any laws, rules, and regulations of this state.

Sec. 10. K.S.A. 2011 Supp. 84-9-502 is hereby amended to read as follows: 84-9-502. (a) **Sufficiency of financing statement.** Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) **Real-property-related financing statements.** Except as otherwise provided in K.S.A. 2011 Supp. 84-9-501(b), and amendments thereto, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) Indicate that it covers this type of collateral;

(2) indicate that it is to be filed in the real property records;

(3) provide a description of the real property to which the collateral is related; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) **Record of mortgage as financing statement.** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section ~~other than an indication~~, *but:*

(A) *The record need not indicate that it is to be filed in the real property records; and*

(B) *the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom K.S.A. 2011 Supp. 84-9-503(a)(4), and amendments thereto, applies; and*

(4) the record is *duly* recorded.

(d) **Filing before security agreement or attachment.** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Sec. 11. K.S.A. 2011 Supp. 84-9-503 is hereby amended to read as

follows: 84-9-503. (a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

(1) *Except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name of the debtor indicated that is stated to be the registered organization's name on the public record of the debtor's organic record most recently filed with, issued or enacted by the registered organization's jurisdiction of organization which shows the debtor to have been organized purports to state, amend or restate the registered organization's name;*

(2) *if the debtor is a decedent's estate subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the debtor is an estate collateral is being administered by a personal representative;*

(3) *if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:*

~~(A) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and~~

~~(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and if the collateral is held in a trust that is not a registered organization, only if the financing statement:~~

~~(A) Provides, as the name of the debtor:~~

~~(i) If the organic record of the trust specifies a name for the trust, the name specified; or~~

~~(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and~~

~~(B) in a separate part of the financing statement:~~

~~(i) If the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or~~

~~(ii) if the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;~~

(4) *subject to subsection (g), if the debtor is an individual to whom this state has issued a driver's license or identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license or identification card;*

(5) *if the debtor is an individual to whom paragraph (4) does not*

apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor;

~~(4)~~(6) if the debtors are married debtors jointly engaged in business and it is unclear whether a partnership exists, the financing statement may be filed in the names of the individual debtors; and

~~(5)~~(7) in other cases:

(A) If the debtor has a name, only if ~~it~~ the financing statement provides the ~~individual or~~ organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person were the debtor.

(b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) unless required under subsection ~~(a)(4)(B)~~~~(a)(7)(B)~~, names of partners, members, associates, or other persons comprising the debtor.

(c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) **Name of decedent.** The name of the decedent is indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

(g) **Multiple drivers' licenses or identification cards.** If this state has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) **Definition.** In this section, the "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with, issued or enacted by the settlor's jurisdiction of organization which purports to state, amend or restate the settlor's name; or

(2) in other cases, the name of the settlor or testator indicated in the trust's organic record.

Sec. 12. K.S.A. 2011 Supp. 84-9-507 is hereby amended to read as

follows: 84-9-507. (a) **Disposition.** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) **Information becoming seriously misleading.** Except as otherwise provided in subsection (c) and K.S.A. 2011 Supp. 84-9-508, and amendments thereto, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under K.S.A. 2011 Supp. 84-9-506, and amendments thereto.

(c) **Change in debtor's name.** ~~If a debtor so changes its~~ *If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under K.S.A. 2011 Supp. 84-9-503(a), and amendments thereto, so that the financing statement becomes* seriously misleading under K.S.A. 2011 Supp. 84-9-506, and amendments thereto:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, ~~the change~~ *filed financing statement becomes seriously misleading*; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after ~~the change~~ *filed financing statement becomes seriously misleading*, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the ~~change~~ *financing statement becomes seriously misleading*.

Sec. 13. K.S.A. 2011 Supp. 84-9-515 is hereby amended to read as follows: 84-9-515. (a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f); and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) **Manufactured-home transaction.** Except as otherwise provided in subsections (e), (f); and (g), an initial financing statement filed in connection with a manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a manufactured-home transaction.

(c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.** A continuation

statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) **Effect of filing continuation statement.** Except as otherwise provided in K.S.A. 2011 Supp. 84-9-510, and amendments thereto, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed *initial* financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under ~~subsection (c) of~~ K.S.A. 2011 Supp. 84-9-502(c), and amendments thereto, remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Sec. 14. K.S.A. 2011 Supp. 84-9-516 is hereby amended to read as follows: 84-9-516. (a) **What constitutes filing.** Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or ~~correction~~ *information* statement, the record:

(i) Does not identify the initial financing statement as required by K.S.A. 2011 Supp. 84-9-512 or 84-9-518, and amendments thereto, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under K.S.A. 2011 Supp. 84-9-515, and amendments thereto;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name~~ *surname*; or

(D) in the case of a record filed *or recorded* in the filing office described in K.S.A. 2011 Supp. 84-9-501(a)(1), and amendments thereto, the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor; *or*

(B) indicate whether the *name provided as the name of the* debtor is *the name of* an individual or an organization; ~~or~~

~~(C) if the financing statement indicates that the debtor is an organization, provide:~~

~~(i) a type of organization for the debtor;~~

~~(ii) a jurisdiction of organization for the debtor; or~~

~~(iii) an organizational identification number for the debtor or indicate that the debtor has none;~~

(6) in the case of an assignment reflected in an initial financing statement under K.S.A. 2011 Supp. 84-9-514(a), and amendments thereto, or an amendment filed under K.S.A. 2011 Supp. 84-9-514(b), and amendments thereto, the record does not provide a name and mailing address for the assignee; or

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by K.S.A. 2011 Supp. 84-9-515(d), and amendments thereto.

(c) **Rules applicable to subsection (b).** For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by K.S.A. 2011 Supp. 84-9-512, 84-9-514 or 84-9-518, and amendments thereto, is an initial financing statement.

(d) **Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing

fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

Sec. 15. K.S.A. 2011 Supp. 84-9-518 is hereby amended to read as follows: 84-9-518. (a) ~~Correction statement.~~ **Statement with respect to record indexed under person's name.** A person may file in the filing office ~~a correction~~ an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) ~~Sufficiency of correction statement~~ **Contents of statement under subsection (a).** ~~A correction~~ An information statement under subsection (a) must:

- (1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
- (2) indicate that it is ~~a correction~~ an information statement; and
- (3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) **Statement by secured party of record.** A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under K.S.A. 2011 Supp. 84-9-509(d), and amendments thereto.

(d) **Contents of statement under subsection (c).** An information statement under subsection (c) must:

- (1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
- (2) indicate that it is an information statement; and
- (3) provide the basis for the person's belief that the person that filed the record was not entitled to do so under K.S.A. 2011 Supp. 84-9-509(d), and amendments thereto.

~~(e)~~ (e) **Record not affected by correction information statement.** The filing of ~~a correction~~ an information statement does not affect the effectiveness of an initial financing statement or other filed record.

Sec. 16. K.S.A. 2011 Supp. 84-9-607 is hereby amended to read as follows: 84-9-607. (a) **Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

- (1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under K.S.A. 2011 Supp. 84-9-315, and amendments thereto;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under K.S.A. 2011 Supp. 84-9-104(a)(1), and amendments thereto, may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under K.S.A. 2011 Supp. 84-9-104(a)(2) or (3), and amendments thereto, may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) **Nonjudicial enforcement of mortgage.** If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred *with respect to the obligation secured by the mortgage*; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney fees and legal expenses incurred by the secured party.

(e) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Sec. 17. K.S.A. 2011 Supp. 84-9-625 is hereby amended to read as follows: 84-9-625. (a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with

this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d); and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction if collateral is consumer goods.** Except as otherwise provided in K.S.A. 2011 Supp. 84-9-628, and amendments thereto:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ~~10 percent~~ 10% of the principal amount of the obligation or the time-price differential plus ~~10 percent~~ 10% of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under K.S.A. 2011 Supp. 84-9-626, and amendments thereto, may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under K.S.A. 2011 Supp. 84-9-626, and amendments thereto, may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) **Statutory damages: Noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(1) Fails to comply with K.S.A. 2011 Supp. 84-9-208, and amendments thereto;

(2) fails to comply with K.S.A. 2011 Supp. 84-9-209, and amendments thereto;

(3) files a record that the person is not entitled to file under K.S.A. 2011 Supp. 84-9-509(a), and amendments thereto;

(4) fails to cause the secured party of record to file or send a termination statement as required by K.S.A. 2011 Supp. 84-9-513(a) or (c), and amendments thereto;

(5) fails to comply with K.S.A. 2011 Supp. 84-9-616(b)(1), and amendments thereto, and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with K.S.A. 2011 Supp. 84-9-616(b)(2), and amendments thereto.

(f) **Statutory damages: Noncompliance with K.S.A. 2011 Supp. 84-9-210, and amendments thereto.** A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under K.S.A. 2011 Supp. 84-9-210, and amendments thereto. A recipient of a request under K.S.A. 2011 Supp. 84-9-210, and amendments thereto, which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: Noncompliance with K.S.A. 2011 Supp. 84-9-210, and amendments thereto.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under K.S.A. 2011 Supp. 84-9-210, and amendments thereto, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

New Sec. 18. Sections 18 through 26, and amendments thereto, shall be part of and supplemental to article 9 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 19. (a) **Pre-effective-date transactions or liens.** Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

(b) **Pre-effective-date proceedings.** This act does not affect an action, case or proceeding commenced before July 1, 2013.

New Sec. 20. (a) **Continuing perfection: Perfection requirements satisfied.** A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, if, on July 1, 2013, the applicable requirements for attachment and perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, are satisfied without further action.

(b) **Continuing perfection: Perfection requirements not satisfied.** Except as otherwise provided in section 23, and amendments thereto, if immediately before July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, are not satisfied on July 1, 2013, the security interest remains perfected thereafter only if the applicable requirements for perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, are satisfied within one year after July 1, 2013.

New Sec. 21. A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

(1) Without further action, on July 1, 2013, if the applicable requirements for perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, are satisfied on or before July 1, 2013; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after July 1, 2013.

New Sec. 22. (a) **Pre-effective-date filing effective.** The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, and as amended by this act.

(b) **When pre-effective-date filing becomes ineffective.** This act does not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, prior to amendments by this act. However, except as otherwise provided in subsections (c) and (d) of section 24, and amendments thereto, the financing statement ceases to be effective:

(1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this act not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) At the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) **Continuation statement.** The filing of a continuation statement after July 1, 2013, does not continue the effectiveness of a financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for a period provided by the law of that jurisdiction.

(d) **Application of subsection (b)(2)(B) to transmitting utility financing statement.** Subsection (b)(2)(B) applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of

the Kansas Statutes Annotated, prior to amendments by this act, only to the extent that article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) **Application of part 5.** A financing statement that includes a financing statement filed before July 1, 2013, and a continuation statement filed after July 1, 2013, is effective only to the extent that it satisfies the requirements of part 5 of article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of K.S.A. 2011 Supp. 84-9-503(a)(2), as amended by this act. A financing statement that indicates that the debtor is a trust or trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of K.S.A. 2011 Supp. 84-9-503(a)(3), as amended by this act.

New Sec. 23. (a) **Initial financing statement in lieu of continuation statement.** The filing of an initial financing statement in the office specified in K.S.A. 2011 Supp. 84-9-501, and amendments thereto, continues the effectiveness of a financing statement filed before this act takes effect on July 1, 2013, if:

(1) The filing of an initial filing statement in that office would be effective to perfect a security interest under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act;

(2) the pre-effective-date financing statement was filed in an office in another state; and

(3) the initial financing statement satisfies subsection (a).

(b) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before July 1, 2013, for the period provided in K.S.A. 2011 Supp. 84-9-515, prior to amendments by this act, with respect to an initial filing statement; and

(2) if the initial financing statement is filed after July 1, 2013, for the period provided in K.S.A. 2011 Supp. 84-9-515, as amended by this act, with respect to an initial financing statement.

(c) **Requirements for initial financing statement under subsection (a).** To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of part 5 of article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating

the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

New Sec. 24. (a) **Pre-effective-date financing statement.** In this section, “pre-effective-date financing statement” means a financing statement filed before July 1, 2013.

(b) **Applicable law.** After July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: General rule.** Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after July 1, 2013, only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in K.S.A. 2011 Supp. 84-9-501, and amendments thereto;

(2) an amendment is filed in the office specified in K.S.A. 2011 Supp. 84-9-501, and amendments thereto, concurrently with, or after the filing in that office of, an initial financing statement that satisfies subsection (c) of section 24, and amendments thereto; or

(3) an initial financing statement that provides the information as amended and satisfies subsection (c) of section 24, and amendments thereto, is filed in the office specified in K.S.A. 2011 Supp. 84-9-501, and amendments thereto.

(d) **Method of amending: Continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under subsections (c) and (e) of section 23, and amendments thereto, or section 24, and amendments thereto.

(e) **Method of amending: Additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after July 1, 2013, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies subsection (c) of section 24, and amendments thereto, has been filed in the office specified by the

law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, as the office in which to file a financing statement.

New Sec. 25. A person may file an initial financing statement or a continuation statement under this part if:

- (1) The secured party of record authorizes the filing; and
- (2) the filing is necessary under this part:
  - (A) To continue the effectiveness of a financing statement filed before July 1, 2013; or
  - (B) to perfect or continue the perfection of a security interest.

New Sec. 26. This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, article 9 of chapter 84 of the Kansas Statutes Annotated, prior to amendments by this act, determines priority.

Sec. 27. K.S.A. 2011 Supp. 84-9-102, 84-9-105, 84-9-307, 84-9-311, 84-9-316, 84-9-317, 84-9-326, 84-9-406, 84-9-408, 84-9-502, 84-9-503, 84-9-507, 84-9-515, 84-9-516, 84-9-518, 84-9-607 and 84-9-625 are hereby repealed.

Sec. 28. This act shall take effect and be in force from and after July 1, 2013, and its publication in the statute book.

Approved April 6, 2012.

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## CHAPTER 85

### HOUSE BILL No. 2697\*

AN ACT concerning eligibility requirements for medicaid; allowing a collateral assignment of the proceeds of life insurance policies.

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

Section 1. (a) The department of health and environment, in conjunction with the department of social and rehabilitation services, shall review and update its rules and regulations establishing eligibility requirements for the Kansas program of medical assistance established in accordance with title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.* Such review shall include the establishment of a procedure which permits the holder of a life insurance policy which has a cash surrender value to give the Kansas program of medical assistance established in accordance with title XIX of the federal social security act a collateral assignment of the proceeds of such life insurance policy. The collateral assignment may be used by the insured in lieu of any requirement that such life insurance policy be sold in order for the insured to meet any property ownership limitation contained in any eligibility requirement for

participation in the Kansas program of medical assistance established in accordance with title XIX of the federal social security act. The collateral assignment shall be for an amount not to exceed the proceeds of such policy necessary to reimburse the Kansas program of medical assistance established in accordance with title XIX of the federal social security act for any amount paid by such program for medical benefits provided to the insured. The collateral assignment shall be irrevocable as established by a written agreement binding on the holder of the life insurance policy to not affect or otherwise use the cash surrender value of such policy after the irrevocable assignment pursuant to rules and regulations promulgated by the secretary of the department of health and environment.

(b) The department of health and environment is hereby directed to seek any necessary waivers from program requirements of the federal government as may be needed to carry out the provisions of this section and to maximize federal matching and other funds with respect to the provisions of this section. If the department of health and environment determines that one or more waivers from program requirements of the federal government are needed to carry out the provisions of this section, the department of health and environment shall implement the provisions of this section only if such waivers to federal program requirements have been obtained from the federal government.

(c) (1) Except as provided in paragraph (2), the review and update of the rules and regulations establishing eligibility requirements for the Kansas program of medical assistance established in accordance with title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*, shall be completed and the revisions of such rules and regulations shall be adopted in accordance with the rules and regulations filing act no later than 12 calendar months following the date of receipt of the waivers required under subsection (b).

(2) If the department of health and environment determines that no waivers are required to implement the provisions of subsection (a), the review and update of the rules and regulations establishing eligibility requirements for the Kansas program of medical assistance established in accordance with title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*, shall be completed and the revisions of such rules and regulations shall be adopted in accordance with the rules and regulations filing act no later than 12 calendar months following the effective date of this act.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 6, 2012.

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## CHAPTER 86

## SENATE BILL No. 303

AN ACT concerning disposition of unclaimed cremated remains; relating to veterans cremated remains; amending K.S.A. 65-1732 and repealing the existing section; also repealing K.S.A. 65-1733.

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

Section 1. K.S.A. 65-1732 is hereby amended to read as follows: 65-1732. ~~With respect to the cremation of dead bodies, as such term is defined in subsection (5) of K.S.A. 65-2401 and amendments thereto, if after a period of 90 days from the time of cremation the cremated remains have not been claimed, the funeral establishment, branch establishment or crematory may dispose of the cremated remains: (a) If the funeral establishment, branch establishment or crematory has sent by certified mail, return receipt requested, at least 30 days prior to the end of such period of time to the last known address of the authorizing agent as defined under K.S.A. 65-1760, and amendments thereto, a notice that such remains will be disposed of in accordance with the provisions of this section unless claimed prior to the end of the 90 day period of time; (b) if the remains have not been claimed prior to the end of such period of time (a) A funeral establishment, branch establishment or crematory which has possession of the cremated remains of a dead human body may dispose of the cremated remains, if:~~

(1) *Such cremated remains have not been claimed for at least 90 days from the time of cremation;*

(2) *the funeral establishment, branch establishment or crematory has sent a notice by certified mail, return receipt requested, to the last known address of the authorizing agent as defined under K.S.A. 65-1760, and amendments thereto. Such notice shall state that such remains will be disposed of in accordance with the provisions of this section unless claimed within 30 days of the date such notice is sent; and*

(3) *the funeral establishment, branch establishment or crematory has not received any claim on the cremated remains for at least 30 days from the date that such notice was sent.*

(b) *Such disposal under subsection (a) shall include burial by placing the remains in a church or cemetery plot, scatter garden, pond, or columbarium; relinquishing possession of the cremated remains of veterans to the Kansas commission of veterans affairs or a national cemetery in accordance with the provisions of subsection (c); or otherwise disposing of the remains as provided by rule and regulation of the board of mortuary arts. Disposition may include the commingling of the cremated remains with other cremated remains and thus the cremated remains would not be recoverable.*

(c) (1) *A funeral establishment, branch establishment or crematory which has held in its possession cremated remains for more than 90 days*

*from the date of cremation and has provided notice pursuant to subsection (a) and the cremated remains remain unclaimed may, in accordance with the provisions of this section, determine if such cremated remains are those of a veteran, and if so, may dispose of such remains as provided in this section.*

*(2) Notwithstanding any law or rules and regulations to the contrary, nothing in this section shall prevent a funeral establishment, branch establishment or crematory from sharing information with the United States department of veterans affairs or the Kansas commission on veterans affairs for the purpose of determining whether the cremated remains are those of a veteran. A funeral establishment, branch establishment, crematory, funeral director, assistant funeral director or crematory operator shall be discharged from any legal obligations or liability with regard to the releasing or sharing of information with such entities.*

*(3) Should a funeral establishment, branch establishment or crematory ascertain the cremated remains in its possession are those of a veteran and they are unclaimed cremated remains to be disposed of pursuant to provisions of subsection (a), the funeral establishment, branch establishment or crematory may relinquish possession of the cremated remains to the Kansas commission on veterans affairs or a national cemetery for disposition. Disposition shall be by placement of cremated remains in a tomb, mausoleum, crypt, niche in a columbarium or burial in a cemetery but shall not include the scattering of cremated remains.*

*(d) Nothing in this section shall require a funeral establishment, branch establishment or crematory to determine or seek others to determine that an individual's cremated remains are those of a veteran if the funeral establishment, branch establishment or crematory was informed by the person in control of the disposition that: (1) Such individual was not a veteran or (2) such individual did not desire any funeral or burial-related services or ceremonies recognizing service as a veteran.*

*(e) The funeral establishment, branch establishment, crematory, funeral director, assistant funeral director or crematory operator, upon disposing of cremated remains in accordance with the provisions of this section, shall be held harmless for any costs or damages, except if there is gross negligence or willful misconduct, and shall be discharged from any legal obligation or liability concerning the cremated remains.*

Sec. 2. K.S.A. 65-1732 and 65-1733 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 6, 2012.

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CHAPTER 87

HOUSE BILL No. 2557  
(Amended by Chapter 175)

AN ACT concerning commercial vehicles; requiring an annual commercial vehicle fee; amending K.S.A. 79-306d and K.S.A. 2011 Supp. 8-1,152, 79-6a01, 79-6a02, 79-6a03, 79-6a04, 79-1439, 79-3425i and 79-5101 and repealing the existing sections.

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

New Section 1. (a) On and after January 1, 2014, any truck or truck tractor registered for a gross weight of more than 10,000 pounds which is operating as a commercial vehicle shall, in addition to the annual fee prescribed under K.S.A. 8-143, and amendments thereto, pay an annual commercial vehicle fee as follows:

<b>Weight Group</b>	<b>Vehicle Age</b>	<b>Fee</b>
up to 12,000 lbs. ....	1 to 3 .....	\$250.00
12,000 lbs. ....	4 to 6 .....	200.00
12,000 lbs. ....	7 and older .....	150.00
16,000 lbs. ....	All Ages .....	250.00
20,000 lbs. ....	All Ages .....	250.00
24,000 lbs. ....	All Ages .....	250.00
26,000 lbs. ....	All Ages .....	300.00
30,000 lbs. ....	All Ages .....	300.00
36,000 lbs. ....	All Ages .....	300.00
42,000 lbs. ....	All Ages .....	350.00
48,000 lbs. ....	All Ages .....	350.00
54,000 lbs. ....	All Ages .....	350.00
60,000 lbs. ....	All Ages .....	400.00
66,000 lbs. ....	All Ages .....	400.00
74,000 lbs. ....	All Ages .....	400.00
80,000 lbs. ....	All Ages .....	400.00
85,500 lbs. ....	All Ages .....	400.00

(b) Truck or truck tractors registered under this section shall be eligible for apportioned registration under the provisions of K.S.A. 8-1,100 *et seq.*, and amendments thereto.

(c) Upon the payment of the commercial vehicle fee and applicable registration fees under K.S.A. 8-143, and amendments thereto, except for vehicles registered under K.S.A. 8-1,100 *et seq.*, and amendments thereto, the division shall provide for the registration of and the issuance of license plates for commercial motor vehicles in accordance with the provisions of this section. License plates issued under this section shall be permanent in nature and designed in such a manner as to remain with the commercial motor vehicle for the duration of the life span of the commercial motor vehicle or until the commercial motor vehicle is deleted from the owner's fleet. Such license plates shall be distinctive and shall contain the word "commercial" and there shall be no year date thereon. License plates

issued under this section shall not be transferable to any other commercial motor vehicle, except that the unused registration and commercial vehicle fee may be transferred to another commercial motor vehicle which is registered at the same or greater weight.

(d) Amounts collected by the county treasurer as annual commercial vehicle fees under this section shall be remitted or distributed in the following manner:

(1) Amounts collected from non-Kansas-based motor carriers, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(2) Amounts collected from Kansas-based motor carriers shall be allocated and distributed in the same manner as taxes levied against motor vehicles under article 51 of chapter 79 of the Kansas Statutes Annotated.

(e) If an applicant registers a motor vehicle described under this section where such vehicle or vehicles are to have a tax situs in another county, then the county treasurer of the county registering such vehicle or vehicles shall collect the fees prescribed under this section and remit them to the county where the vehicle retains its tax situs. Any county treasurer registering a fleet registered under K.S.A. 8-1,101, and amendments thereto, shall remit the commercial vehicle portion of the fee to the county where the fleet is registered. Upon the transfer and receipt of fees under this subsection, the county treasurer of the receiving county shall remit or distribute such fees as provided in subsection (d).

(f) As used in this section, “commercial vehicle” means any self-propelled or towed motor vehicle in commerce that is used to transport property or passengers when the vehicle:

(1) Has a gross weight or gross combination weight of 10,001 pounds or more;

(2) is designed or used to transport 15 or more passengers, including the driver; or

(3) is used to transport hazardous materials in a quantity requiring placarding.

The term “commercial vehicle” shall not include any motor vehicle required to pay a license fee under subsection (b)(6) of K.S.A. 8-143, and amendments thereto, or any motor vehicle valued under article 5a of chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 2. (a) Each commercial vehicle registering under the provisions of K.S.A. 8-143, 8-1,100, or 8-1,152, and amendments thereto, shall be assessed a fee of four dollars. Such fee shall be collected by the county treasurer and shall be remitted in the following manner:

(1) Two dollars of such fee assessed and collected pursuant to this section shall be remitted to the state treasurer in accordance with the

provisions of K.S.A. 75-4215, and amendments thereto, who shall then credit the entire amount thereof to the commercial vehicle administrative system fund, which fund is hereby established in the state treasury. All moneys deposited in such fund shall be used by the Kansas department of revenue solely for the operation, maintenance and enhancement of the work processes, computer hardware and software and related equipment associated with the division of vehicle's functions related to commercial motor vehicles.

(2) Two dollars shall be deposited by the county treasurer in the special fund created pursuant to K.S.A. 8-145, and amendments thereto, and such amounts shall be used by the county treasurer for all purposes for which such fund has been appropriated by law.

Sec. 3. K.S.A. 2011 Supp. 8-1,152 is hereby amended to read as follows: 8-1,152. (a) As used in this section, "fleet motor vehicle" means ~~any motor vehicle of a commercial fleet of 250 or more motor vehicles which is registered for a gross weight of at least 12,000 pounds but not more than 26,000 pounds, except that if a vehicle is registered for a gross weight of more than 26,000 pounds and is part of a commercial fleet, and such vehicle is not driven out of state, such vehicle shall be deemed a fleet motor vehicle for purposes of this section:~~

(1) *Any motor vehicle which is part of a public utility commercial fleet of 250 or more and which is not required to file for apportioned registration pursuant to K.S.A. 8-1,100 through K.S.A. 8-1,124, inclusive, and amendments thereto; or*

(2) *any motor vehicle of a motor carrier who registers a fleet of interstate apportioned registration commercial vehicles of 250 or more in any international registration plan jurisdiction, and will register a fleet of 250 or more commercial vehicles as Kansas fleet registration vehicles, which are registered for a gross weight of at least 12,000 pounds, and is part of the commercial fleet, and such vehicle is not driven out of state, such commercial vehicle shall pay the commercial vehicle fee prescribed in section 1, and amendments thereto, at the allocation factor of 35% of the commercial vehicle fee.*

(b) ~~Upon the payment of the applicable registration fees under K.S.A. 8-143, and amendments thereto, the division shall provide for the registration of and the issuance of license plates for fleet motor vehicles in accordance with the provisions of this section. Fleet motor vehicles registered under the provisions of this section shall annually pay the applicable registration fees under K.S.A. 8-143, and amendments thereto. Upon registration, the owner of the fleet motor vehicles who are not exempt from personal property taxes, shall provide evidence of the taxes assessed under K.S.A. 79-6a01 et seq., or 79-5101 et seq., and amendments thereto. License plates issued under this section shall be permanent in nature and designed in such a manner as to remain with the fleet~~

motor vehicle for the duration of the life span of the fleet motor vehicle or until the fleet motor vehicle is deleted from the owner's fleet. Such license plates shall be distinctive and there shall be no year date thereon. Fleet motor vehicles registered under the provisions of this section shall be issued a permanent registration cab card for the duration of the life span of the fleet motor vehicle or until the fleet motor vehicle is deleted from the owner's fleet. License plates issued under this section shall not be transferable to any other fleet motor vehicle, except that the unused registration fee may be transferred to another fleet motor vehicle which is registered at the same or greater weight. The data required for registration under this section shall be submitted electronically.

(c) The secretary of revenue may adopt rules and regulations in order to administer the provisions of this section.

Sec. 4. K.S.A. 79-306d is hereby amended to read as follows: 79-306d. (a) This section shall not apply: (1) To motor vehicles which are assessed and taxed by the director of property valuation under the provisions of chapter 79, article 6a, of the Kansas Statutes Annotated, *and amendments thereto*; (2) to motor vehicles of ~~public service companies~~ *a public utility* whose property is assessed by the director of property valuation *under the provisions of chapter 79, article 5a, of the Kansas Statutes Annotated*; (3) ~~to motor vehicles owned by a manufacturer of motor vehicles with respect to motor vehicles returned for taxation purposes by such manufacturer on an average inventory basis~~; (4) ~~motor vehicles owned and/or possessed by motor vehicle dealers which are taxed under the provisions of K.S.A. 79-1016 et seq.~~, and (5) to motor vehicles valued and taxed under the provisions of article 51 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto; *and (4) commercial vehicles required to be annually registered pursuant to section 1, and amendments thereto.*

(b) It shall be the duty of the county appraiser to value each vehicle and place it on the tax roll for taxation purposes. In making such valuation the county appraiser shall use the valuation schedules furnished by the director of property valuation except that said appraiser may deviate from such valuation schedules if the vehicle being valued should be assessed at a lower amount than that shown in the schedule because it has been damaged.

(c) Motor vehicles acquired, purchased, traded or sold after January 1 and prior to September 1 of any year shall be valued in the following manner: In each case the tentative value shall be determined pursuant to the provisions of subsection (b) hereof, and such tentative value divided by twelve to arrive at the monthly value. The value of the motor vehicle shall then be determined as follows: (1) In the case where the vehicle acquired is not a replacement vehicle, the monthly value as defined above shall be multiplied by the number of months or fractions thereof remaining in the calendar year. The value thus determined shall constitute the

value of the motor vehicle for said calendar year. (2) In the case where the vehicle acquired is a replacement vehicle, the newly acquired vehicle shall be valued as in subsection (c)(1) above and the vehicle replaced shall be valued by multiplying the monthly value as defined above times the number of full calendar months in the calendar year that the vehicle was owned and for which assessment is being made. The values of the vehicles thus ascertained shall be added together and the sum of the values shall constitute the valuation of the motor vehicles for said calendar year. Motor vehicles acquired, or purchased, after September 1 of any year shall not be subject to assessment and taxation for the year in which they are acquired. As used in this subsection, the term "replacement vehicle" means the vehicle which replaces a motor vehicle previously listed for assessment and taxation for the calendar year in which such vehicle is acquired.

(d) The county treasurer, upon accepting an application for title of a vehicle, shall forthwith furnish the county appraiser with such information as is shown on the title application.

(e) The director of property valuation shall prescribe such forms as are necessary to administer this section.

(f) Whenever any motor vehicle assessed and taxed under the provisions of this section is sold or becomes subject to taxation under the provisions of article 51 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto*, prior to the end of the tax year, such vehicle shall be valued by multiplying the monthly value as determined in the manner provided by subsection (c) by the number of months or fractions thereof in the calendar year that such vehicle is owned and not subject to taxation under article 51 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto*.

Sec. 5. K.S.A. 2011 Supp. 79-6a01 is hereby amended to read as follows: 79-6a01. *Prior to January 1, 2014*, the director of property valuation shall value and assess annually the over-the-road motor vehicles and rolling equipment of motor carriers described in this act. The local deputy assessor shall value and assess within the taxing district where located all other property, real and personal, belonging to such motor carriers.

As used in this act, "over-the-road motor vehicles and rolling equipment" shall include all motor-driven vehicles, trailers, semitrailers, buses and trucks owned, used or operated in the state of Kansas by such motor carriers in the transportation of persons or property other than motor vehicles and rolling equipment used solely or mainly for local transportation in a particular community or local area, or for local pickup and delivery, or passenger automobiles used for purposes other than transportation of persons or property for hire. "Motor carriers" as used in this act shall include every person, firm or corporation who or which holds a certificate of convenience and necessity, a certificate of public service, or

an interstate license as a common or exempt carrier from the corporation commission of the state of Kansas or is required to register motor carrier equipment pursuant to 49 U.S.C. ~~11506~~ § 14504a.

Sec. 6. K.S.A. 2011 Supp. 79-6a02 is hereby amended to read as follows: 79-6a02. On or before ~~March 20 in each year~~ *May 15, 2012 and 2013*, every person, firm or corporation which was a motor carrier on January 1 of such year and who or which owned, used or operated any over-the-road motor vehicles or rolling equipment in the state of Kansas during the preceding year shall (if a firm or corporation by its president, secretary or principal acting officer or agent) return to the director of property valuation, upon forms furnished by the director, a sworn statement or schedule as follows:

1. A list of all certificates, licenses and permits which have been issued to the operator as a motor carrier by the Kansas state corporation commission.

2. The total number of miles for which all over-the-road motor vehicles used in the state of Kansas were operated in Kansas and everywhere during the calendar year prior to making such report.

3. The complete list of over-the-road vehicles and rolling equipment owned, used or operated in the state of Kansas by such motor carrier during the preceding calendar year and giving the name and number, model and value of the same, except that interchange equipment and trip-leased equipment shall be listed only by the owner.

4. In case any motor carrier holding a certificate of convenience and necessity, an interstate license as a common or exempt carrier from the corporation commission of the state of Kansas between January 1 and March 1 of ~~any year~~ *2012 and 2013* did not own, use or operate any over-the-road motor vehicle or rolling equipment in the state of Kansas during the preceding calendar year such motor carrier shall on or before March 20 of such year file with the director of property valuation a complete list and number of over-the-road motor vehicles and rolling equipment owned, used or operated by such motor carrier in the state of Kansas between January 1 and March 1 of ~~the year~~ *2012 and 2013*, in which such list is filed together with a verified statement estimating the number of miles such motor carrier expects such equipment to be operated in the state of Kansas and everywhere during such year.

5. In case any motor carrier required to file a statement under the provisions of this act fails to make and file such statement on or before ~~March 20~~ *May 15*, the director of property valuation shall, after the director has ascertained the value of the property, of such motor carrier from any other sources available to the director, add 50% additional value as a penalty for failure to file a report, but such assessment shall not relieve the motor carrier from the duty to file such report or statement, except that for good cause shown the director of property valuation may

extend the time in which to make and file such statement, except that whenever, in the judgment of the director of property valuation the failure of any motor carrier to comply with this provision is due to a good and reasonable cause, the director of property valuation may at the director's discretion waive or reduce any of the penalty herein provided upon making a record of the director's reason therefor. In the event a motor carrier shall file a statement for any year within one year after such statement was due, the director of property valuation shall recompute the assessment, tax and penalty on the basis of such statement.

Sec. 7. K.S.A. 2011 Supp. 79-6a03 is hereby amended to read as follows: 79-6a03. *Prior to January 1, 2014*, the director of property valuation shall value and assess all over-the-road motor vehicles owned, used and operated in the state of Kansas during the preceding calendar year by every motor carrier for the purpose of taxation by the state of Kansas in an amount to be determined in the following manner and according to the following method:

(1) The true value of all over-the-road motor vehicles and rolling equipment operated in the state of Kansas shall be determined;

(2) the ratio which the total number of miles of the equipment listed operated in the state of Kansas bears to the total number of miles operated everywhere by such equipment shall be determined;

(3) the assessed value of all over-the-road motor vehicles and rolling equipment owned, used or operated in the state of Kansas by such motor carrier shall be determined by multiplying the true value by the mileage ratio;

(4) the amount so determined shall be the value and assessment of all over-the-road motor vehicles and rolling equipment owned, used or operated in the state of Kansas by such motor carrier in the state of Kansas, except that if any motor carrier who or which holds a certificate of convenience and necessity, or an interstate license as a common or exempt carrier from the corporation commission of the state of Kansas between January 1 and March 1 of ~~any year~~ 2012 and 2013, did not own, use or operate any over-the-road motor vehicles or rolling equipment in Kansas during the preceding calendar year, the director of property valuation shall determine the mileage ratio of miles operated in the state of Kansas to miles operated everywhere by use of the estimate of mileage furnished by such motor carrier, and apply the same to the assessed valuation of the equipment listed by such motor carrier to determine the assessed value of such equipment and the tax due thereon; and in any such case, when the carrier files such carrier's return the following year, showing the actual mileage of such vehicles in the state of Kansas and everywhere during such year, the director of property valuation shall recompute the tax and refund any excess tax paid by such carrier, or if an additional amount of tax is determined to be due from the taxpayer, such

additional amount shall become due upon mailing of notice of such additional tax to the motor carrier by the director of property valuation, which additional tax may be collected as provided in K.S.A. 79-6a07 and 79-6a11, and amendments thereto.

Sec. 8. K.S.A. 2011 Supp. 79-6a04 is hereby amended to read as follows: 79-6a04. *Prior to January 1, 2014*, the director of property valuation each year, shall make a levy for purposes of taxation, against the value assessed and determined to exist in accordance with the manner and method set forth in article 6a of chapter 79 of Kansas Statutes Annotated, and amendments thereto, at a rate which shall equal the average rate of levy for all purposes in the several taxing districts of the state for the preceding year.

For the purposes of such valuation, assessment and taxation, the taxable situs of the over-the-road vehicles and other rolling equipment determined to be taxable under this act is hereby declared to be within this state whether owned, used or operated by a motor carrier who is a resident or nonresident of Kansas and irrespective of whether such motor carrier be domiciled in Kansas or otherwise.

The director of property valuation shall cause to be sent to each motor carrier on or before the first day of August a statement of the amount of the valuation or assessment, the rate of levy and the amount of the tax. The determination contained in such statement shall not require an adjudicative proceeding under the Kansas administrative procedure act. The statement shall inform the motor carrier of the right to an informal conference as provided in this section. The failure to request an informal conference shall not preclude any appeal under K.S.A. 74-2438, and amendments thereto. If a motor carrier has any objection to the statement as issued, the motor carrier must, within 15 days of the date of mailing of such notice, notify the director of property valuation in writing of such objection, setting forth the basis therefor and all facts relating thereto. Within 30 days of the date of receipt by the director of property valuation of such written objection, the director shall hold an informal conference with the motor carrier and shall issue a written finding, ruling, order, decision or other final action thereon, which finding, ruling, order, decision or other final action shall become effective for purposes of the appeal as provided by K.S.A. 74-2438, and amendments thereto, three days following the mailing of a copy thereof to the motor carrier. Informal conferences held pursuant to this section may be conducted by the director or the director's designee. The rules of evidence shall not apply to an informal conference and no record shall be made except at the request and expense of the director or the motor carrier.

The tax as finally determined shall be paid by the motor carrier to the director of property valuation. The motor carrier may, at its option, pay the full amount thereof on or before December 20 of each year, or ½

thereof on or before December 20 and the remaining  $\frac{1}{2}$  thereof on or before May 10 next ensuing, but in the event a motor carrier so charged with tax hereunder fails to pay the first  $\frac{1}{2}$  thereof, the full amount shall become immediately due and payable. If such motor carrier's taxes are less than \$50, the amount thereof shall be paid on or before December 20 or be subject to the penalties herein provided. In case the first  $\frac{1}{2}$  of such taxes remains unpaid after December 20, the entire and full amount of taxes charged shall draw interest at the rate prescribed by K.S.A. 79-2004a, and amendments thereto, from December 20 to date of payment. All taxes levied hereunder of the preceding year and accrued interest thereon which shall remain due and unpaid on May 11 shall draw interest at the rate prescribed by K.S.A. 79-2004a, and amendments thereto, from May 10 until paid. All moneys collected under the provisions of this act, except as provided in K.S.A. 79-6a09, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 9. K.S.A. 2011 Supp. 79-1439 is hereby amended to read as follows: 79-1439. (a) All real and tangible personal property which is subject to general *ad valorem* taxation shall be appraised uniformly and equally as to class and, unless otherwise specified herein, shall be appraised at its fair market value, as defined in K.S.A. 79-503a, and amendments thereto.

(b) Property shall be classified into the following classes and assessed at the percentage of value prescribed therefor:

(1) Real property shall be assessed as to subclass at the following percentages of value:

(A) Real property used for residential purposes including multi-family residential real property, real property necessary to accommodate a residential community of mobile or manufactured homes including the real property upon which such homes are located, residential real property used partially for day care home purposes if such home has been registered or licensed pursuant to K.S.A. 65-501 *et seq.*, and amendments thereto, and residential real property used partially for bed and breakfast home purposes at 11.5%. As used in this paragraph "bed and breakfast home" means a residence with five or fewer bedrooms available for overnight guests who stay for not more than 28 consecutive days for which there is compliance with all zoning or other applicable ordinances or laws which pertain to facilities which lodge and feed guests;

(B) land devoted to agricultural use valued pursuant to K.S.A. 79-1476, and amendments thereto, at 30%;

(C) vacant lots at 12%;

(D) real property which is owned and operated by a not-for-profit

organization not subject to federal income taxation pursuant to section 501 of the federal internal revenue code and included herein pursuant to K.S.A. 79-1439a, and amendments thereto, at 12%;

(E) public utility real property, except railroad property which shall be assessed at the average rate all other commercial and industrial property is assessed, at 33%. As used in this paragraph, "public utility" shall have the meaning ascribed thereto by K.S.A. 79-5a01, and amendments thereto;

(F) real property used for commercial and industrial purposes and buildings and other improvements located upon land devoted to agricultural use at 25%; and

(G) all other urban and rural real property not otherwise specifically subclassed at 30%.

(2) Personal property shall be classified into the following classes and assessed at the percentage of value prescribed therefor:

(A) Mobile homes used for residential purposes at 11.5%;

(B) mineral leasehold interests, except oil leasehold interests the average daily production from which is five barrels or less, and natural gas leasehold interests, the average daily production from which is 100 mcf or less, which shall be assessed at 25%, at 30%;

(C) public utility tangible personal property including inventories thereof, except railroad personal property including inventories thereof, which shall be assessed at the average rate all other commercial and industrial property is assessed, at 33%. As used in this paragraph, "public utility" shall have the meaning ascribed thereto by K.S.A. 79-5a01, and amendments thereto;

(D) all categories of motor vehicles listed and taxed pursuant to K.S.A. 79-306d, and amendments thereto, and, *prior to January 1, 2014*, over-the-road motor vehicles defined pursuant to K.S.A. 79-6a01, and amendments thereto, at 30%;

(E) commercial and industrial machinery and equipment, including rolling equipment defined pursuant to K.S.A. 79-6a01, and amendments thereto, which, if its economic life is seven years or more, shall be valued at its retail cost when new less seven-year straight-line depreciation, or which, if its economic life is less than seven years, shall be valued at its retail cost when new less straight-line depreciation over its economic life, except that, the value so obtained for such property as long as it is being used shall not be less than 20% of the retail cost when new of such property at 25%; and

(F) all other tangible personal property not otherwise specifically classified at 30%.

Sec. 10. K.S.A. 2011 Supp. 79-3425i is hereby amended to read as follows: 79-3425i. (a) On January 15 and July 15 of each year, the director of accounts and reports shall transfer a sum equal to the total taxes col-

lected under the provisions of K.S.A. 79-6a04 and 79-6a10, and amendments thereto, *and annual commercial vehicle fees collected pursuant to section I, and amendments thereto*, and credited to the state general fund during the six months next preceding the date of transfer, from the state general fund to the special city and county highway fund, created by K.S.A. 79-3425, and amendments thereto, except that: (1) Such transfers are subject to reduction under K.S.A. 75-6704, and amendments thereto; (2) no moneys shall be transferred from the state general fund to the special city and county highway fund during state fiscal year 2010, state fiscal year 2011, state fiscal year 2012 or state fiscal year 2013; (3) all transfers under this section shall be considered to be demand transfers from the state general fund; and (4) (A) on each January 14, April 14, July 14 and October 14 of state fiscal years 2012, 2013, 2014, 2015 and 2016 the state treasurer shall determine the amount of money to be paid the counties and cities on such dates of such year, pursuant to K.S.A. 79-3425c, and amendments thereto, and make the following adjustments prior to the apportionment and payment specified in K.S.A. 79-3425c, and amendments thereto: (i) The following amounts shall be added to the apportionment and payment to be paid to the following counties: Barton county, \$7,984.99; Butler county, \$96,937.27; Douglas county, \$128,245.99; Leavenworth county, \$55,766.22; Shawnee county, \$267,356.20; and (ii) the following amounts shall be deducted from the apportionment and payment to the following counties: Allen county, \$3,839.12; Anderson county, \$2,957.98; Atchison county, \$4,345.79; Barber county, \$1,813.76; Bourbon county, \$2,945.98; Brown county, \$1,590.14; Chase county, \$1,364.54; Chautauqua county, \$539.42; Cherokee county, \$5,874.25; Cheyenne county, \$1,317.84; Clark county, \$757.32; Clay county, \$968.54; Cloud county, \$2,774.68; Coffey county, \$2,894.76; Comanche county, \$446.63; Cowley county, \$2,116.31; Crawford county, \$5,558.19; Decatur county, \$1,615.15; Dickinson county, \$6,024.00; Doniphan county, \$2,626.24; Edwards county, \$1,580.33; Elk county, \$525.08; Ellis county, \$8,774.46; Ellsworth county, \$2,334.37; Finney county, \$5,837.57; Ford county, \$7,048.03; Franklin county, \$6,898.28; Geary county, \$976.57; Gove county, \$1,058.76; Graham county, \$1,409.48; Grant county, \$1,936.03; Gray county, \$2,355.25; Greeley county, \$941.53; Greenwood county, \$2,701.29; Hamilton county, \$1,060.71; Harper county, \$1,466.35; Harvey county, \$7,863.46; Haskell county, \$1,335.39; Hodgeman county, \$959.20; Jackson county, \$4,647.68; Jefferson county, \$6,701.43; Jewell county, \$1,211.66; Johnson county, \$115,947.72; Kearny county, \$1,160.82; Kingman county, \$2,801.87; Kiowa county, \$1,441.36; Labette county, \$5,563.25; Lane county, \$652.48; Lincoln county, \$1,203.05; Linn county, \$3,772.22; Logan county, \$1,169.58; Lyon county, \$8,236.73; Marion county, \$3,681.52; Marshall county, \$3,878.17; McPherson county, \$8,652.66; Meade county, \$1,048.56; Miami county, \$10,701.45; Mitchell county, \$3,466.79;

Montgomery county, \$8,377.29; Morris county, \$1,955.91; Morton county, \$1,200.61; Nemaha county, \$3,774.74; Neosho county, \$5,507.28; Ness county, \$991.77; Norton county, \$1,800.14; Osage county, \$2,327.93; Osborne county, \$1,882.73; Ottawa county, \$2,063.91; Pawnee county, \$1,802.09; Phillips county, \$2,622.20; Pottawatomie county, \$6,512.08; Pratt county, \$2,187.16; Rawlins county, \$1,119.60; Reno county, \$12,935.71; Republic county, \$2,272.31; Rice county, \$1,722.51; Riley county, \$11,149.53; Rooks county, \$2,252.51; Rush county, \$1,235.76; Russell county, \$577.59; Saline county, \$14,049.86; Scott county, \$1,340.37; Sedgwick county, \$117,126.91; Seward county, \$4,488.67; Sheridan county, \$1,786.11; Sherman county, \$194.37; Smith county, \$1,993.99; Stafford county, \$2,029.27; Stanton county, \$991.97; Stevens county, \$638.08; Sumner county, \$5,908.68; Thomas county, \$3,388.44; Trego county, \$1,781.87; Wabaunsee county, \$2,354.10; Wallace county, \$994.33; Washington county, \$2,554.75; Wichita county, \$1,333.92; Wilson county, \$3,659.10; Woodson county, \$1,214.90; Wyandotte county, \$16,818.00; (B) after determining and including such additions and deductions, the resulting apportionment and payment shall be paid by the state treasurer to the counties and cities prescribed therefor, notwithstanding the provisions of K.S.A. 79-3425c, and amendments thereto, or any other statute, each January 14, April 14, July 14 and October 14 of state fiscal years 2012, 2013, 2014, 2015 and 2016, with the requirement that the additional moneys received by each such county shall be deposited and administered in accordance with K.S.A. 79-3425c, and amendments thereto, including any redistributions provided for by that statute, except that the state treasurer shall calculate the annual equalization payment to each county without considering the deductions or additions to quarterly distributions required by subsection (a)(4)(A); and (C) acceptance of the payments made pursuant to this subsection (a)(4) shall be deemed as payment in full and a release of any liability from the county to the state treasurer for payments from the special city and county highway fund for state fiscal years 2000 through 2009.

(b) During the state fiscal year ending June 30, 2010, on July 15, 2009, and January 15, 2010, the director of accounts and reports shall transfer \$2,515,916 from the state highway fund to the special city and county highway fund, created by K.S.A. 79-3425, and amendments thereto.

Sec. 11. K.S.A. 2011 Supp. 79-5101 is hereby amended to read as follows: 79-5101. As used in this act the term “motor vehicle” means and includes all motor vehicles required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, except:

(a) Motor vehicles assessed and taxed by the director of property

valuation under the provisions of chapter 79, article 6a, of the Kansas Statutes Annotated, and amendments thereto;

(b) motor vehicles of public service companies whose property is assessed by the director of property valuation under the provisions of article 5a of chapter 79 of the Kansas Statutes Annotated, and amendments thereto;

(c) motor vehicles registered for a gross weight of more than 12,000 pounds;

(d) motor vehicles owned by a car rental company upon which the tax imposed under K.S.A. 79-5117 and amendments thereto, has been paid;

(e) recreational vehicles, as defined by K.S.A. 79-5118, and amendments thereto; ~~and~~

(f) motor vehicles which are exempted from property taxation under the provisions of the Kansas Statutes Annotated or the Kansas constitution; *and*

(g) *commercial motor vehicles as defined in section 1, and amendments thereto.*

Sec. 12. K.S.A. 79-306d and K.S.A. 2011 Supp. 8-1,152, 79-6a01, 79-6a02, 79-6a03, 79-6a04, 79-1439, 79-3425i and 79-5101 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 6, 2012.

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## CHAPTER 88

### SENATE BILL No. 301

AN ACT concerning the state board of technical professions; relating to terms of members; amending K.S.A. 74-7006 and repealing the existing section.

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

Section 1. K.S.A. 74-7006 is hereby amended to read as follows: 74-7006. (a) Whenever a vacancy occurs in the membership of the board by reason of the expiration of a term of office, the governor shall appoint a successor of like qualifications. *Except as provided in subsection (e)*, all appointments shall be for terms of four years, but no member shall be appointed for more than three successive four-year terms.

(b) The terms of members appointed to the board shall commence on the July 1 immediately following the day of expiration of the preceding term, regardless of when the appointment is made, and *except as provided*

in subsection (e), shall expire on June 30 of the fourth year of the member's term.

(c) Each member shall serve until a successor is appointed and qualified. Whenever a vacancy shall occur in the membership of the board for any reason other than the expiration of a member's term of office, the governor shall appoint a successor of like qualifications to fill the unexpired term.

(d) The governor may remove any member of the board for misconduct, incompetency, neglect of duty; or for any other sufficient cause.

(e) (1) *The following members whose terms begin July 1, 2012, shall serve initial terms as follows:*

(A) *One member licensed as both an engineer and as a land surveyor shall serve a term of one year.*

(B) *One member from the general public shall serve a term of one year.*

(C) *One member licensed as a geologist shall serve a term of three years.*

(D) *One member licensed as a land surveyor shall serve a term of two years.*

(2) *The terms of members specified in this subsection shall expire on June 30 in the last year of such member's term. Upon reappointment, members shall serve a term of not more than four years.*

(3) *No member specified in this subsection shall serve more than four consecutive terms.*

Sec. 2. K.S.A. 74-7006 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 6, 2012.

Published in the *Kansas Register* April 12, 2012.

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## CHAPTER 89

SENATE BILL No. 424  
(Amended by Chapter 166)

AN ACT concerning the Kansas law enforcement training act; amending K.S.A. 19-801b, 31-157, 74-5601 and 74-5622 and K.S.A. 2011 Supp. 12-1,120, 74-5602, 74-5603, 74-5605, 74-5607, 74-5607a, 74-5608a and 74-5616 and repealing the existing sections; also repealing K.S.A. 74-5618.

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

Section 1. K.S.A. 74-5601 is hereby amended to read as follows: 74-5601. The provisions of ~~K.S.A. 74-5601 to 74-5611, inclusive, and amendments thereto, K.S.A. 74-5604a, 74-5607a, 74-5609a, 74-5611a, 74-5616~~

~~and 74-5617~~ article 56 of chapter 74 of the *Kansas Statutes Annotated*, and amendments thereto, shall be known and be cited as the Kansas law enforcement training act.

Sec. 2. K.S.A. 2011 Supp. 74-5602 is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) “Training center” means the law enforcement training center within ~~the division of continuing education of~~ the university of Kansas, created by K.S.A. 74-5603, and amendments thereto.

(b) “Commission” means the Kansas commission on peace officers’ standards and training, created by K.S.A. 74-5606, and amendments thereto, *or the commission’s designee*.

(c) “~~Dean~~Chancellor” means the ~~dean of continuing education~~ *chancellor* of the university of Kansas, *or the chancellor’s designee*.

(d) “Director of police training” means the director of police training at the law enforcement training center.

(e) “Director” means the executive director of the Kansas commission on peace officers’ standards and training.

(f) “Law enforcement” means the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof.

(g) “Police officer” or “law enforcement officer” means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff’s office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858, and amendments thereto; conservation officers of the Kansas department of wildlife ~~and parks~~, *parks and tourism*; university police officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus police officers, as defined in K.S.A. 22-2401a, and amendments thereto; law enforcement agents of the director of alcoholic beverage control; law enforcement agents designated by the secretary of revenue pursuant to K.S.A. 2011 Supp. 75-5157, and amendments thereto; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol police, existing under the authority of K.S.A. 75-4503, and amendments thereto; and law enforcement officers appointed by the adjutant general pursuant to K.S.A. 48-204, and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524, and amendments thereto; school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222, and amendments thereto; the manager and employees of the horsethief reservoir benefit district pursuant to K.S.A. 2011 Supp. 82a-

2212, and amendments thereto; and the director of the Kansas commission on peace officers' standards and training and any other employee of such commission designated by the director pursuant to K.S.A. 74-5603, and amendments thereto, as a law enforcement officer. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the commissioner of juvenile justice, the secretary of corrections or the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife and parks, *parks and tourism*; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(h) "Full-time" means employment requiring at least 1,000 hours of law enforcement related work per year.

(i) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of law enforcement related work per year.

(j) "Misdemeanor crime of domestic violence" means a violation of domestic battery as provided by K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2011 Supp. 21-5414, and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

(k) "Auxiliary personnel" means members of organized nonsalaried groups ~~which~~ *who* operate as an adjunct to a police or sheriff's department, including reserve officers, posses and search and rescue groups.

(l) "Active law enforcement certificate" means a certificate which attests to the qualification of a person to perform the duties of a law enforcement officer and which has not been suspended or revoked by action of the Kansas commission on peace officers' standards and training and

has not lapsed by operation of law as provided in K.S.A. 74-5622, and amendments thereto.

Sec. 3. K.S.A. 2011 Supp. 74-5603 is hereby amended to read as follows: 74-5603. (a) There is hereby created within ~~continuing education~~ of the university of Kansas a law enforcement training center, to be located at the former site of the U.S. naval air station in Reno county. The purpose and function of such training center shall be the promotion and development of improved law enforcement personnel and procedures throughout the state, and the training center shall offer to qualified applicants, as defined in K.S.A. 74-5605, and amendments thereto, such programs and courses of instruction designed to fulfill this end. No person shall enroll in a basic course of instruction at the Kansas law enforcement training center unless the person holds a provisional law enforcement certificate.

(b) The ~~dean~~ *chancellor*, upon consultation with and approval of the commission, shall appoint a director of police training. The ~~dean~~ *chancellor* shall ~~also~~ appoint such additional personnel as deemed necessary to carry out the law enforcement training programs of the training center. Such personnel, whether administrative, instructional or research, shall be in the unclassified service under the Kansas civil service act.

(c) The director of police training shall be responsible for the administration of the training center and for the operation of the programs thereunder. The director of police training shall be responsible for determining the curriculum of the program, subject to such changes and modification as are directed by the commission. In consultation with the commission, the director of police training may prescribe a code of conduct applicable to all trainees at the Kansas law enforcement training center. Upon consultation with and approval of the commission, the director of police training is authorized to adopt such rules and regulations ~~and policies~~ as are necessary for the effective ~~operation~~ *administration* of the law enforcement training program.

(d) Kansas commission on peace officers' standards and training shall appoint a director who shall be in the unclassified service under the Kansas civil service act.

(1) The director shall serve at the pleasure of the Kansas commission on peace officers' standards and training and shall be subject to removal by vote of  $\frac{3}{4}$  of the entire commission membership.

(2) The director shall enter into contracts necessary to administer the provisions of the Kansas law enforcement training act.

(3) The director may appoint employees, agents and consultants as the director considers necessary and prescribe their duties.

(4) The director shall be a law enforcement officer. The director may designate any other employee of the Kansas commission on peace officers' standards and training as a law enforcement officer. The director

and any employee designated as a law enforcement officer by the director shall possess all powers and privileges which are now or may hereafter be given to an agent of the Kansas bureau of investigation and may exercise such powers and privileges throughout the state.

Sec. 4. K.S.A. 2011 Supp. 74-5605 is hereby amended to read as follows: 74-5605. (a) Every applicant for certification shall be an employee of a state, county or city law enforcement agency, a municipal university police officer, a railroad policeman appointed pursuant to K.S.A. 66-524, and amendments thereto; an employee of the tribal law enforcement agency of an Indian nation that has entered into a tribal-state gaming compact with this state; a manager or employee of the horsethief reservoir benefit district pursuant to K.S.A. 2011 Supp. 82a-2212, and amendments thereto; or a school security officer designated as a school law enforcement officer pursuant to K.S.A. 72-8222, and amendments thereto.

(b) Prior to admission to a course conducted at the training center or at a certified state or local law enforcement agency, ~~the applicant~~ *applicant's appointing authority or agency head* shall furnish to the director of police training *and to the commission* a statement ~~from the applicant's appointing authority or agency head certifying the applicant's fulfillment of the following requirements. The applicant certifying that the applicant has been found to meet the minimum requirements of certification established by this subsection. The commission may rely upon the statement of the appointing authority or agency head as evidence that the applicant meets the minimum requirements for certification to issue a provisional certification. Each applicant for certification shall meet the following minimum requirements:~~

~~(a)(1) is~~ Be a United States citizen;

~~(b)(2) has~~ *have* been fingerprinted and a search of local, state and national fingerprint files ~~has been~~ made to determine whether the applicant has a criminal record;

~~(c)(3) has not have~~ been convicted, ~~does not have an expunged conviction, and on and after July 1, 1995, has not been placed on diversion by any state or the federal government for a crime which is a felony or its equivalent under the uniform code of military justice of a crime that would constitute a felony under the laws of this state, a misdemeanor crime of domestic violence or a misdemeanor offense that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the commission;~~

~~(d) has not been convicted, does not have an expunged conviction, has not been placed on diversion by any state or the federal government for a misdemeanor crime of domestic violence or its equivalent under the uniform code of military justice, when such misdemeanor crime of domestic violence was committed on or after the effective date of this act;~~

~~(e) is the holder of a high school diploma or furnishes evidence of successful completion of an examination indicating an equivalent achievement;~~

(4) *have graduated from a high school accredited by the Kansas state board of education or the appropriate accrediting agency of another state jurisdiction or have obtained the equivalent of a high school education as defined by rules and regulations of the commission;*

~~(f)(5) is of~~ *be of good moral character sufficient to warrant the public trust in the applicant as a police officer or law enforcement officer;*

~~(g)(6) has completed a psychological test~~ *have completed an assessment, including psychological testing approved by the commission, to determine that the applicant does not have a mental or personality disorder that would adversely affect the ability to perform the essential functions of a police officer or law enforcement officer with reasonable skill, safety and judgment;*

~~(h)(7) is~~ *be free of any physical or mental condition which might adversely affect the applicant's performance of a police officer's or law enforcement officer's duties adversely affects the ability to perform the essential functions of a police officer or law enforcement officer with reasonable skill, safety and judgment; and*

~~(i)(8) is~~ *be at least 21 years of age.*

(c) *The commission may deny a provisional or other certification upon a finding that the applicant has engaged in conduct for which a certificate may be revoked, suspended or otherwise disciplined as provided in K.S.A. 74-5616, and amendments thereto. When it appears that grounds for denial of a certification exist under this subsection, after a conditional offer of employment has been made to an applicant seeking appointment as a police officer or law enforcement officer, the applicant's appointing authority or agency head may request an order from the commission to determine whether a provisional certification will be issued to that applicant.*

(d) *As used in this section, "conviction" includes rendering of judgment by a military court martial pursuant to the uniform code of military justice, by a court of the United States or by a court of competent jurisdiction in any state, whether or not expunged; and any diversion agreement entered into for a misdemeanor crime of domestic violence and any diversion agreement entered into on or after July 1, 1995, for a felony.*

Sec. 5. K.S.A. 2011 Supp. 74-5607 is hereby amended to read as follows: 74-5607. (a) In addition to other powers and duties prescribed by law, the commission shall adopt, in accordance with the provisions of K.S.A. 77-415 *et seq.*, and amendments thereto, rules and regulations necessary to carry out the provisions of ~~subsection (c) of K.S.A. 74-5616, and amendments thereto, and such other rules and regulations as necessary~~ *and to administer this the Kansas law enforcement training act.*

The commission may also adopt such rules of procedure or guidance documents as are necessary for conducting the business of the commission.

(b) *The commission or a designated committee or member of the commission may conduct investigations and proceedings necessary to carry out the provisions of the Kansas law enforcement training act. In all investigations, hearings or other matters pending before the commission, the commission or any person acting as a presiding officer for the commission shall have the power to:*

(1) Administer oaths and take testimony;

(2) issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the district courts. In case of the failure of any person to comply with any subpoena issued on behalf of the commission, or on the refusal of any witness to testify to any matters regarding which the witness may be lawfully ~~interrogated~~ *questioned*, the district court of any county, on application of a member of the commission, may require compliance by proceedings for contempt, as in the case of failure to comply with a subpoena issued from such court or a refusal to testify in such court. Each witness who appears before the commission by its order or subpoena, other than a state officer or employee, shall receive for such attendance the fees and mileage provided for witnesses in civil cases in courts of record which shall be audited and paid upon presentation of proper vouchers sworn to by such witnesses and approved by the chairperson of the commission or by a person or persons designated by the chairperson;

(3) enter into contracts necessary to administer the provisions of ~~this~~ *the Kansas law enforcement training act* and the certification of law enforcement officers; and

(4) assess the costs of such matters pending before the commission under this section against the governmental entity employing the police officer or law enforcement officer.

(c) Members of the commission attending meetings of the commission, or attending a ~~subcommittee~~ *committee* meeting authorized by the commission, shall be paid amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto. The ~~director~~ *commission* shall be responsible for approving all expense vouchers of members.

(d) The commission shall meet at least once each year at the training center and may hold other meetings whenever they are called by the chairperson.

(e) The commission shall adopt the rules and regulations that are necessary to ensure that law enforcement officers are adequately trained and to enforce the provisions of ~~this~~ *the Kansas law enforcement training*

act. Such rules and regulations shall include, but are not limited to, the establishment of a course of fire as a standard qualification for active law enforcement officers to carry firearms that may also be used for qualified retired officers to carry firearms pursuant to federal law. The director of police training shall provide qualification opportunities for qualified retired officers ~~at least twice a year~~ at the times and places the director determines to be necessary. The training center shall charge and collect a fee from retired state, local and federal officers for the qualification opportunities, but these fees shall be limited to the actual costs of presenting the standard qualifications course.

*(f) On and after July 1, 2012, the commission shall require fingerprinting of each applicant for certification under the Kansas law enforcement training act, and may require fingerprinting of a person who has received a certificate under the Kansas law enforcement training act prior to July 1, 2012, if such person's conduct is investigated pursuant to this section. The commission shall appoint an employee of the commission whose official duty includes seeking and maintaining confidential information as provided by this subsection. The appointed employee shall submit fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation for the purpose of verifying the identity of such applicant or certificate holder and for obtaining records of that person's criminal arrests and convictions. Upon the request of the appointed employee, the Kansas bureau of investigation and other criminal justice agencies shall provide to the appointed employee all background investigation information including criminal history record information, arrest and nonconviction data and criminal intelligence information. Such information, other than conviction data, shall be confidential and shall not be disclosed by the appointed employee, except for a purpose stated in this section. In addition to any other penalty provided by law, unauthorized disclosure of such information shall be grounds for removal from office or termination of employment.*

Sec. 6. K.S.A. 2011 Supp. 74-5607a is hereby amended to read as follows: 74-5607a. (a) The commission shall not issue a certification as a full-time police officer or law enforcement officer unless such officer has been awarded a certificate attesting to satisfactory completion of a full-time officer basic course of accredited instruction at the training center or at a certified state or local law enforcement training school or has been awarded such a certificate for not less than the number of hours of instruction required by the Kansas law enforcement training act at the time such certificate was issued or received a permanent appointment as a full-time police officer or law enforcement officer prior to July 1, 1969, or was appointed a railroad policeman pursuant to K.S.A. 66-524, and amendments thereto, on or before January 1, 1982. No person shall receive certification as a part-time police officer or law enforcement officer

unless such officer has been awarded a certificate attesting to the satisfactory completion of a part-time officer basic course of instruction in law enforcement at the training center or at a certified state or local law enforcement training school.

(b) Beginning the second year after certification, every full-time police officer or law enforcement officer shall complete annually 40 hours of *continuing* law enforcement education or training in subjects relating directly to law enforcement. Failure to complete such training shall be grounds for suspension ~~from work without pay of a certificate issued under the Kansas law enforcement training act~~ until such training is completed, *except that the commission may stay any such suspension upon a showing of hardship upon the employing law enforcement agency.* ~~The director with the approval of the~~ *commission, in consultation with the director of police training,* shall adopt rules and regulations regarding such education or training. Such education or training may include procedures for law enforcement to follow when responding to an allegation of stalking. Every city, county and state agency shall send to the director certified reports of the completion of such education or training. ~~The director~~ *commission* shall maintain a record of the reports in the central registry.

(c) Subject to the provisions of subsection (d):

(1) Any person who is appointed or elected as a police officer or law enforcement officer and who does not hold a certificate as required by subsection (a) may be issued a provisional certificate for a period of one year. ~~The director~~ *commission* may extend the one-year period for the provisional certificate if in ~~the director's~~ *commission's* determination the extension would not constitute an intentional avoidance of the requirements of subsection (a). If a person's provisional certificate expires or is revoked, the person shall not be issued another provisional certificate within one year of the expiration or revocation. A provisional certificate shall be revoked upon dismissal from any basic training program authorized by K.S.A. 74-5604a, and amendments thereto. A provisional certificate may be revoked upon voluntary withdrawal from any basic training program authorized by K.S.A. 74-5604a, and amendments thereto.

(2) Any police officer or law enforcement officer who does not complete the education or training required by subsection (b) by the date such education or training is required to have been completed shall be subject to revocation or suspension of certification and loss of the officer's office or position.

(d) ~~The director~~ *commission* may extend, waive or modify the annual continuing education requirement, when it is shown that the failure to comply with the requirements of subsection (a) or (b) was not due to the intentional avoidance of the law.

Sec. 7. K.S.A. 2011 Supp. 74-5608a is hereby amended to read as

follows: 74-5608a. (a) The ~~director~~ *commission* may, in the exercise of discretion, award a certificate to any person who has been duly certified under the laws of another state or territory if, in the opinion of the director *of police training*, the requirements for certification in such other jurisdiction equal or exceed the qualifications required to complete satisfactorily the basic course of instruction at the training center.

(b) The ~~director~~ *commission* may waive any number of the hours or courses required to complete the basic course of instruction at the training center, part-time school, reciprocity school or for the hours required for annual continuing education for any person who, in the opinion of the director *of police training*, has received sufficient training or experience that such hours of instruction ~~at the training center~~ would be, unless waived, unduly burdensome or ~~duplicitous~~ *duplicative*.

Sec. 8. K.S.A. 2011 Supp. 74-5616 is hereby amended to read as follows: 74-5616. (a) No person shall be appointed as a full-time law enforcement officer unless the person holds a full-time active law enforcement certificate or a provisional law enforcement certificate. No person shall be appointed as a part-time officer unless the person holds a full-time active law enforcement certificate, a part-time active law enforcement certificate or a provisional certificate. ~~The commission's certification shall be awarded to persons who:~~

~~(1) Received a permanent appointment as a police officer or law enforcement officer prior to July 1, 1969, or~~

~~(2) hold a permanent appointment as a police officer or law enforcement officer on July 1, 1983.~~

(b) The commission may suspend, ~~revoke, reprimand, censure condition or revoke the certification of a police officer or law enforcement officer, reprimand or censure a police officer or law enforcement officer,~~ or deny the certification of a police officer or law enforcement officer who:

(1) Fails to meet *and maintain* the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto, ~~or has met such requirements by falsifying documents or failing to disclose information required for certification;~~

(2) ~~fails to meet and maintain the minimum standards for certification adopted by the commission~~ *has knowingly submitted false or misleading documents or willfully failed to obtain any certification under the Kansas law enforcement training act;*

(3) provides false information or otherwise fails to cooperate in a commission investigation to determine a person's *continued* suitability for law enforcement certification;

(4) fails to complete the annual continuing education required by K.S.A. 74-5607a, and amendments thereto, and implementing rules and

regulations or otherwise fails to comply with the requirements of ~~this the~~ *Kansas law enforcement training act*; or

(5) ~~fails to maintain the requirements for initial certification as set forth in K.S.A. 74-5605, and amendments thereto, and any implementing rules and regulations~~ *engaged in conduct which, if charged as a crime, would constitute a felony crime under the laws of this state, a misdemeanor crime of domestic violence as defined in the Kansas law enforcement training act at the time the conduct occurred or a misdemeanor crime that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the commission;*

(6) *has used racial or other biased-based policing prohibited by K.S.A. 2011 Supp. 22-4609, and amendments thereto; or*

(7) *has engaged in unprofessional conduct as defined by rules and regulations of the commission.*

~~(e) The commission shall immediately institute proceedings to revoke the certification of any police officer or law enforcement officer convicted of, or on or after July 1, 1995, diverted for a felony under the laws of this state, another state or the United States or of its equivalent under the uniform code of military justice or convicted of or diverted for a misdemeanor crime of domestic violence under the laws of this state, another state or the United States or of its equivalent under the uniform code of military justice, when such misdemeanor crime of domestic violence was committed on or after the effective date of this act.~~

~~(d)~~(c) The procedure for the ~~public or private~~ *censure; or reprimand of a police officer or law enforcement officer, probation or ordering a condition, suspension, revocation and or denial of certification of a person as a police officer or law enforcement officer or an applicant for certification, shall be in accordance with the Kansas administrative procedure act.*

(d) *The commission may commence an emergency proceeding under the Kansas administrative procedure act to suspend the certification of any police officer or law enforcement officer who engages in conduct constituting grounds for discipline in this section and whose continued performance of duties constitutes an immediate danger to the public.*

(e) Any action of the commission pursuant to ~~subsection (d)~~ *this section* is subject to review in accordance with the Kansas judicial review act. Upon request of the commission, the attorney general shall prosecute or defend any action for review on behalf of the state, but the county or district attorney of the county where the police or law enforcement officer has been employed as such shall appear and prosecute or defend such action upon request of the attorney general or commission. The commission may elect to retain the services of a private attorney to appear and prosecute or defend any action on behalf of the commission.

Sec. 9. K.S.A. 74-5622 is hereby amended to read as follows: 74-5622. (a) Certification by the commission will remain active for a period of five years after leaving employment as a law enforcement officer. Certification which has lapsed due to more than five years since employment as a law enforcement officer may be reinstated if the applicant, within one year of reappointment:

(1) Satisfactorily completes the current basic training required under K.S.A. 74-5607a, and amendments thereto;

(2) passes a written competency test and firearms proficiency qualification course developed and administered by the Kansas law enforcement training center; or

(3) obtains from the ~~director~~ *commission* pursuant to subsection (b) of K.S.A. 74-5608a, and amendments thereto, a waiver based on the training, experience and circumstances of the applicant.

(b) ~~The provisions of this section shall be part of and supplemental to the Kansas law enforcement training act.~~

*A person whose certificate issued under the Kansas law enforcement training act has been suspended or revoked may petition the commission to reinstate the certificate. The commission may reinstate a suspended or revoked certificate upon a finding that the petitioner is otherwise qualified for certification under the Kansas law enforcement training act and is sufficiently rehabilitated to warrant the public trust. The burden shall be upon the petitioner to establish rehabilitation by clear and convincing evidence. In determining whether a petitioner is sufficiently rehabilitated to warrant the public trust, the commission may consider any relevant evidence, and may, but shall not be required, to consider the following factors:*

(1) *The present moral fitness of the petitioner for performance of duties as a police officer or law enforcement officer;*

(2) *the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought upon the law enforcement profession and the administration of justice;*

(3) *the extent of the petitioner's rehabilitation;*

(4) *the nature and seriousness of the original misconduct;*

(5) *the conduct subsequent to discipline;*

(6) *the time elapsed since the original discipline; and*

(7) *the petitioner's character, maturity and experience at the time of the original revocation.*

Sec. 10. K.S.A. 2011 Supp. 12-1,120 is hereby amended to read as follows: 12-1,120. (a) Each person holding office as chief of police of any city in this state shall be fingerprinted as provided by this section.

(b) Before assuming the office of chief of police of any city in this state, a person shall be fingerprinted as provided by this section.

(c) Fingerprinting pursuant to this section shall be done by the law

enforcement agency of the city in the presence of the city clerk. The city clerk shall forthwith forward the fingerprints to the Kansas bureau of investigation for a search of state and national fingerprint files to determine whether the person qualifies for admission to the law enforcement training center pursuant to ~~subsection (e) of K.S.A. 74-5605~~ *subsection (f) of K.S.A. 74-5607*, and amendments thereto. The Kansas bureau of investigation shall certify any conviction record of the person, or lack thereof, found as a result of such search to the city clerk and, if such a record is found, to the attorney general.

(d) Fingerprints taken and submitted pursuant to this section shall be on forms approved by the attorney general.

(e) The cost of a search of fingerprint files pursuant to this section shall be paid by the person being fingerprinted.

Sec. 11. K.S.A. 19-801b is hereby amended to read as follows: 19-801b. (a) No person shall be eligible for nomination, election or appointment to the office of sheriff unless such person:

(1) Is a citizen of the United States and a qualified elector of the county;

(2) possesses a high-school education or its recognized equivalent; and

(3) has never been convicted of or pleaded guilty or entered a plea of *nolo contendere* to any felony charge, a misdemeanor crime of domestic violence as defined in K.S.A. 74-5602, and amendments thereto, or to any violation of any federal or state laws or city ordinances relating to gambling, liquor or narcotics.

(b) Every person elected to the office of sheriff for the first time, or anyone reelected or appointed to the office after having been out of the office for five years or more shall be required to attend the law enforcement training center as established by K.S.A. 74-5601 *et seq.*, and amendments thereto, and satisfactorily complete the required training course of not less than 320 hours, unless such person has satisfactorily completed such training course within the five years prior to election or appointment, passes a written competency test and firearms proficiency qualification course developed and administered by the Kansas law enforcement training center or unless the ~~director~~ *commission*, as defined in subsection ~~(d)~~ *(b)* of K.S.A. 74-5602, and amendments thereto, waives the requirements of this subsection as provided in K.S.A. 74-5608a, and amendments thereto. Unless the requirements are waived, any person elected or appointed to the office of sheriff who has not attended the law enforcement training center shall hold office on a provisional basis, and such person shall attend the next scheduled training program at the law enforcement training center and satisfactorily complete such training program or the one subsequent to it, or shall forfeit such office.

(c) Each newly elected sheriff of each county who is required to at-

tend the law enforcement training center shall be hired as a deputy sheriff and shall be paid a salary as deputy sheriff while attending the law enforcement training center. The tuition, board, room and travel expense for the sheriff-elect at the law enforcement training center shall be paid by the county.

Sec. 12. K.S.A. 31-157 is hereby amended to read as follows: 31-157.

(a) The state fire marshal, the state fire marshal's deputies and full-time fire prevention personnel assigned investigation duties who are members of a paid fire department who have been certified by the state fire marshal pursuant to this section shall have the authority to make arrests, carry firearms and conduct searches and seizures while investigating any fire or explosion in which arson or attempted arson is suspected or in which there is an attempt or suspected attempt to defraud an insurance company. Any affidavits necessary to authorize arrests, searches or seizures pursuant to this section shall be made in accordance with K.S.A. 22-2302 and 22-2502, and amendments thereto.

(b) The state fire marshal, with the assistance of an advisory committee appointed pursuant to K.S.A. 31-135, and amendments thereto, shall adopt rules and regulations and specify the number of investigators for departments or areas and establish standards for certification of members of fire departments to make arrests, carry firearms and conduct searches and seizures pursuant to this section. No fire department personnel shall be certified to carry firearms under the provisions of this act without having first successfully completed the firearm training course or courses prescribed for law enforcement officers under K.S.A. ~~74-5604~~ 74-5604a, and amendments thereto.

(c) With the exception of firearms training, nothing in this section shall be construed to require persons employed prior to the effective date of this act to comply with the standards established by the state fire marshal pursuant to this section as a condition of continued employment, and such persons' failure to comply with such standards shall not make such persons ineligible for any promotional examination for which they are otherwise eligible or affect in any way any pension rights to which they are entitled on the effective date of this act.

Sec. 13. K.S.A. 19-801b, 31-157, 74-5601, 74-5618 and 74-5622 and K.S.A. 2011 Supp. 12-1,120, 74-5602, 74-5603, 74-5605, 74-5607, 74-5607a, 74-5608a and 74-5616 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 6, 2012.

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## CHAPTER 90

House Substitute for SENATE BILL No. 74

AN ACT concerning civil procedure; relating to social and rehabilitation services; amending K.S.A. 60-1501 and repealing the existing section.

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

New Section 1. (a) Any patient in the custody of the secretary of social and rehabilitation services pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto, prior to filing any civil action naming as the defendant pursuant to the rules of civil procedure, the state of Kansas, any political subdivision of the state of Kansas, any public official, the secretary of social and rehabilitation services or an employee of the department of social and rehabilitation services, while such employee is engaged in the performance of such employee's duty, shall be required to have exhausted such patient's administrative remedies, established by procedures adopted pursuant to subsection (d) of K.S.A. 59-29a22, and amendments thereto, concerning such civil action. Upon filing a petition in a civil action, such patient shall file with such petition proof that the administrative remedies have been exhausted.

(b) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:

(1) The allegation of poverty is untrue, notwithstanding the fact that a filing fee, or any portion thereof has been paid; or

(2) the action or appeal:

(A) Is frivolous or malicious;

(B) fails to state a claim on which relief may be granted; or

(C) seeks monetary relief against a defendant who is immune from such relief.

(c) In no event shall such patient bring a civil action or appeal a judgment in a civil action or proceeding under this section if such patient has, on three or more prior occasions, while in the custody of the secretary of social and rehabilitation services pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto, brought an action or appeal in a court of the state of Kansas or of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless the patient is under imminent danger of serious physical injury.

(d) The provisions of this section shall not apply to a writ of *habeas corpus*.

Sec. 2. K.S.A. 60-1501 is hereby amended to read as follows: 60-1501. (a) Subject to the provisions of K.S.A. 60-1507, and amendments thereto, any person in this state who is detained, confined, or restrained of liberty on any pretense whatsoever, and any parent, guardian, or next friend for

the protection of infants or allegedly incapacitated or incompetent persons, physically present in this state may prosecute a writ of *habeas corpus* in the supreme court, court of appeals or the district court of the county in which such restraint is taking place. No docket fee shall be required, as long as the petitioner complies with the provisions of subsection (b) of K.S.A. 60-2001, and amendments thereto.

(b) Except as provided in K.S.A. 60-1507, and amendments thereto, an inmate in the custody of the secretary of corrections shall file a petition for writ pursuant to subsection (a) within 30 days from the date the action was final, but such time is extended during the pendency of the inmate's timely attempts to exhaust such inmate's administrative remedies.

(c) *Except as provided in K.S.A. 60-1507, and amendments thereto, a patient in the custody of the secretary of social and rehabilitation services pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall file a petition for writ pursuant to subsection (a) within 30 days from the date the action was final, but such time is extended during the pendency of the patient's timely attempts to exhaust such patient's administrative remedies.*

Sec. 3. K.S.A. 60-1501 is hereby repealed.

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

Approved April 6, 2012.

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## CHAPTER 91

Substitute for SENATE BILL No. 397  
(Amended by Chapters 114, 165 and 166)

AN ACT providing for a change in terminology in the statutes from the terms mental retardation, handicap and similar terms to the term intellectual disability and similar terms; amending K.S.A. 17-1762, 19-4001, 19-4002, 19-4002a, 19-4002b, 19-4003, 19-4004, 19-4005, 19-4007, 19-4009, 19-4010, 19-4011, 39-927, 39-971, 39-1001, 39-1002, 39-1005, 39-1006, 39-1007, 39-1201, 39-1202, 39-1205, 39-1207, 39-1803, 58-24a16, 59-2946, 59-2972, 59-3077, 65-5a14, 65-3501, 65-4202, 65-4212, 65-4411, 65-4412, 65-4413, 65-4414, 65-4415, 65-5601, 72-6203, 74-8917, 75-4375, 75-5399, 75-6508, 76-12b01, 76-12b02, 76-12b03, 76-12b07, 76-12b11 and 76-17c01 and K.S.A. 2011 Supp. 12-1675, 21-5417, 21-6622, 39-923, 39-936, 39-1401, 39-1702, 40-3401, 50-676, 65-180, 65-1124, 65-1626, 65-4915, 65-4921, 65-6805, 72-962, 74-5344, 75-4265, 75-5321a, 75-6506, 75-6609, 75-6610, 75-7303 and 79-3606 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 79-3606g.

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

New Section 1. It is hereby declared to be the official policy of the state of Kansas that the term "intellectual disability" be used in place of the term "mental retardation" and the term "person or people with intellectual disability" be used in place of the term "mentally retarded."

Whenever the term “mental retardation” or “retardation” appears in the Kansas administrative regulations, state agencies are hereby directed to read and use the term “intellectual disability.” State agencies are further directed that, in the normal course of conducting their planned updates or changes to language in rules and regulations, agencies update the terminology of their rules and regulations to be consistent with this policy. The changes to the new policy and new terminology can take place as rules and regulations are naturally updated.

Sec. 2. K.S.A. 2011 Supp. 12-1675 is hereby amended to read as follows: 12-1675. (a) The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen’s relief association, community mental health center, community facility for ~~the mentally retarded~~ *people with intellectual disability* or any other governmental entity, unit or subdivision in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute.

(b) Such moneys shall be invested only:

(1) In temporary notes or no-fund warrants issued by such investing governmental unit;

(2) in savings deposits, time deposit, open accounts, certificates of deposit or time certificates of deposit with maturities of not more than two years: (A) In banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit; or (B) if no main or branch office of a bank, savings and loan association or savings bank is located in such investing governmental unit, then in banks, savings and loan associations and savings banks, which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located;

(3) in repurchase agreements with: (A) Banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or (B)(i) if no main or branch office of a bank, savings and loan association or savings bank, is located in such investing governmental unit; or (ii) if no such bank, savings and loan association or savings bank having a main or branch office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks which have main or branch offices in the county or counties in which all or part

of such investing governmental unit is located; or (C) if no bank, savings and loan association or savings bank, having a main or branch office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks located within this state;

(4) in United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with banks, savings and loan associations and savings banks; the federal reserve bank of Kansas City, Missouri; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer engaged in the business of selling government securities which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-12a401, and amendments thereto;

(5) in the municipal investment pool fund established in K.S.A. 12-1677a, and amendments thereto;

(6) in the investments authorized and in accordance with the conditions prescribed in K.S.A. 12-1677b, and amendments thereto;

(7) in multiple municipal client investment pools managed by the trust departments of banks which have main or branch offices located in the county or counties where such investing governmental unit is located or with trust companies incorporated under the laws of this state which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with banks which have main or branch offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Pooled investments of public moneys made by trust departments under this paragraph shall be subject to the same terms, conditions and limitations as are applicable to the municipal investment pool established by K.S.A. 12-1677a, and amendments thereto; or

(8) municipal bonds or other obligations issued by any municipality of the state of Kansas as defined in K.S.A. 10-1101, and amendments thereto, which are general obligations of the municipality issuing the same.

(c) The investments authorized in paragraphs (4), (5), (6), (7) or (8) of subsection (b) shall be utilized only if the banks, savings and loan associations and savings banks eligible for investments authorized in paragraph (2) of subsection (b), cannot or will not make the investments authorized in paragraph (2) of subsection (b) available to the investing governmental unit at interest rates equal to or greater than the investment

rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto.

(d) In selecting a depository pursuant to paragraph (2) of subsection (b), if a bank, savings and loan association or savings bank eligible for an investment deposit thereunder has an office located in the investing governmental unit and such financial institution will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and such financial institution otherwise qualifies for such deposit, the investing governmental unit shall select one or more of such eligible financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the investing governmental unit may select for such deposits one or more eligible banks, savings and loan associations or savings banks which have offices in the county or counties in which all or a part of such investing governmental unit is located which will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and which otherwise qualify for such deposits.

(e) (1) All security purchases and repurchase agreements shall occur on a delivery versus payment basis.

(2) All securities, including those acquired by repurchase agreements, shall be perfected in the name of the investing governmental unit and shall be delivered to the purchaser or a third-party custodian which may be the state treasurer.

(f) Public moneys deposited pursuant to subsection (b)(2) of K.S.A. 12-1675, and amendments thereto, by the governing body of any governmental unit listed in subsection (a) of K.S.A. 12-1675, and amendments thereto, through a selected bank, savings and loan association or savings bank which is part of a reciprocal deposit program in which the bank, savings and loan association or savings bank:

(1) Receives reciprocal deposits from other participating institutions located in the United States in an amount equal to the amount of funds deposited by the municipal corporation or quasi-municipal corporation; and

(2) for which the total cumulative amount of each deposit does not exceed the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation.

Such deposits shall not be treated as securities and need not be secured as provided in this or any other act.

Sec. 3. K.S.A. 17-1762 is hereby amended to read as follows: 17-1762. The following persons shall not be required to register with the secretary of state:

(a) State educational institutions under the control and supervision of the state board of regents, unified school districts, educational interlocals, educational cooperatives, area vocational-technical schools, all educational institutions that are accredited by a regional accrediting association or by an organization affiliated with the national commission of accrediting, any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution confining its solicitation of contributions to the student body, alumni, faculty and trustees of such institution, and their families, or a library established under the laws of this state, provided that the annual financial report of such institution or library shall be filed with the attorney general;

(b) fraternal, patriotic, social, educational, alumni organizations and historical societies when solicitation of contributions is confined to their membership. This exemption shall be extended to any subsidiary of a parent or superior organization exempted by this subsection where such solicitation is confined to the membership of the subsidiary, parent or superior organization;

(c) persons requesting any contributions for the relief or benefit of any individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary, first deducting reasonable expenses for costs of banquets, or social gatherings, if any, provided all fund raising functions are carried on by persons who are unpaid, directly or indirectly, for such services;

(d) any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of \$10,000 during such organization's tax period, as defined by K.S.A. 17-7501, and amendments thereto, if all of such organization's fund-raising functions are carried on by persons who are unpaid for such services. However, if the gross contributions received by such charitable organization during any such tax period is in excess of \$10,000, such organization, within 30 days after the end of such tax period, shall register with the secretary of state as provided in K.S.A. 17-1763, and amendments thereto;

(e) any incorporated community chest, united fund, united way or any charitable organization receiving an allocation from an incorporated community chest, united fund or united way;

(f) a *bona fide* organization of volunteer firemen, or a *bona fide* auxiliary or affiliate of such organization, if all fund-raising activities are carried on by members of such organization or an affiliate thereof and such members receive no compensation, directly or indirectly, therefor;

(g) any charitable organization operating a nursery for infants awaiting adoption if all fund-raising activities are carried on by members of such an organization or an affiliate thereof and such members receive no compensation, directly or indirectly, therefor;

(h) any corporation established by the federal congress that is required by federal law to submit annual reports of such corporation's ac-

tivities to congress containing itemized accounts of all receipts and expenditures after being duly audited by the department of defense or other federal department;

(i) any girls' club which is affiliated with the girls' club of America, a corporation chartered by congress, if such an affiliate properly files the reports required by the girls' club of America and that the girls' club of America files with the government of the United States the reports required by such federal charter;

(j) any boys' club which is affiliated with the boys' club of America, a corporation chartered by congress, if such an affiliate properly files the reports required by the boys' club of America and that the boys' club of America files with the government of the United States the reports required by such federal charter;

(k) any corporation, trust or organization incorporated or established for religious purposes, or established for charitable, hospital or educational purposes and engaged in effectuating one or more of such purposes, that is affiliated with, operated by or supervised or controlled by a corporation, trust or organization incorporated or established for religious purposes, or to any other religious agency or organization which serves religion by the preservation of religious rights and freedom from persecution or prejudice or by fostering religion, including the moral and ethical aspects of a particular religious faith;

(l) the boy scouts of America and the girl scouts of America, including any regional or local organization affiliated therewith;

(m) the young men's christian association and the young women's christian association, including any regional or local organization affiliated therewith;

(n) any licensed medical care facility which is organized as a nonprofit corporation under the laws of this state;

(o) any licensed community mental health center or licensed mental health clinic;

(p) any licensed community ~~mental retardation~~ center *for people with intellectual disability* and its affiliates as determined by the department of social and rehabilitation services;

(q) any charitable organization of employees of a corporation whose principal gifts are made to an incorporated community chest, united fund or united way, and whose solicitation is limited to such employees;

(r) any community foundation or community trust to which deductible contributions can be made by individuals, corporations, public charities and private foundations, as well as other charitable organizations and governmental agencies for the overall purposes of the foundation or to particular charitable and endowment funds established under agreement with the foundation or trust for the charitable benefit of the people of a specific geographic area and which is a nonprofit organization exempt from federal income taxation pursuant to section 501(a) of the internal

revenue code of 1986, as in effect on the effective date of this act, by reason of qualification under section 501(c)(3) of the internal revenue code of 1986, as in effect on the effective date of this act, and which is deemed a publicly supported organization and not a private foundation within the meaning of section 509(a)(1) of the internal revenue code of 1986, as in effect on the effective date of this act;

(s) any charitable organization which does not intend to or does not actually solicit or receive contributions from more than 100 persons;

(t) any charitable organization the funds of which are used to support an activity of a municipality of this state; and

(u) the junior league, including any local community organization affiliated therewith.

Sec. 4. K.S.A. 19-4001 is hereby amended to read as follows: 19-4001. The board of county commissioners of any county or the boards of county commissioners of two ~~(2)~~ or more counties jointly may establish a community mental health center, ~~and/or~~ community facility for ~~the mentally retarded~~ *people with intellectual disability, or both*, which shall be organized, operated, and financed according to the provisions of this act. The mental health center may render the following mental health services: Out-patient and inpatient diagnostic and treatment services; rehabilitation services to individuals returning to the community from an inpatient facility; consultative services to schools, courts, health and welfare agencies, both public and private, and conducting, in collaboration with other agencies when practical, in-service training for students entering the mental health professions, educational programs, information and research. The community facilities for ~~the mentally retarded~~ *people with intellectual disability* may render, and ~~a mental retardation~~ *an intellectual disability* governing board which contracts with nonprofit corporations to provide services for ~~the mentally retarded~~ *people with intellectual disability* may provide, the following services: Pre-school, day care, work activity, sheltered workshops, sheltered domiciles, parent and community education and, in collaboration with other agencies when practical, clinical services, rehabilitation services, in-service training for students entering professions dealing with the above aspects of ~~mental retardation~~ *intellectual disability*, information and research. It may establish consulting ~~and/~~ or referral services, *or both*, in conjunction with related community health, education, and welfare services.

No community mental health center, ~~and/or~~ facility for ~~the mentally retarded~~ *people with intellectual disability, or both*, shall be established in ~~said~~ *such* community after the effective date of this act unless and until the establishment of the same has been approved by the secretary of social and rehabilitation services.

Sec. 5. K.S.A. 19-4002 is hereby amended to read as follows: 19-4002. (a) (1) Except as provided by K.S.A. 19-4002a and 19-4002b, and amend-

ments thereto, every county which establishes a mental health center or facility for ~~the mentally retarded~~ *people with intellectual disability* shall establish a community mental health or ~~mental retardation~~ *intellectual disability* governing board. Every county which wants to establish such board for the purpose of allowing such board to contract with a nonprofit corporation to provide services for ~~the mentally retarded~~ *people with intellectual disability* may establish a ~~mental retardation~~ *intellectual disability* governing board in accordance with the provisions of this section. Any board established under this subsection shall be referred to as the governing board. The governing board shall be composed of not less than seven members. The members of such governing board shall be appointed by and shall serve at the pleasure of the board of county commissioners of the county.

(2) When two or more counties desire to establish a mental health center or facility for ~~the mentally retarded~~ *people with intellectual disability*, the chairperson of the board of the county commissioners of each participating county shall appoint two members to a selection committee, which committee shall select the first governing board. Each participating county shall have at least one representative on such board.

(b) Membership of each governing board, as nearly as possible, shall be representative of public health, medical profession, the judiciary, public welfare, hospitals, mental health organizations and ~~mental retardation~~ *organizations for people with intellectual disability*, education, rehabilitation, labor, business and civic groups and the general public. The governing board of a mental health center also shall include consumers of mental health services or representatives of mental health consumer groups and shall include family members of mentally ill persons.

(c) If the board of county commissioners desires to provide both mental health services and services for ~~the mentally retarded~~ *people with intellectual disability* in accordance with the provisions of this act, and determine it is more practical to establish a single governing board for mental health services and ~~mental retardation~~ *facilities for people with intellectual disability*, the board of commissioners may establish a single board. If the board of county commissioners determine that separate boards are more practical, the board of county commissioners may establish a governing board for a mental health center and a separate board for ~~mental retardation~~ *facilities for people with intellectual disability*.

Sec. 6. K.S.A. 19-4002a is hereby amended to read as follows: 19-4002a. (a) (1) In lieu of appointing a governing board as provided by K.S.A. 19-4002, and amendments thereto, the board of county commissioners of Sedgwick county may serve as the community mental health or ~~mental retardation~~ *intellectual disability* governing board for Sedgwick county.

(2) In lieu of appointing a governing board as provided by K.S.A. 19-

4002, and amendments thereto, the unified government board of commissioners of Wyandotte county may serve as the community mental health or ~~mental retardation~~ *intellectual disability* governing board for Wyandotte county.

(b) If the board of county commissioners or the unified government board of commissioners elects to serve as the governing board pursuant to this section, the board of county commissioners or the unified government board of commissioners shall appoint a mental health and ~~mental retardation~~ *intellectual disability* advisory board of not less than seven members. Members of the advisory board shall serve at the pleasure of the board making their appointment. Membership of the advisory board shall include consumers of mental health services *and services for people with intellectual disability* or representatives of mental health consumer groups *and consumer groups for people with intellectual disability* and shall include family members of mentally ill persons *and people with intellectual disability* and, as nearly as possible, shall be representative of public health, medical profession, the judiciary, public welfare, hospitals and mental health organizations *and organizations for people with intellectual disability* and education, rehabilitation, labor, business and civic groups.

(c) The board of county commissioners or the unified government board of commissioners, as the mental health or ~~mental retardation~~ *intellectual disability* governing board, shall seek the recommendations of the mental health and ~~mental retardation~~ *intellectual disability* advisory board prior to adopting the annual plan and budget for county mental health and ~~retardation~~ *programs for people with intellectual disability* .

Sec. 7. K.S.A. 19-4002b is hereby amended to read as follows: 19-4002b. (a) In lieu of appointing a governing board as provided by K.S.A. 19-4002 and amendments thereto, the board of county commissioners of Johnson county may serve as the community mental health or ~~mental retardation~~ *intellectual disability* governing board for Johnson county.

(b) If the board of county commissioners elects to serve as the governing board pursuant to this section, the board of county commissioners shall appoint a mental health and ~~mental retardation~~ *intellectual disability* advisory board of not less than seven members. Members of the advisory board shall serve at the pleasure of the board of county commissioners. Membership of the advisory board shall include consumers of mental health services *and services for people with intellectual disability* or representatives of mental health consumer groups *and consumer groups for people with intellectual disability* and shall include family members of mentally ill persons *and people with intellectual disability* and, as nearly as possible, shall be representative of public health, medical profession, the judiciary, public welfare, hospitals and mental health organizations

and organizations for people with intellectual disability and education, rehabilitation, labor, business and civic groups.

(c) The board of county commissioners, as the mental health or ~~mental retardation~~ *intellectual disability* governing board, shall seek the recommendations of the mental health and ~~mental retardation~~ *intellectual disability* advisory board prior to adopting the annual plan and budget for county mental health and ~~retardation~~ *programs for people with intellectual disability*.

Sec. 8. K.S.A. 19-4003 is hereby amended to read as follows: 19-4003. The duties of the governing boards shall include: (a) Election from its members of a chairman, a vice-chairman, a secretary and a treasurer, who shall hold office for a term of one (~~1~~) year. Such treasurer shall give bond to be approved by the board of county commissioners of the county in which the mental health center ~~and/or~~ facilities for ~~the mentally retarded~~ *people with intellectual disability, or both*, are located or the board of county commissioners which created a governing board to contract with a nonprofit corporation to provide services for ~~the mentally retarded~~ *people with intellectual disability* for the safekeeping and the disbursements of all funds that may come into ~~his or her~~ *such treasurer's* hands. All money provided for mental health ~~and/or~~ ~~mental retardation~~ *intellectual disability* purposes under the provisions of this act shall, when collected, be paid over to the treasurer of ~~said~~ *the* governing board for the purposes of this act. Such governing board shall have exclusive control over the expenditures of all moneys paid to the credit of its treasurer under the provisions of this act, and no money shall be paid therefrom, except upon vouchers signed by the treasurer and on order of the governing board.

(b) Formulating and establishing policies for the operation of the mental health center ~~and/or~~ facilities for ~~the mentally retarded~~ *people with intellectual disability, or both*, and employment of personnel if the governing board operates a mental health center or facility for ~~the mentally retarded~~ *people with intellectual disability, or both*.

(c) Annually reviewing, evaluating and reporting of community mental health ~~and~~ ~~mental retardation~~ *services and services for people with intellectual disability* provided by the center pursuant to this act to such board or boards of county commissioners.

(d) Preparing and submitting the annual plan and budget and making recommendations thereon.

Sec. 9. K.S.A. 19-4004 is hereby amended to read as follows: 19-4004. In all counties wherein the board or boards of county commissioners in the event of a combination of counties has established a governing board, the respective board or boards of county commissioners may levy an annual tax upon all taxable tangible property in such county for mental health services and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto,

by cities located in the county. The respective board or boards of county commissioners may also levy an additional annual tax upon all taxable tangible property in such county for ~~mental retardation~~ *intellectual disability* services and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. The additional levy authorized by this section for ~~mental retardation~~ *intellectual disability* services shall not be made until a notice of intent to make such levy has been published in a newspaper of general circulation in the county or counties involved by the board or boards of county commissioners proposing to make such levy, and such notice shall state that if a petition signed by 5% of the electors of the county shall file a protest petition within 60 days of the date of such publication a proposition will be submitted at an election called for the purpose in the county for approval of the levy; if such proposition is approved or if no sufficient protest is made, then the board or boards of county commissioners shall levy such tax, but if a sufficient protest is made and such proposition is not approved, the levy will not be made. The proceeds thereof shall be placed in the hands of the appropriate governing board to be administered as provided by this act.

In addition thereto, to provide for the purchase of or the construction of facilities for the community mental health center, ~~and/or facility for the mentally retarded~~ *people with intellectual disability, or both*, the board or boards of county commissioners ~~may~~, upon petition of the governing board, *may* levy an annual tax on all taxable tangible property in their county and to issue and sell general obligation bonds of such county, for the purpose of creating and providing a special fund to be used in acquiring a site for, and the building, equipping, repairing, remodeling and furnishing of a community mental health center, ~~and/or facilities for the mentally retarded~~ *people with intellectual disability, or both*, or for any one or more of such purposes. The additional levy authorized by this section shall not be made until a notice of intent to make such levy has been published in a newspaper of general circulation in the county or counties involved by the board or boards of county commissioners proposing to make such levy, and such notice shall state that if a petition signed by 5% of the electors of the county shall file a protest petition within 60 days of the date of such publication a proposition will be submitted at an election called for the purpose in the county for approval of the levy; if such proposition is approved or if no sufficient protest is made, then the board of county commissioners will make the levy of such tax, but if a sufficient protest is made and such proposition is not approved, the levy will not be made. The board of county commissioners shall proceed in the manner prescribed to be followed in such notice. The tax levy may be made annually until sufficient funds have been created for the purpose or purposes, or if the county has issued and sold general obligation bonds, the proceeds raised by the annual tax levy shall be used to

retire the general obligation bonds and the tax levy shall continue until the general obligation bonds have been retired. Such federal, state or private funds as may be available may be accepted by the board of county commissioners to be placed in the fund for operation of or construction of a community mental health center, ~~and/or facility for the mentally retarded~~ *people with intellectual disability, or both*, as the case may be. Title to the building or buildings of the community mental health center, ~~and/or facility for the mentally retarded~~ *people with intellectual disability, or both*, shall vest in the governing board which is responsible for the maintenance and operation of the facilities if a combination of counties has established the center, but, if only one county has established the mental health center or facilities for ~~the mentally retarded~~ *people with intellectual disability*, title shall vest in the board of county commissioners of such county. If the board of county commissioners has contracted with a nonprofit corporation to provide mental health services under K.S.A. 19-4007, and amendments thereto, the title to the building or buildings ~~may~~, in the discretion of the board of county commissioners, *may* vest in the board of county commissioners or the nonprofit corporation providing mental health services, and the board of county commissioners may allow the nonprofit corporation to use the buildings without charge.

Sec. 10. K.S.A. 19-4005 is hereby amended to read as follows: 19-4005. ~~Said~~ *The governing board may establish a schedule of charges for services to persons using* ~~said the community mental health center, and/or mental retardation facilities,~~ *or facilities for people with intellectual disability, or both*, but no person shall be denied the services of ~~said the mental health center and/or facilities for the mentally retarded~~ *people with intellectual disability* because of inability to pay for the same.

Sec. 11. K.S.A. 19-4007 is hereby amended to read as follows: 19-4007. (a) If the board or boards of county commissioners desire to provide either mental health services or services for ~~the mentally retarded~~ *people with intellectual disability*, or both such services, and to levy the taxes authorized in K.S.A. 19-4004, ~~or any~~ *and* amendments thereto, but determine that it is more practicable to contract for such services with a nonprofit corporation, such board or boards may contract with the nonprofit corporation to provide either mental health services or services for ~~the mentally retarded~~ *people with intellectual disability*, or both such services, for the residents of ~~said the~~ *county or counties*. In lieu of contracting with a nonprofit corporation to provide services for ~~the mentally retarded~~ *people with intellectual disability*, a board of county commissioners may establish ~~a mental retardation~~ *an intellectual disability* governing board for the purpose of allowing this board to contract for and on behalf of the board of county commissioners with a nonprofit corporation to provide services for ~~the mentally retarded~~ *people with intellectual disability*. The board or boards entering into such a contract with a

nonprofit corporation, or the ~~mental-retardation~~ *intellectual disability* governing board authorized to contract with a nonprofit corporation under this section, are hereby authorized to pay the amount agreed upon in such contract from the proceeds of the tax or taxes levied pursuant to K.S.A. 19-4004, ~~or any and~~ amendments thereto, for mental health services or ~~mental-retardation~~ *intellectual disability* services, or for both such services. ~~Said~~ The nonprofit corporation may not deny service to anyone because of inability to pay for the same, but ~~said~~ the nonprofit corporation may establish a schedule of charges for services to those who are financially able to pay for such services. ~~Said~~ The nonprofit corporation shall annually provide ~~said~~ the board or boards of county commissioners with a complete financial report showing the amount of fees collected, the amount of tax money received under ~~said~~ the contract, and any other income. The financial report shall also show the nonprofit corporation's disbursements, including salaries paid to each person employed by ~~said~~ the nonprofit corporation. No such nonprofit corporation shall be organized to receive public funds raised through taxation or public solicitation, or both, unless and until the establishment of the same has been approved by the secretary of social and rehabilitation services. The governing board of all such nonprofit corporations shall report annually to the secretary of social and rehabilitation services, in such form as may be required on the activities of the mental health center, or community facility for ~~the mentally-retarded~~ *people with intellectual disability*.

(b) If the board or boards of county commissioners desire to provide services for ~~the mentally-retarded~~ *people with intellectual disability* and to levy the tax authorized in K.S.A. 19-4004, ~~or any and~~ amendments thereto, for ~~mental-retardation~~ *intellectual disability* services, but determine that it is more practicable to transfer the proceeds from such tax levy or a portion thereof to a state agency operating a program established under the federal social security act whereby the funds will be eligible for federal financial participation in the purchase of services for eligible persons in facilities for ~~the mentally-retarded~~ *people with intellectual disability*, the board or boards are hereby authorized to transfer such proceeds, or a portion thereof, to any such state agency to purchase services in facilities for ~~the mentally-retarded~~ *people with intellectual disability*.

Sec. 12. K.S.A. 19-4009 is hereby amended to read as follows: 19-4009. Nothing contained in this act shall be construed as repealing any existing law nor as affecting any mental health center or facilities for ~~the mentally-retarded~~ *people with intellectual disability* established by any county under any other law prior to the effective date of this act except as herein otherwise specifically provided; but no county which has heretofore established or shall hereafter establish under any other law a mental health center or facilities for ~~the mentally-retarded~~ *people with intellectual disability* shall make a tax levy under such other law for a mental

health center or facilities for ~~the mentally retarded~~ *people with intellectual disability* if it shall establish either singly or jointly a mental health center under the provisions of this act.

Sec. 13. K.S.A. 19-4010 is hereby amended to read as follows: 19-4010. The board of county commissioners of any county which is not a part of a community mental health center is hereby authorized to contract with a community mental health center ~~and/or~~ community facilities for ~~the mentally retarded~~ *people with intellectual disability, or both*, organized in accordance with the provisions of K.S.A. 19-4001 *et seq.*, and ~~any~~ amendments thereto, for such mental health services ~~and/or mental retardation~~ *or intellectual disability services, or both*, for the residents of such county as may be mutually agreeable between the governing board of the center ~~and/or~~ community facilities for ~~the mentally retarded~~ *people with intellectual disability, or both*, and the county commissioners, requesting the services for the residents thereof. Such an agreement may provide for out-patient and treatment services, rehabilitation services, consultative services and other services assented to by both parties. The consideration for such services shall not in any case exceed in amount the revenue that will be derived from the tax levy authorized by K.S.A. 19-4011, *and amendments thereto*. Such agreement may be for a term of not exceeding five ~~(5)~~ years, but may be renewed from time to time.

Sec. 14. K.S.A. 19-4011 is hereby amended to read as follows: 19-4011. The county commissioners of a county entering into such an agreement with a community mental health center is hereby authorized to levy an annual tax upon all of the taxable tangible property in such county for the purpose of providing revenue to pay for the mental health services contracted for with the center and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. The county commissioners of a county entering into such an agreement with a community facility for ~~the mentally retarded~~ *people with intellectual disability* is hereby authorized to levy an annual tax upon all of the taxable tangible property in such county for the purpose of providing revenue to pay for ~~the mental retardation~~ *intellectual disability* services contracted for with the facility and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. Upon receipt of such tax moneys, the county commissioners shall pay the amount agreed upon to the governing body of the center ~~and/or~~ community facilities for ~~the mentally retarded~~ *people with intellectual disability, or both*, and the governing body is authorized to receive and expend such moneys to provide community mental health services.

Sec. 15. K.S.A. 2011 Supp. 21-5417 is hereby amended to read as

follows: 21-5417. (a) Mistreatment of a dependent adult is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult;

(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense; or

(3) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of a dependent adult.

(b) Mistreatment of a dependent adult as defined in:

(1) Subsection (a)(1) is a severity level 5, person felony;

(2) subsection (a)(2) if the aggregate amount of the value of the resources is:

(A) \$1,000,000 or more is a severity level 2, person felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, person felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, person felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 5, person felony;

(E) at least \$1,000 but less than \$25,000 is a severity level 7, person felony;

(F) less than \$1,000 is a class A person misdemeanor, except as provided in subsection (b)(2)(G); and

(G) less than \$1,000 and committed by a person who has, within five years immediately preceding commission of the crime, the offender has been convicted of mistreatment of a dependent adult two or more times is a severity level 7, person felony; and

(3) subsection (a)(3) is a severity level 8, person felony.

(c) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

(d) As used in this section, "dependent adult" means an individual 18 years of age or older who is unable to protect the individual's own interest. Such term shall include, but is not limited to, any:

(1) Resident of an adult care home including, but not limited to, those facilities defined by K.S.A. 39-923, and amendments thereto;

(2) adult cared for in a private residence;

(3) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;

(4) individual with ~~mental retardation~~ *intellectual disability* or a de-

developmental disability receiving services through a community ~~mental-retardation~~ facility *for people with intellectual disability* or residential facility licensed under K.S.A. 75-3307b, and amendments thereto;

(5) individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(6) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for ~~the mentally-retarded~~ *people with intellectual disability*.

(e) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6418, and amendments thereto.

Sec. 16. K.S.A. 2011 Supp. 21-6622 is hereby amended to read as follows: 21-6622. (a) If, under K.S.A. 2011 Supp. 21-6617, and amendments thereto, the county or district attorney has filed a notice of intent to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death and the defendant is convicted of the crime of capital murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is ~~mentally-retarded~~ *a person with intellectual disability*. If the court determines that there is not sufficient reason to believe that the defendant is ~~mentally-retarded~~ *a person with intellectual disability*, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 2011 Supp. 21-6617, 21-6619, 21-6624, 21-6625, 21-6628 and 21-6629, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is ~~mentally-retarded~~ *a person with intellectual disability*, the court shall conduct a hearing to determine whether the defendant is ~~mentally-retarded~~ *a person with intellectual disability*.

(b) If a defendant is convicted of the crime of capital murder and a sentence of death is not imposed, or if a defendant is convicted of the crime of murder in the first degree based upon the finding of premeditated murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is ~~mentally-retarded~~ *a person with intellectual disability*. If the court determines that there is not sufficient reason to believe that the defendant is ~~mentally-retarded~~ *a person with intellectual disability*, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is ~~mentally-retarded~~ *a person with intellectual disability*, the court shall

conduct a hearing to determine whether the defendant is ~~mentally retarded~~ *a person with intellectual disability*.

(c) At the hearing, the court shall determine whether the defendant is ~~mentally retarded~~ *a person with intellectual disability*. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within 14 days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(d) If, at the conclusion of a hearing pursuant to subsection (a), the court determines that the defendant is not ~~mentally retarded~~ *a person with intellectual disability*, the defendant shall be sentenced in accordance with K.S.A. 2011 Supp. 21-6617, 21-6619, 21-6624, 21-6625, 21-6628 and 21-6629, and amendments thereto.

(e) If, at the conclusion of a hearing pursuant to subsection (b), the court determines that the defendant is not ~~mentally retarded~~ *a person with intellectual disability*, the defendant shall be sentenced in accordance with K.S.A. 2011 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto.

(f) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is ~~mentally retarded~~ *a person with intellectual disability*, the court shall sentence the defendant as otherwise provided by law, and no sentence of death, life without the possibility of parole, or mandatory term of imprisonment shall be imposed hereunder.

(g) Unless otherwise ordered by the court for good cause shown, the provisions of subsection (b) shall not apply if it has been determined, pursuant to a hearing granted under the provisions of subsection (a), that the defendant is not ~~mentally retarded~~ *a person with intellectual disability*.

(h) As used in this section, "~~mentally retarded~~ *intellectual disability*" means having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01, and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

Sec. 17. K.S.A. 2011 Supp. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

(1) "Adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for ~~the mentally retarded~~ *people with intellectual disability*, assisted living facility, residential health care

facility, home plus, boarding care home and adult day care facility; all of which are classifications of adult care homes and are required to be licensed by the secretary of aging.

(2) “Nursing facility” means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) “Nursing facility for mental health” means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) “Intermediate care facility for ~~the mentally retarded~~ *people with intellectual disability*” means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by ~~mental retardation~~ *intellectual disability* or related conditions, need services to compensate for activities of daily living limitations.

(5) “Assisted living facility” means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week, for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) “Residential health care facility” means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-days-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled

services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) “Home plus” means any residence or facility caring for not more than 12 individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided to residents shall be determined by preparation of the staff and rules and regulations developed by the department on aging. An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than 12-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous. Any home plus that provides care for more than eight individuals after the effective date of this act shall adjust staffing personnel and resources as necessary to meet residents’ needs in order to maintain the current level of nursing care standards. Personnel of any home plus who provide services for residents with dementia shall be required to take annual dementia care training.

(8) “Boarding care home” means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

(9) “Adult day care” means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of or assistance with activities of daily living.

(10) “Place or facility” means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term “place or facility” may include multiple buildings.

(11) “Skilled nursing care” means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

(12) “Supervised nursing care” means services provided by or under the guidance of a licensed nurse with initial direction for nursing proce-

dures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

(13) “Resident” means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

(14) “Person” means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

(15) “Operate an adult care home” means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word “own” and the word “lease” shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

(16) “Licensing agency” means the secretary of aging.

(17) “Skilled nursing home” means a nursing facility.

(18) “Intermediate nursing care home” means a nursing facility.

(19) “Apartment” means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

(20) “Individual living unit” means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.

(21) “Operator” means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the secretary of health and environment on principles of assisted living and such other requirements as may be established by the secretary of health and environment by rules and regulations.

(22) “Activities of daily living” means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting.

(23) “Personal care” means care provided by staff to assist an individual with, or to perform activities of daily living.

(24) “Functional impairment” means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(25) “Kitchen” means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(26) The term “intermediate personal care home” for purposes of

those individuals applying for or receiving veterans' benefits means residential health care facility.

(27) "Paid nutrition assistant" means an individual who is paid to feed residents of an adult care home, or who is used under an arrangement with another agency or organization, who is trained by a person meeting nurse aide instructor qualifications as prescribed by 42 C.F.R. § 483.152, 42 C.F.R. § 483.160 and paragraph (h) of 42 C.F.R. § 483.35, and who provides such assistance under the supervision of a registered professional or licensed practical nurse.

(b) The term "adult care home" shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.*, and amendments thereto, and which provide services only to hospice patients.

(c) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(d) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

(e) Nursing facilities with less than 60 beds converting a portion of the facility to residential health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.

(f) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

Sec. 18. K.S.A. 39-927 is hereby amended to read as follows: 39-927. An application for a license to operate an adult care home shall be made in writing to the licensing agency upon forms provided by it and shall be in such form and shall contain such information as the licensing agency shall require, which may include affirmative evidence of the applicant's

ability to comply with such reasonable standards and rules and regulations as are adopted under the provisions of this act. The application shall be signed by the person or persons seeking to operate an adult care home, as specified by the licensing agency, or by a duly authorized agent of any person so specified. Any nonprofit corporation operating a nursing facility for ~~the mentally retarded~~ *people with intellectual disability* which, on the effective date of this act, includes more than one residential building located on one site or on contiguous sites may apply for a license to operate a new nursing facility for ~~the mentally retarded~~ *people with intellectual disability* which includes more than one residential building located on one site or on contiguous sites and may apply for one license for each residential building located on the new site, except that total resident population at any such location shall not exceed 75 residents.

Sec. 19. K.S.A. 2011 Supp. 39-936 is hereby amended to read as follows: 39-936. (a) The presence of each resident in an adult care home shall be covered by a statement provided at the time of admission, or prior thereto, setting forth the general responsibilities and services and daily or monthly charges for such responsibilities and services. Each resident shall be provided with a copy of such statement, with a copy going to any individual responsible for payment of such services and the adult care home shall keep a copy of such statement in the resident's file. No such statement shall be construed to relieve any adult care home of any requirement or obligation imposed upon it by law or by any requirement, standard or rule and regulation adopted pursuant thereto.

(b) A qualified person or persons shall be in attendance at all times upon residents receiving accommodation, board, care, training or treatment in adult care homes. The licensing agency may establish necessary standards and rules and regulations prescribing the number, qualifications, training, standards of conduct and integrity for such qualified person or persons attendant upon the residents.

(c) (1) The licensing agency shall require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to ~~the mentally retarded~~ *people with intellectual disability* which has been granted an exception by the secretary of aging upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care home, employed on and after the effective date of this act who provide direct, individual care to residents and who do not administer medications to residents and who have not completed a course of education and training relating to resident care and treatment approved by the secretary of health and environment or are not participating in such a course on the effective date of this act to complete successfully 40 hours of training in basic resident care skills. Any unlicensed person who has not completed 40 hours of training relating to resident care and treatment approved by the secretary of health

and environment shall not provide direct, individual care to residents. The 40 hours of training shall be supervised by a registered professional nurse and the content and administration thereof shall comply with rules and regulations adopted by the secretary of health and environment. The 40 hours of training may be prepared and administered by an adult care home or by any other qualified person and may be conducted on the premises of the adult care home. The 40 hours of training required in this section shall be a part of any course of education and training required by the secretary of health and environment under subsection (c)(2). Training for paid nutrition assistants shall consist of at least eight hours of instruction, at a minimum, which meets the requirements of 42 C.F.R. § 483.160.

(2) The licensing agency may require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to ~~the mentally retarded~~ *people with intellectual disability* which has been granted an exception by the secretary of health and environment upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care home, who provide direct, individual care to residents and who do not administer medications to residents and who do not meet the definition of paid nutrition assistance under paragraph (a)(27) of K.S.A. 39-923, and amendments thereto after 90 days of employment to successfully complete an approved course of instruction and an examination relating to resident care and treatment as a condition to continued employment by an adult care home. A course of instruction may be prepared and administered by any adult care home or by any other qualified person. A course of instruction prepared and administered by an adult care home may be conducted on the premises of the adult care home which prepared and which will administer the course of instruction. The licensing agency shall not require unlicensed employees of an adult care home who provide direct, individual care to residents and who do not administer medications to residents to enroll in any particular approved course of instruction as a condition to the taking of an examination, but the secretary of health and environment shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction. Unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents may enroll in any approved course of instruction and upon completion of the approved course of instruction shall be eligible to take an examination. The examination shall be prescribed by the secretary of health and environment, shall be reasonably related to the duties performed by unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents and shall be the same examination given by the secretary of health and environment to all unlicensed employees of adult care homes

who provide direct, individual care to residents and who do not administer medications.

(3) The secretary of health and environment shall fix, charge and collect a fee to cover all or any part of the costs of the licensing agency under this subsection (c). The fee shall be fixed by rules and regulations of the secretary of health and environment. The fee shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(4) The secretary of health and environment shall establish a state registry containing information about unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications in compliance with the requirements pursuant to PL 100-203, Subtitle C, as amended November 5, 1990.

(5) No adult care home shall use an individual as an unlicensed employee of the adult care home who provides direct, individual care to residents and who does not administer medications unless the facility has inquired of the state registry as to information contained in the registry concerning the individual.

(6) Beginning July 1, 1993, the adult care home must require any unlicensed employee of the adult care home who provides direct, individual care to residents and who does not administer medications and who since passing the examination required under paragraph (2) of this subsection has had a continuous period of 24 consecutive months during none of which the unlicensed employee provided direct, individual care to residents to complete an approved refresher course. The secretary of health and environment shall prepare guidelines for the preparation and administration of refresher courses and shall approve or disapprove courses.

(d) Any person who has been employed as an unlicensed employee of an adult care home in another state may be so employed in this state without an examination if the secretary of health and environment determines that such other state requires training or examination, or both, for such employees at least equal to that required by this state.

(e) All medical care and treatment shall be given under the direction of a physician authorized to practice under the laws of this state and shall be provided promptly as needed.

(f) No adult care home shall require as a condition of admission to or as a condition to continued residence in the adult care home that a person change from a supplier of medication needs of their choice to a supplier of medication selected by the adult care home. Nothing in this subsection (f) shall be construed to abrogate or affect any agreements entered into prior to the effective date of this act between the adult care

home and any person seeking admission to or resident of the adult care home.

(g) Except in emergencies as defined by rules and regulations of the licensing agency and except as otherwise authorized under federal law, no resident may be transferred from or discharged from an adult care home involuntarily unless the resident or legal guardian of the resident has been notified in writing at least 30 days in advance of a transfer or discharge of the resident.

(h) No resident who relies in good faith upon spiritual means or prayer for healing shall, if such resident objects thereto, be required to undergo medical care or treatment.

Sec. 20. K.S.A. 39-971 is hereby amended to read as follows: 39-971.

(a) Notwithstanding any provision of law to the contrary, and within the limits of appropriations therefor, the secretary of social and rehabilitation services and the secretary on aging shall establish a quality enhancement wage pass-through program as part of the state medicaid plan to allow nursing facilities electing to participate in such program a payment option of not to exceed \$4 per resident day designed to increase salaries or benefits, or both, for those employees providing direct care and support services to residents of nursing facilities. The categories of employees eligible to receive the wage pass-through are the following: Nurse aides, medication aides, restorative-rehabilitation aides, licensed mental health technicians, plant operating and maintenance personnel, nonsupervisory dietary personnel, laundry personnel, housekeeping personnel and non-supervisory activity staff. The program shall establish a pass-through wage payment system designed to reimburse facilities during the reimbursement period in which the pass-through wage payment costs are incurred.

(b) Nursing facilities shall have the option to elect to participate in the quality enhancement wage pass-through program. The wage pass-through moneys are to be paid to nursing facilities outside of cost center limits or occupancy penalties as a pass-through labor cost reimbursement. The pass-through cost shall be included in the cost report base.

(c) The quality enhancement wage pass-through program shall require quarterly wage audits for all nursing facilities participating in the program. The quarterly wage audits will require facilities to submit cost information within 45 days of the end of each quarter reporting on the use of the wage pass-through payment under the quality enhancement wage pass-through program. This quarterly wage audit process shall be used to assure that the wage pass-through payment was used to increase salaries and benefits to direct care and other support staff as specified in this subsection or to hire additional staff that fall into the eligible personnel categories specified in this subsection.

(d) No wage pass-through moneys shall be expended to increase management compensation or facility profits. A nursing facility participating

in the quality enhancement wage pass-through program which fails to file quarterly enhancement audit reports shall be terminated from the program and shall repay all amounts which the nursing facility has received under the quality enhancement wage pass-through program for that reporting period.

(e) All expenditures for the quality enhancement wage pass-through program shall be made only from moneys specifically appropriated therefor.

(f) As used in this section, “nursing facility” means a nursing facility as defined under K.S.A. 39-923, and amendments thereto, or an intermediate care facility for ~~the mentally retarded~~ *people with intellectual disability* as defined under K.S.A. 39-923, and amendments thereto.

Sec. 21. K.S.A. 39-1001 is hereby amended to read as follows: 39-1001. The purpose of this act shall be to aid in development, maintenance, improvement or expansion of day care programs for ~~the mentally retarded and other handicapped~~ *children with intellectual or other disabilities* in this state.

Sec. 22. K.S.A. 39-1002 is hereby amended to read as follows: 39-1002. The secretary of social and rehabilitation services hereinafter referred to as the secretary is hereby designated as the official of this state authorized to accept and disburse funds made available to the secretary for grants-in-aid to eligible local community organizations for day care programs for ~~mentally retarded or other handicapped~~ *children with intellectual or other disabilities*. The secretary is authorized to accept any moneys made available to the state by the federal government or any agency thereof and to accept and account for state appropriations, gifts and donations from any other sources.

Sec. 23. K.S.A. 39-1005 is hereby amended to read as follows: 39-1005. The purpose of grants-in-aid shall be: (a) To encourage the development of local community initiative in broadening the scope of noninstitutional care and training programs for ~~persons handicapped by mental retardation or otherwise handicapped~~ *people with intellectual or other disabilities*; (b) to maintain minimum standards for the operations of such programs; (c) to review the experience of individual programs as they develop; *and* (d) to foster the progress of day care programs to successively higher levels of quality and service. Grants-in-aid under the provisions of this act shall only supplement local funds, shall not exceed one-half of the cost of operating expenses of day care centers for ~~retarded or other handicapped~~ *children with intellectual or other disabilities* and shall not be used for the purchase or construction of buildings.

Sec. 24. K.S.A. 39-1006 is hereby amended to read as follows: 39-1006. Day care programs shall be those which provide day service for development in self-help, social, recreational, and work skills for ~~mentally retarded and other handicapped persons~~ *people with intellectual and*

*other disabilities*, giving priority to providing services for ~~the severely and young retarded or handicapped~~ *people with severe intellectual and other disabilities*.

Sec. 25. K.S.A. 39-1007 is hereby amended to read as follows: 39-1007. Eligible local community organizations shall be organizations which are nonprofit charitable agencies operating day care programs under public or private auspices ~~(, excluding public schools)~~, and serving ~~the mentally retarded or handicapped~~ *people with intellectual or other disabilities* without regard to race, religion, or color, or national origin. Such organizations shall be licensed in accordance with the provisions of article 5 of chapter 65 of the Kansas Statutes Annotated, *and amendments thereto*.

Sec. 26. K.S.A. 39-1201 is hereby amended to read as follows: 39-1201. The purpose of this act will be to aid in development, maintenance, improvement or expansion of rehabilitation facilities and half-way houses serving ~~the mentally retarded and other handicapped~~ *adults with intellectual and other disabilities* in this state.

Sec. 27. K.S.A. 39-1202 is hereby amended to read as follows: 39-1202. The secretary of social and rehabilitation services, hereinafter referred to as the secretary, is hereby designated as the official of this state authorized to accept and disburse funds made available to said secretary for grants in aid to eligible local community organizations for rehabilitation facilities and half-way houses for ~~the mentally retarded and other handicapped~~ *adults with intellectual and other disabilities*. The secretary is authorized to accept any moneys made available to the state by the federal government or any agency thereof, and to accept and account for state appropriations, gifts and donations from any other sources.

Sec. 28. K.S.A. 39-1205 is hereby amended to read as follows: 39-1205. The purpose of grants-in-aid shall be: (a) To encourage the development of local community initiative in broadening the scope of noninstitutional care and training programs for ~~persons handicapped by mental retardation or other handicaps~~ *people with intellectual or other disabilities*; (b) to maintain minimum standards in the operation of such programs; (c) to review the experiences of the individual community programs as they develop or maintain their programs; (d) to foster the progress of rehabilitation programs and half-way house programs to higher levels of quality and service. Grants-in-aid under the provisions of this act shall only supplement funds, shall not exceed ~~one-half (1/2)~~  $\frac{1}{2}$  of the cost of operating expense of rehabilitation facilities or half-way houses for ~~mentally retarded or other handicapped~~ *adults with intellectual or other disabilities* and shall not be used for the purchase or construction of buildings.

Sec. 29. K.S.A. 39-1207 is hereby amended to read as follows: 39-1207. Eligible local community organizations shall be organizations which are nonprofit, charitable agencies, operating sheltered workshop pro-

grams and half-way house programs under private auspices and serving ~~the mentally retarded or other handicapped~~ *people with intellectual or other disabilities* without regard to race, religion, color, ancestry or national origin. Such organizations shall be licensed in accordance with the provisions of existing statutes.

Sec. 30. K.S.A. 2011 Supp. 39-1401 is hereby amended to read as follows: 39-1401. As used in this act:

(a) "Resident" means:

(1) Any resident, as defined by K.S.A. 39-923 and amendments thereto; or

(2) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility; or

(3) any individual, kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for ~~the mentally retarded~~ *people with intellectual disability*.

(b) "Adult care home" has the meaning ascribed thereto in K.S.A. 39-923, and amendments thereto.

(c) "In need of protective services" means that a resident is unable to perform or obtain services which are necessary to maintain physical or mental health, or both.

(d) "Services which are necessary to maintain physical and mental health" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of a resident to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent, except as provided in this act.

(e) "Protective services" means services provided by the state or other governmental agency or any private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services and assistance in securing medical and legal services.

(f) "Abuse" means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a resident, including:

(1) Infliction of physical or mental injury;

(2) any sexual act with a resident when the resident does not consent or when the other person knows or should know that the resident is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;

(3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm a resident;

(4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the resident or another resident;

(5) a threat or menacing conduct directed toward a resident that results or might reasonably be expected to result in fear or emotional or mental distress to a resident;

(6) fiduciary abuse; or

(7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

(g) "Neglect" means the failure or omission by one's self, caretaker or another person with a duty to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

(h) "Caretaker" means a person or institution who has assumed the responsibility, whether legally or not, for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

(i) "Exploitation" means misappropriation of resident property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(j) "Medical care facility" means a facility licensed under K.S.A. 65-425 *et seq.*, and amendments thereto, but shall not include, for purposes of this act, a state psychiatric hospital or state institution for ~~the mentally retarded~~ *people with intellectual disability*, including Larned state hospital, Osawatimie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

(k) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, a resident, takes, secretes, or appropriates the resident's money or property, to any use or purpose not in the due and lawful execution of such person's trust.

(l) "State psychiatric hospital" means Larned state hospital, Osawatimie state hospital and Rainbow mental health facility.

(m) "State institution for ~~the mentally retarded~~ *people with intellectual disability*" means Kansas neurological institute and Parsons state hospital and training center.

(n) "Report" means a description or accounting of an incident or incidents of abuse, neglect or exploitation under this act and for the purposes of this act shall not include any written assessment or findings.

(o) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes and

investigate criminal acts, whether that duty extends to all crimes or is limited to specific crimes.

(p) “Legal representative” means an agent designated in a durable power of attorney, power of attorney or durable power of attorney for health care decisions or a court appointed guardian, conservator or trustee.

(q) “Financial institution” means any bank, trust company, escrow company, finance company, saving institution or credit union, chartered and supervised under state or federal law.

(r) “Governmental assistance provider” means an agency, or employee of such agency, which is funded solely or in part to provide assistance within the Kansas senior care act, K.S.A. 75-5926 *et seq.*, and amendments thereto, including medicaid and medicare.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

Sec. 31. K.S.A. 2011 Supp. 39-1702 is hereby amended to read as follows: 39-1702. As used in this act:

(a) “Children and adolescents who require multiple levels and kinds of specialized services which are beyond the capability of one agency” means children and adolescents who are residents of Kansas, and with respect to whom there is documentation that: (1) Various agencies have acknowledged the need for a certain type of service and have taken action to provide that level of care; (2) various agencies have collaborated to develop a program plan to meet the needs of the child or adolescent; and (3) various agencies have collaborated to develop programs and funding to meet the need of the child or adolescent, and that existing or alternative programs and funding have been exhausted or are insufficient or inappropriate in view of the distinctive nature of the situation of the child or adolescent.

(b) “Agency” means and includes county health departments, area offices of the department of social and rehabilitation services, district offices of the department of health and environment, local offices of the department of labor, boards of education of public school districts, community mental health centers, community facilities for ~~the mentally retarded/developmentally disabled~~ *people with intellectual or developmental disabilities, or both*, district courts, county commissions, and law enforcement agencies.

(c) “Authorized decision makers” means agency representatives who have the authority to commit the resources of the agency they represent in the provision of services to any child or adolescent whose needs are brought before a regional interagency council.

(d) “District court” means the chief judge for a judicial district.

(e) “Parent” means a natural parent, an adoptive parent, a stepparent, a foster care provider of a child or adolescent for whom services are needed from more than one agency, or a person acting as parent of a child or adolescent for whom services are needed from more than one agency.

(f) “Person acting as parent” means a guardian or conservator, or a person, other than a parent, who is liable by law to maintain, care for, or support a child or adolescent, or who has actual care and custody of the child or adolescent and is contributing the major portion of the cost of support of the child or adolescent, or who has actual care and control of the child or adolescent with the written consent of a person who has legal custody of the child or adolescent, or who has been granted custody of the child or adolescent, by a court of competent jurisdiction.

Sec. 32. K.S.A. 39-1803 is hereby amended to read as follows: 39-1803. As used in the developmental disabilities reform act:

(a) “Adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of that person’s age, cultural group and community.

(b) “Affiliate” means an entity or person that meets standards set out in rules and regulations adopted by the secretary relating to the provision of services and that contracts with a community developmental disabilities organization.

(c) “Community services” means services provided to meet the needs of persons with developmental disabilities relating to work, living in the community, and individualized supports and services.

(d) “Community developmental disability organization” means any community ~~mental retardation~~ facility *for people with intellectual disability* that is organized pursuant to K.S.A. 19-4001 through 19-4015, and amendments thereto.

(e) “Community service provider” means a community developmental disability organization or affiliate thereof.

(f) “Developmental disability” means:

(1) ~~Mental retardation~~ *Intellectual disability*; or

(2) a severe, chronic disability, which:

(A) Is attributable to a mental or physical impairment, a combination of mental and physical impairments or a condition which has received a dual diagnosis of ~~mental retardation~~ *intellectual disability* and mental illness;

(B) is manifest before 22 years of age;

(C) is likely to continue indefinitely;

(D) results, in the case of a person five years of age or older, in a substantial limitation in three or more of the following areas of major life

functioning: Self-care, receptive and expressive language development and use, learning and adapting, mobility, self-direction, capacity for independent living and economic self-sufficiency;

(E) reflects a need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are lifelong, or extended in duration and are individually planned and coordinated; and

(F) does not include individuals who are solely and severely emotionally disturbed or seriously or persistently mentally ill or have disabilities solely as a result of the infirmities of aging.

(g) “Institution” means state institution for ~~the mentally retarded~~ *people with intellectual disability* as defined by subsection (c) of K.S.A. 76-12b01, and amendments thereto, or intermediate care facility for ~~the mentally retarded~~ *people with intellectual disabilities* of nine beds or more as defined by subsection (a) (4) of K.S.A. 39-923, and amendments thereto.

(h) ~~“Mental retardation~~ *Intellectual disability*” means substantial limitations in present functioning that is manifested during the period from birth to age 18 years and is characterized by significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior including related limitations in two or more of the following applicable adaptive skill areas: Communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

(i) “Secretary” means the secretary of social and rehabilitation services.

Sec. 33. K.S.A. 2011 Supp. 40-3401 is hereby amended to read as follows: 40-3401. As used in this act the following terms shall have the meanings respectively ascribed to them herein.

(a) “Applicant” means any health care provider.

(b) “Basic coverage” means a policy of professional liability insurance required to be maintained by each health care provider pursuant to the provisions of subsection (a) or (b) of K.S.A. 40-3402, and amendments thereto.

(c) “Commissioner” means the commissioner of insurance.

(d) “Fiscal year” means the year commencing on the effective date of this act and each year, commencing on the first day of that month, thereafter.

(e) “Fund” means the health care stabilization fund established pursuant to subsection (a) of K.S.A. 40-3403, and amendments thereto.

(f) “Health care provider” means a person licensed to practice any branch of the healing arts by the state board of healing arts with the exception of physician assistants, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of

healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a medical care facility licensed by the department of health and environment, a health maintenance organization issued a certificate of authority by the commissioner of insurance, a podiatrist licensed by the state board of healing arts, an optometrist licensed by the board of examiners in optometry, a pharmacist licensed by the state board of pharmacy, a licensed professional nurse who is authorized to practice as a registered nurse anesthetist, a licensed professional nurse who has been granted a temporary authorization to practice nurse anesthesia under K.S.A. 65-1153, and amendments thereto, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection, a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine, a dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 65-2899, and amendments thereto, a psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto, or a mental health center or mental health clinic licensed by the secretary of social and rehabilitation services, except that health care provider does not include: (1) Any state institution for ~~the mentally retarded~~ *people with intellectual disability*; (2) any state psychiatric hospital; (3) any person holding an exempt license issued by the state board of healing arts; or (4) any person holding a visiting clinical professor license from the state board of healing arts.

(g) “Inactive health care provider” means a person or other entity who purchased basic coverage or qualified as a self-insurer on or subsequent to the effective date of this act but who, at the time a claim is made for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, does not have basic coverage or self-insurance in effect solely because such person is no longer engaged in rendering professional service as a health care provider.

(h) “Insurer” means any corporation, association, reciprocal exchange, inter-insurer and any other legal entity authorized to write bodily injury or property damage liability insurance in this state, including workers compensation and automobile liability insurance, pursuant to the

provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated.

(i) “Plan” means the operating and administrative rules and procedures developed by insurers and rating organizations or the commissioner to make professional liability insurance available to health care providers.

(j) “Professional liability insurance” means insurance providing coverage for legal liability arising out of the performance of professional services rendered or which should have been rendered by a health care provider.

(k) “Rating organization” means a corporation, an unincorporated association, a partnership or an individual licensed pursuant to K.S.A. 40-956, and amendments thereto, to make rates for professional liability insurance.

(l) “Self-insurer” means a health care provider who qualifies as a self-insurer pursuant to K.S.A. 40-3414, and amendments thereto.

(m) “Medical care facility” means the same when used in the health care provider insurance availability act as the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a medical care facility.

(n) “Mental health center” means a mental health center licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b, and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health center.

(o) “Mental health clinic” means a mental health clinic licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b, and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health clinic.

(p) “State institution for ~~the mentally retarded~~ *people with intellectual disability*” means Winfield state hospital and training center, Parsons state hospital and training center and the Kansas neurological institute.

(q) “State psychiatric hospital” means Larned state hospital, Osawatimie state hospital and Rainbow mental health facility.

(r) “Person engaged in residency training” means:

(1) A person engaged in a postgraduate training program approved by the state board of healing arts who is employed by and is studying at the university of Kansas medical center only when such person is engaged in medical activities which do not include extracurricular, extra-institutional medical service for which such person receives extra compensation

and which have not been approved by the dean of the school of medicine and the executive vice-chancellor of the university of Kansas medical center. Persons engaged in residency training shall be considered resident health care providers for purposes of K.S.A. 40-3401 *et seq.*, and amendments thereto; and

(2) a person engaged in a postgraduate training program approved by the state board of healing arts who is employed by a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine or who is employed by an affiliate of the university of Kansas school of medicine as defined in K.S.A. 76-367, and amendments thereto, only when such person is engaged in medical activities which do not include extracurricular, extra-institutional medical service for which such person receives extra compensation and which have not been approved by the chief operating officer of the nonprofit corporation or the chief operating officer of the affiliate and the executive vice-chancellor of the university of Kansas medical center.

(s) "Full-time physician faculty employed by the university of Kansas medical center" means a person licensed to practice medicine and surgery who holds a full-time appointment at the university of Kansas medical center when such person is providing health care.

(t) "Sexual act" or "sexual activity" means that sexual conduct which constitutes a criminal or tortious act under the laws of the state of Kansas.

Sec. 34. K.S.A. 2011 Supp. 50-676 is hereby amended to read as follows: 50-676. As used in K.S.A. 50-676 through 50-679, and amendments thereto:

(a) "Elder person" means a person who is 60 years of age or older.

(b) "Disabled person" means a person who has physical or mental impairment, or both, which substantially limits one or more of such person's major life activities.

(c) "Immediate family member" means parent, child, stepchild or spouse.

(d) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(e) "Member of the military" means a member of the armed forces or national guard on active duty or a member of an active reserve unit in the armed forces or national guard.

(f) "Physical or mental impairment" means the following:

(1) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss substantially affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or

(2) any mental or psychological disorder, such as ~~mental retardation~~ *intellectual disability*, organic brain syndrome, emotional or mental illness and specific learning disabilities.

The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, ~~mental retardation~~ *intellectual disability* and emotional illness.

(g) “Protected consumer” means:

- (1) An elder person;
- (2) a disabled person;
- (3) a veteran;
- (4) the surviving spouse of a veteran; and
- (5) an immediate family member of a member of the military.

(h) “Substantially limits” means:

(1) Unable to perform a major life activity that the average person in the general population can perform; or

(2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity. Minor temporary ailments or injuries shall not be considered physical or mental impairments which substantially limit a person’s major life activities. Minor temporary ailments include, but are not limited to, colds, influenza or sprains or minor injuries.

(i) “Veteran” means a person who has served in the armed forces of the United States of America and separated from the armed forces under honorable conditions.

Sec. 35. K.S.A. 58-24a16 is hereby amended to read as follows: 58-24a16. (a) Administrators, executors, conservators, trustees, insurance companies and other financial institutions, charitable, educational, eleemosynary corporations and organizations are authorized, in addition to investments now authorized by law, to invest funds which they are authorized by law to invest, in shares or savings deposits of federally insured savings and loan associations or federally chartered savings banks with main or branch offices, as defined in K.S.A. 12-1675a, and amendments thereto, in the state of Kansas and in credit unions which are, in whole or in part, insured with an insurer or guarantee corporation as required under K.S.A. 17-2246, and amendments thereto, and such investment shall be deemed and held to be legal investments for such funds.

(b) The governing body of any municipal corporation or quasi-municipal corporation, county, township, school district, area vocational-technical school, community college, firemen’s relief association, community mental health center, community facility for ~~the mentally retarded~~

*people with intellectual disability* or any other governmental entity, unit or division in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest the same subject to and as provided by K.S.A. 9-1401, 9-1402, 9-1405, 9-1407, 12-1675 and 12-1676, and amendments thereto.

Sec. 36. K.S.A. 59-2946 is hereby amended to read as follows: 59-2946. When used in the care and treatment act for mentally ill persons:

(a) “Discharge” means the final and complete release from treatment, by either the head of a treatment facility acting pursuant to K.S.A. 59-2950, and amendments thereto, or by an order of a court issued pursuant to K.S.A. 59-2973, and amendments thereto.

(b) “Head of a treatment facility” means the administrative director of a treatment facility or such person’s designee.

(c) “Law enforcement officer” shall have the meaning ascribed to it in K.S.A. 22-2202, and amendments thereto.

(d) (1) “Mental health center” means any community mental health center organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto, or mental health clinic organized pursuant to the provisions of K.S.A. 65-211 through 65-215, and amendments thereto, or a mental health clinic organized as a not-for-profit or a for-profit corporation pursuant to K.S.A. 17-1701 through 17-1775, and amendments thereto or K.S.A. 17-6001 through 17-6010, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b, and amendments thereto.

(2) “Participating mental health center” means a mental health center which has entered into a contract with the secretary of social and rehabilitation services pursuant to the provisions of K.S.A. 39-1601 through 39-1612, and amendments thereto.

(e) “Mentally ill person” means any person who is suffering from a mental disorder which is manifested by a clinically significant behavioral or psychological syndrome or pattern and associated with either a painful symptom or an impairment in one or more important areas of functioning, and involving substantial behavioral, psychological or biological dysfunction, to the extent that the person is in need of treatment.

(f) (1) “Mentally ill person subject to involuntary commitment for care and treatment” means a mentally ill person, as defined in subsection (e), who also lacks capacity to make an informed decision concerning treatment, is likely to cause harm to self or others, and whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; ~~mental retardation~~ *intellectual disability*; organic personality syndrome; or an organic mental disorder.

(2) “Lacks capacity to make an informed decision concerning treatment” means that the person, by reason of the person’s mental disorder,

is unable, despite conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment or is unable to engage in a rational decision-making process regarding hospitalization or treatment, as evidenced by an inability to weigh the possible risks and benefits.

(3) “Likely to cause harm to self or others” means that the person, by reason of the person’s mental disorder: ~~(a)~~(A) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another’s property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state’s interest in protecting the property from such harm outweighs the person’s interest in personal liberty; or ~~(b)~~(B) is substantially unable, except for reason of indigency, to provide for any of the person’s basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person’s ability to function on the person’s own.

No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be a mentally ill person subject to involuntary commitment for care and treatment under this act unless substantial evidence is produced upon which the district court finds that the proposed patient is likely in the reasonably foreseeable future to cause substantial physical injury or physical abuse to self or others or substantial damage to another’s property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state’s interest in protecting the property from such harm outweighs the person’s interest in personal liberty.

(g) “Patient” means a person who is a voluntary patient, a proposed patient or an involuntary patient.

(1) “Voluntary patient” means a person who is receiving treatment at a treatment facility pursuant to K.S.A. 59-2949, and amendments thereto.

(2) “Proposed patient” means a person for whom a petition pursuant to K.S.A. 59-2952 or 59-2957, and amendments thereto, has been filed.

(3) “Involuntary patient” means a person who is receiving treatment under order of a court or a person admitted and detained by a treatment facility pursuant to an application filed pursuant to subsection (b) or (c) of K.S.A. 59-2954, and amendments thereto.

(h) “Physician” means a person licensed to practice medicine and surgery as provided for in the Kansas healing arts act or a person who is employed by a state psychiatric hospital or by an agency of the United

States and who is authorized by law to practice medicine and surgery within that hospital or agency.

(i) “Psychologist” means a licensed psychologist, as defined by K.S.A. 74-5302, and amendments thereto.

(j) “Qualified mental health professional” means a physician or psychologist who is employed by a participating mental health center or who is providing services as a physician or psychologist under a contract with a participating mental health center, a licensed masters level psychologist, a licensed clinical psychotherapist, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, a licensed professional counselor, a licensed clinical professional counselor, a licensed specialist social worker or a licensed master social worker or a registered nurse who has a specialty in psychiatric nursing, who is employed by a participating mental health center and who is acting under the direction of a physician or psychologist who is employed by, or under contract with, a participating mental health center.

(1) “Direction” means monitoring and oversight including regular, periodic evaluation of services.

(2) “Licensed master social worker” means a person licensed as a master social worker by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318, and amendments thereto.

(3) “Licensed specialist social worker” means a person licensed in a social work practice specialty by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318, and amendments thereto.

(4) “Licensed masters level psychologist” means a person licensed as a licensed masters level psychologist by the behavioral sciences regulatory board under K.S.A. 74-5361 through 74-5373, and amendments thereto.

(5) “Registered nurse” means a person licensed as a registered professional nurse by the board of nursing under K.S.A. 65-1113 through 65-1164, and amendments thereto.

(k) “Secretary” means the secretary of social and rehabilitation services.

(l) “State psychiatric hospital” means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility or Topeka state hospital.

(m) “Treatment” means any service intended to promote the mental health of the patient and rendered by a qualified professional, licensed or certified by the state to provide such service as an independent practitioner or under the supervision of such practitioner.

(n) “Treatment facility” means any mental health center or clinic, psychiatric unit of a medical care facility, state psychiatric hospital, psychologist, physician or other institution or person authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

(o) The terms defined in K.S.A. 59-3051, and amendments thereto, shall have the meanings provided by that section.

Sec. 37. K.S.A. 59-2972 is hereby amended to read as follows: 59-2972. (a) The secretary of social and rehabilitation services or the secretary's designee may transfer any patient from any state psychiatric hospital under the secretary's control to any other state psychiatric hospital whenever the secretary or the secretary's designee considers it to be in the best interests of the patient. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the hospital to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer.

(b) The secretary of social and rehabilitation services or the designee of the secretary may transfer any involuntary patient from any state psychiatric hospital to any state institution for ~~the mentally retarded people~~ *with intellectual disability* whenever the secretary of social and rehabilitation services or the designee of the secretary considers it to be in the best interests of the patient. Any patient transferred as provided for in this subsection shall remain subject to the same statutory provisions as were applicable at the psychiatric hospital from which the patient was transferred and in addition thereto shall abide by and be subject to all the rules and regulations of the ~~retardation~~ *institution for people with intellectual disability* to which the patient has been transferred. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the institution to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer. No patient shall be transferred from a state psychiatric hospital to a state institution for ~~the mentally retarded people with intellectual disability~~ unless the superintendent of the receiving institution has found, pursuant to K.S.A. 76-12b01 through 76-12b11, and amendments thereto, that the patient is ~~mentally retarded~~ *a person with intellectual disability* and in need of care and training and that placement in the institution is the least restrictive alternative available. Nothing in this subsection shall prevent the secretary of social and rehabilitation services or the designee of the secretary from allowing a patient at a state psychiatric hospital to be admitted as a voluntary resident to a state institution for ~~the mentally retarded people with intellectual disability~~, or from then discharging such person from

the state psychiatric hospital pursuant to K.S.A. 59-2973, and amendments thereto, as may be appropriate.

Sec. 38. K.S.A. 59-3077 is hereby amended to read as follows: 59-3077. (a) At any time after the filing of the petition provided for in K.S.A. 59-3058, 59-3059, 59-3060 or 59-3061, and amendments thereto, any person may file in addition to that original petition, or as a part thereof, or at any time after the appointment of a temporary guardian as provided for in K.S.A. 59-3073, and amendments thereto, or a guardian as provided for in K.S.A. 59-3067, and amendments thereto, the temporary guardian or guardian may file, a verified petition requesting that the court grant authority to the temporary guardian or guardian to admit the proposed ward or ward to a treatment facility, as defined in subsection (h), and to consent to the care and treatment of the proposed ward or ward therein. The petition shall include:

(1) The petitioner's name and address, and if the petitioner is the proposed ward's or ward's court appointed temporary guardian or guardian, that fact;

(2) the proposed ward's or ward's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the proposed ward's or ward's permanent residence;

(3) the name and address of the proposed ward's or ward's court appointed temporary guardian or guardian, if different from the petitioner;

(4) the factual basis upon which the petitioner alleges the need for the proposed ward or ward to be admitted to and treated at a treatment facility, or for the proposed ward or ward to continue to be treated at the treatment facility to which the proposed ward or ward has already been admitted, or for the guardian to have continuing authority to admit the ward for care and treatment at a treatment facility pursuant to subsection (b)(3) of K.S.A. 59-2949, or subsection (b)(3) of K.S.A. 59-29b49, and amendments thereto;

(5) the names and addresses of witnesses by whom the truth of this petition may be proved; and

(6) a request that the court find that the proposed ward or ward is in need of being admitted to and treated at a treatment facility, and that the court grant to the temporary guardian or guardian the authority to admit the proposed ward or ward to a treatment facility and to consent to the care and treatment of the proposed ward or ward therein.

(b) The petition may be accompanied by a report of an examination and evaluation of the proposed ward or ward conducted by an appropriately qualified professional, which shows that the criteria set out in K.S.A. 39-1803, subsection (e) of K.S.A. 59-2946, subsection (f) of K.S.A. 59-29b46 or K.S.A. 76-12b03, and amendments thereto, are met.

(c) Upon the filing of such a petition, the court shall issue the following:

(1) An order fixing the date, time and place of a hearing on the petition. Such hearing, in the court's discretion, may be conducted in a courtroom, a treatment facility or at some other suitable place. The time fixed in the order shall in no event be earlier than seven days or later than 21 days after the date of the filing of the petition. The court may consolidate this hearing with the trial upon the original petition filed pursuant to K.S.A. 59-3058, 59-3059, 59-3060 or 59-3061, and amendments thereto, or with the trial provided for in the care and treatment act for mentally ill persons or the care and treatment act for persons with an alcohol or substance abuse problem, if the petition also incorporates the allegations required by, and is filed in compliance with, the provisions of either of those acts.

(2) An order requiring that the proposed ward or ward appear at the time and place of the hearing on the petition unless the court makes a finding prior to the hearing that the presence of the proposed ward or ward will be injurious to the person's health or welfare, or that the proposed ward's or ward's impairment is such that the person could not meaningfully participate in the proceedings, or that the proposed ward or ward has filed with the court a written waiver of such ward's right to appear in person. In any such case, the court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed ward or ward at the hearing should be excused. Notwithstanding the foregoing provisions of this subsection, if the proposed ward or ward files with the court at least one day prior to the date of the hearing a written notice stating the person's desire to be present at the hearing, the court shall order that the person must be present at the hearing.

(3) An order appointing an attorney to represent the proposed ward or ward. The court shall give preference, in the appointment of this attorney, to any attorney who has represented the proposed ward or ward in other matters, if the court has knowledge of that prior representation. The proposed ward, or the ward with the consent of the ward's conservator, if one has been appointed, shall have the right to engage an attorney of the proposed ward's or ward's choice and, in such case, the attorney appointed by the court shall be relieved of all duties by the court. Any appointment made by the court shall terminate upon a final determination of the petition and any appeal therefrom, unless the court continues the appointment by further order.

(4) An order fixing the date, time and a place that is in the best interest of the proposed ward or ward, at which the proposed ward or ward shall have the opportunity to consult with such ward's attorney. This consultation shall be scheduled to occur prior to the time at which the

examination and evaluation ordered pursuant to subsection (d)(1), if ordered, is scheduled to occur.

(5) A notice similar to that provided for in K.S.A. 59-3066, and amendments thereto.

(d) Upon the filing of such a petition, the court may issue the following:

(1) An order for a psychological or other examination and evaluation of the proposed ward or ward, as may be specified by the court. The court may order the proposed ward or ward to submit to such an examination and evaluation to be conducted through a general hospital, psychiatric hospital, community mental health center, community developmental disability organization, or by a private physician, psychiatrist, psychologist or other person appointed by the court who is qualified to examine and evaluate the proposed ward or ward. The costs of this examination and evaluation shall be assessed as provided for in K.S.A. 59-3094, and amendments thereto.

(2) If the petition is accompanied by a report of an examination and evaluation of the proposed ward or ward as provided for in subsection (b), an order granting temporary authority to the temporary guardian or guardian to admit the proposed ward or ward to a treatment facility and to consent to the care and treatment of the proposed ward or ward therein. Any such order shall expire immediately after the hearing upon the petition, or as the court may otherwise specify, or upon the discharge of the proposed ward or ward by the head of the treatment facility, if the proposed ward or ward is discharged prior to the time at which the order would otherwise expire.

(3) For good cause shown, an order of continuance of the hearing.

(4) For good cause shown, an order of advancement of the hearing.

(5) For good cause shown, an order changing the place of the hearing.

(e) The hearing on the petition shall be held at the time and place specified in the court's order issued pursuant to subsection (c), unless an order of advancement, continuance, or a change of place of the hearing has been issued pursuant to subsection (d). The petitioner and the proposed ward or ward shall each be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. If the hearing has been consolidated with a trial being held pursuant to either the care and treatment act for mentally ill persons or the care and treatment act for persons with an alcohol or substance abuse problem, persons not necessary for the conduct of the proceedings may be excluded as provided for in those acts. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall have the authority to receive all relevant and material evidence which may be offered, including the testimony or written report, findings or recommendations of any professional or other person who has examined or evaluated the proposed ward or ward pursuant to any order issued by

the court pursuant to subsection (d). Such evidence shall not be privileged for the purpose of this hearing.

(f) Upon completion of the hearing, if the court finds by clear and convincing evidence that the criteria set out in K.S.A. 39-1803, subsection (e) of K.S.A. 59-2946, subsection (f) of K.S.A. 59-29b46 or K.S.A. 76-12b03, and amendments thereto, are met, and after a careful consideration of reasonable alternatives to admission of the proposed ward or ward to a treatment facility, the court may enter an order granting such authority to the temporary guardian or guardian as is appropriate, including continuing authority to the guardian to readmit the ward to an appropriate treatment facility as may later become necessary. Any such grant of continuing authority shall expire two years after the date of final discharge of the ward from such a treatment facility if the ward has not had to be readmitted to a treatment facility during that two-year period of time. Thereafter, any such grant of continuing authority may be renewed only after the filing of another petition seeking authority in compliance with the provision of this section.

(g) Nothing herein shall be construed so as to prohibit the head of a treatment facility from admitting a proposed ward or ward to that facility as a voluntary patient if the head of the treatment facility is satisfied that the proposed ward or ward at that time has the capacity to understand such ward's illness and need for treatment, and to consent to such ward's admission and treatment. Upon any such admission, the head of the treatment facility shall give notice to the temporary guardian or guardian as soon as possible of the ward's admission, and shall provide to the temporary guardian or guardian copies of any consents the proposed ward or ward has given. Thereafter, the temporary guardian or guardian shall timely either seek to obtain proper authority pursuant to this section to admit the proposed ward or ward to a treatment facility and to consent to further care and treatment, or shall otherwise assume responsibility for the care of the proposed ward or ward, consistent with the authority of the temporary guardian or guardian, and may arrange for the discharge from the facility of the proposed ward or ward, unless the head of the treatment facility shall file a petition requesting the involuntary commitment of the proposed ward or ward to that or some other facility.

(h) As used herein, "treatment facility" means the Kansas neurological institute, Larned state hospital, Osawatomie state hospital, Parsons state hospital and training center, the rainbow mental health facility, any intermediate care facility for ~~the mentally retarded~~ *people with intellectual disability*, any psychiatric hospital licensed pursuant to K.S.A. 75-3307b, and amendments thereto, and any other facility for mentally ill persons or ~~mentally retarded or developmentally disabled persons~~ *people with intellectual or developmental disabilities* licensed pursuant to K.S.A. 75-3307b, and amendments thereto, if the proposed ward or ward is to be admitted as an inpatient or resident of that facility.

Sec. 39. K.S.A. 2011 Supp. 65-180 is hereby amended to read as follows: 65-180. The secretary of health and environment shall:

(a) Institute and carry on an intensive educational program among physicians, hospitals, public health nurses and the public concerning congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases detectable with the same specimen. This educational program shall include information about the nature of such conditions and examinations for the detection thereof in early infancy in order that measures may be taken to prevent ~~the mental retardation~~ *intellectual disability* or morbidity resulting from such conditions.

(b) Provide recognized screening tests for phenylketonuria, galactosemia, hypothyroidism and such other diseases as may be appropriately detected with the same specimen. The initial laboratory screening tests for these diseases shall be performed by the department of health and environment or its designee for all infants born in the state. Such services shall be performed without charge.

(c) Provide a follow-up program by providing test results and other information to identified physicians; locate infants with abnormal newborn screening test results; with parental consent, monitor infants to assure appropriate testing to either confirm or not confirm the disease suggested by the screening test results; with parental consent, monitor therapy and treatment for infants with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria or other genetic diseases being screened under this statute; and establish ongoing education and support activities for individuals with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases being screened under this statute and for the families of such individuals.

(d) Maintain a registry of cases including information of importance for the purpose of follow-up services to prevent ~~mental retardation~~ *intellectual disability* or morbidity.

(e) Provide, within the limits of appropriations available therefor, the necessary treatment product for diagnosed cases for as long as medically indicated, when the product is not available through other state agencies. In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual meets medicaid eligibility, such individuals' needs shall be covered under the medicaid state plan. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual is not medicaid eligible, but is below 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of between 50% to 100% of the product

cost in accordance with rules and regulations adopted by the secretary of health and environment. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual exceeds 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of an amount not to exceed 50% of the product cost in accordance with rules and regulations adopted by the secretary of health and environment.

(f) Provide state assistance to an applicant pursuant to subsection (e) only after it has been shown that the applicant has exhausted all benefits from private third-party payers, medicare, medicaid and other government assistance programs and after consideration of the applicant's income and assets. The secretary of health and environment shall adopt rules and regulations establishing standards for determining eligibility for state assistance under this section.

(g) (1) Except for treatment products provided under subsection (e), if the medically necessary food treatment product for diagnosed cases must be purchased, the purchaser shall be reimbursed by the department of health and environment for costs incurred up to \$1,500 per year per diagnosed child age 18 or younger at 100% of the product cost upon submission of a receipt of purchase identifying the company from which the product was purchased. For a purchaser to be eligible for reimbursement under this subsection ~~(g)(1)~~, the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(2) As an option to reimbursement authorized under subsection (g)(1), the department of health and environment may purchase food treatment products for distribution to diagnosed children in an amount not to exceed \$1,500 per year per diagnosed child age 18 or younger. For a diagnosed child to be eligible for the distribution of food treatment products under this subsection ~~(g)(2)~~, the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(3) In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection (g).

(h) The department of health and environment shall continue to receive orders for both necessary treatment products and necessary food treatment products, purchase such products, and shall deliver the products to an address prescribed by the diagnosed individual. The depart-

ment of health and environment shall bill the person or persons who have legal responsibility for the diagnosed patient for a *pro-rata* share of the total costs, in accordance with the rules and regulations adopted pursuant to this section.

(i) Not later than July 1, 2008, the secretary of health and environment shall adopt rules and regulations as needed to require, to the extent of available funding, newborn screening tests to screen for treatable disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American college of medical genetics entitled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by the department of health and environment to provide more appropriate newborn screening guidelines to protect the health and welfare of newborns for treatable disorders.

(j) In performing the duties under subsection (i), the secretary of health and environment shall appoint an advisory council to advise the department of health and environment on implementation of subsection (i).

(k) The department of health and environment shall periodically review the newborn screening program to determine the efficacy and cost effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening program.

Sec. 40. K.S.A. 65-5a14 is hereby amended to read as follows: 65-5a14. The secretary of health and environment shall adopt rules and regulations establishing a system of priorities for providing services, devices, equipment and supplies to children under the provisions of this act which will give consideration to the medical needs of the patient and the financial ability of the patient to pay the cost thereof and will insure that available funds will be used where the need is greatest. Such system of priorities shall provide care and treatment only for children having a condition that can reasonably be expected to be aided or improved by treatment and shall include but shall not be limited to:

- (a) Congenital malformations requiring major surgical repair;
- (b) catastrophic and chronic diseases of children (such as hydronephrosis, and chronic nephritis);
- (c) ~~mental-retardation~~ *intellectual disability* or mental disability with associated serious physical defects;
- (d) orthopedic conditions (not including relaxed flat feet or treatment or supportive devices therefor);
- (e) burns requiring plastic surgery;
- (f) cardiovascular (congenital and acquired heart disease or anomalies of the major blood vessels); and

(g) malignant disease (such as leukemia, Wilm's tumor, osteogenic sarcoma, etc., but not to include terminal care).

In adopting the rules and regulations, the secretary of health and environment shall consult with and give consideration to the recommendations of representatives of the Kansas medical society designated or selected by the society for such purpose.

A child with special health care needs shall not be denied services because the child is ~~mentally retarded~~ *a person with intellectual disability*.

Sec. 41. K.S.A. 2011 Supp. 65-1124 is hereby amended to read as follows: 65-1124. No provisions of this law shall be construed as prohibiting:

- (a) Gratuitous nursing by friends or members of the family;
- (b) the incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) caring for the sick in accordance with tenets and practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing;
- (d) nursing assistance in the case of an emergency;
- (e) the practice of nursing by students as part of a clinical course offered through a school of professional or practical nursing or program of advanced registered professional nursing approved in the United States or its territories;
- (f) the practice of nursing in this state by legally qualified nurses of any of the other states as long as the engagement of any such nurse requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed six months in length, and as long as such nurses do not represent or hold themselves out as nurses licensed to practice in this state;
- (g) the practice by any nurse who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of official duties;
- (h) auxiliary patient care services performed in medical care facilities, adult care homes or elsewhere by persons under the direction of a person licensed to practice medicine and surgery or a person licensed to practice dentistry or the supervision of a registered professional nurse or a licensed practical nurse;
- (i) the administration of medications to residents of adult care homes or to patients in hospital-based long-term care units, including state operated institutions for ~~the mentally retarded~~ *people with intellectual disability*, by an unlicensed person who has been certified as having satisfactorily completed a training program in medication administration approved by the secretary of health and environment and has completed the program on continuing education adopted by the secretary, or by an

unlicensed person while engaged in and as a part of such training program in medication administration;

(j) the practice of mental health technology by licensed mental health technicians as authorized under the mental health technicians' licensure act;

(k) performance in the school setting of nursing procedures when delegated by a licensed professional nurse in accordance with the rules and regulations of the board;

(l) performance of attendant care services directed by or on behalf of an individual in need of in-home care as the terms "attendant care services" and "individual in need of in-home care" are defined under K.S.A. 65-6201, and amendments thereto;

(m) performance of a nursing procedure by a person when that procedure is delegated by a licensed nurse, within the reasonable exercise of independent nursing judgment and is performed with reasonable skill and safety by that person under the supervision of a registered professional nurse or a licensed practical nurse;

(n) the practice of nursing by an applicant for Kansas nurse licensure in the supervised clinical portion of a refresher course; or

(o) the teaching of the nursing process in this state by legally qualified nurses of any of the other states while in consultation with a licensed Kansas nurse as long as such individuals do not represent or hold themselves out as nurses licensed to practice in this state.

Sec. 42. K.S.A. 2011 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

- (1) A practitioner or pursuant to the lawful direction of a practitioner;
- (2) the patient or research subject at the direction and in the presence of the practitioner; or
- (3) a pharmacist as authorized in K.S.A. 65-1635a, and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the internal revenue

code, complies with any one of the following: (1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and (2) the wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(d) "Board" means the state board of pharmacy created by K.S.A. 74-1603, and amendments thereto.

(e) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name as the brand name drug product prescribed.

(f) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(g) "Chain pharmacy warehouse" means a permanent physical location for drugs or devices, or both, that acts as a central warehouse and performs intracompany sales or transfers of prescription drugs or devices to chain pharmacies that have the same ownership or control. Chain pharmacy warehouses must be registered as wholesale distributors.

(h) "Co-licensee" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug and the national drug code on the drug product label shall be used to determine the identity of the drug manufacturer.

(i) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(j) "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

(k) "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

(l) "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

(m) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(n) "Distributor" means a person who distributes a drug.

(o) "Drop shipment" means the sale, by a manufacturer, that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, of the manufacturer's prescription drug, to a wholesale distributor whereby the wholesale distributor takes title but not possession of such prescription drug and the

wholesale distributor invoices the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug, and the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug receives delivery of the prescription drug directly from the manufacturer, that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, of such prescription drug. Drop shipment shall be part of the "normal distribution channel."

(p) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated prior to its repeal.

(q) "Durable medical equipment" means technologically sophisticated medical devices that may be used in a residence, including the following: (1) Oxygen and oxygen delivery system; (2) ventilators; (3) respiratory disease management devices; (4) continuous positive airway pressure (CPAP) devices; (5) electronic and computerized wheelchairs and seating systems; (6) apnea monitors; (7) transcutaneous electrical nerve stimulator (TENS) units; (8) low air loss cutaneous pressure management devices; (9) sequential compression devices; (10) feeding pumps; (11) home phototherapy devices; (12) infusion delivery devices; (13) distribution of medical gases to end users for human consumption; (14) hospital beds; (15) nebulizers; (16) other similar equipment determined by the board in rules and regulations adopted by the board.

(r) "Exclusive distributor" means any entity that: (1) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must be an authorized distributor of record.

(s) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(t) “Generic name” means the established chemical name or official name of a drug or drug product.

(u) (1) “Institutional drug room” means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;  
(B) residents of a juvenile detention facility, as defined by the revised Kansas code for care of children and the revised Kansas juvenile justice code;

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

(D) employees of a business or other employer; or  
(E) persons receiving inpatient hospice services.

(2) “Institutional drug room” does not include:

(A) Any registered pharmacy;  
(B) any office of a practitioner; or  
(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(v) “Intracompany transaction” means any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership or control of a corporate entity, or any transaction or transfer between co-licensees of a co-licensed product.

(w) “Medical care facility” shall have the meaning provided in K.S.A. 65-425, and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b, and amendments thereto, except community mental health centers and facilities for ~~the mentally retarded~~ *people with intellectual disability*.

(x) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual’s own use or the preparation, compounding, packaging or labeling of a drug by:

(1) A practitioner or a practitioner’s authorized agent incident to such practitioner’s administering or dispensing of a drug in the course of the practitioner’s professional practice;

(2) a practitioner, by a practitioner’s authorized agent or under a practitioner’s supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or

(3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(y) "Manufacturer" means a person licensed or approved by the FDA to engage in the manufacture of drugs and devices.

(z) "Normal distribution channel" means a chain of custody for a prescription-only drug that goes from a manufacturer of the prescription-only drug, from that manufacturer to that manufacturer's co-licensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, directly or by drop shipment, to:

(1) A pharmacy to a patient or to other designated persons authorized by law to dispense or administer such drug to a patient;

(2) a wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(3) a wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(4) a chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(aa) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(bb) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(cc) "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(dd) "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the

characteristic symbols of pharmacy or the characteristic prescription sign “Rx” may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(ee) “Pharmacy student” means an individual, registered with the board of pharmacy, enrolled in an accredited school of pharmacy.

(ff) “Pharmacy technician” means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(gg) “Practitioner” means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(hh) “Preceptor” means a licensed pharmacist who possesses at least two years’ experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(ii) “Prescription” means, according to the context, either a prescription order or a prescription medication.

(jj) “Prescription medication” means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(kk) “Prescription-only drug” means any drug whether intended for use by man or animal, required by federal or state law (including 21 U.S.C. § 353, as amended), to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(ll) “Prescription order” means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.

(mm) “Probation” means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(nn) “Professional incompetency” means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

(oo) “Retail dealer” means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

(pp) “Secretary” means the executive secretary of the board.

(qq) “Third party logistics provider” means an entity that: (1) Provides or coordinates warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug’s sale or disposition; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(rr) “Unprofessional conduct” means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654, and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee’s professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee’s professional practice; or

(10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

(ss) “Mid-level practitioner” means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written pro-

tol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

(tt) “Vaccination protocol” means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(uu) “Veterinary medical teaching hospital pharmacy” means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a nonhuman.

(vv) “Wholesale distributor” means any person engaged in wholesale distribution of prescription drugs or devices in or into the state, including, but not limited to, manufacturers, repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, including manufacturers’ and distributors’ warehouses, co-licensees, exclusive distributors, third party logistics providers, chain pharmacy warehouses that conduct wholesale distributions, and wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distributions. Wholesale distributor shall not include persons engaged in the sale of durable medical equipment to consumers or patients.

(ww) “Wholesale distribution” means the distribution of prescription drugs or devices by wholesale distributors to persons other than consumers or patients, and includes the transfer of prescription drugs by a pharmacy to another pharmacy if the total number of units of transferred drugs during a twelve-month period does not exceed 5% of the total number of all units dispensed by the pharmacy during the immediately preceding twelve-month period. Wholesale distribution does not include: (1) The sale, purchase or trade of a prescription drug or device, an offer to sell, purchase or trade a prescription drug or device or the dispensing of a prescription drug or device pursuant to a prescription; (2) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device for emergency medical reasons; (3) intracompany transactions, as defined in this section, unless in violation of own use provisions; (4) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device among hospitals, chain pharmacy warehouses, pharmacies or other health care entities that are under common control; (5) the sale, purchase or trade of a prescription drug or device or the offer to sell, purchase or trade a prescription drug or device by a charitable organization described in 503(c)(3) of the internal revenue code of

1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law; (6) the purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a prescription drug or device for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations; (7) the transfer of prescription drugs or devices between pharmacies pursuant to a centralized prescription processing agreement; (8) the sale, purchase or trade of blood and blood components intended for transfusion; (9) the return of recalled, expired, damaged or otherwise non-salable prescription drugs, when conducted by a hospital, health care entity, pharmacy, chain pharmacy warehouse or charitable institution in accordance with the board's rules and regulations; (10) the sale, transfer, merger or consolidation of all or part of the business of a retail pharmacy or pharmacies from or with another retail pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets, in accordance with the board's rules and regulations; (11) the distribution of drug samples by manufacturers' and authorized distributors' representatives; (12) the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use; or (13) the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer, originating wholesale distributor or to a third party returns processor in accordance with the board's rules and regulations.

Sec. 43. K.S.A. 65-3501 is hereby amended to read as follows: 65-3501. As used in this act, ~~or the act of which this section is amendatory,~~ the following words and phrases shall have the meanings respectively ascribed to them in this section:

(a) "Adult care home" means nursing facility, nursing facilities for mental health, intermediate care facilities for ~~the mentally-retarded people~~ *with intellectual disability*, assisted living facility licensed for more than 60 residents and residential health care facility licensed for more than 60 residents as defined by K.S.A. 39-923, and amendments thereto, or by the rules and regulations of the licensing agency adopted pursuant to such section for which a license is required under article 9 of chapter 39 of the Kansas Statutes Annotated, ~~or acts amendatory thereof or supplemental and amendments~~ thereto, except that the term "adult care home" shall not include a facility that is operated exclusively for the care and treatment of ~~the mentally-retarded people with intellectual disability~~ and is licensed for 16 or fewer beds.

(b) "Board" means the board of adult care home administrators established by K.S.A. 65-3506, and amendments thereto.

(c) "Administrator" means the individual directly responsible for

planning, organizing, directing and controlling the operation of an adult care home.

(d) “Person” means an individual and does not include the term firm, corporation, association, partnership, institution, public body, joint stock association or any group of individuals.

(e) “Sponsor” means entities approved by the board to provide continuing education programs or courses on an ongoing basis under this act and in accordance with any rules and regulations promulgated by the board in accordance with this act.

Sec. 44. K.S.A. 65-4202 is hereby amended to read as follows: 65-4202. As used in this act: (a) “Board” means the state board of nursing.

(b) The “practice of mental health technology” means the performance, under the direction of a physician licensed to practice medicine and surgery or registered professional nurse, of services in caring for and treatment of the mentally ill, emotionally disturbed, or ~~mentally retarded~~ *people with intellectual disability* for compensation or personal profit, which services:

(1) Involve responsible nursing and therapeutic procedures for ~~mentally ill or mentally retarded~~ *patients with mental illness or intellectual disability* requiring interpersonal and technical skills in the observations and recognition of symptoms and reactions of such patients, the accurate recording of such symptoms and reactions and the carrying out of treatments and medications as prescribed by a licensed physician or a mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626, and amendments thereto; and

(2) require an application of techniques and procedures that involve understanding of cause and effect and the safeguarding of life and health of the patient and others; and

(3) require the performance of duties that are necessary to facilitate rehabilitation of the patient or are necessary in the physical, therapeutic and psychiatric care of the patient and require close work with persons licensed to practice medicine and surgery, psychiatrists, psychologists, rehabilitation therapists, social workers, registered nurses, and other professional personnel.

(c) A “licensed mental health technician” means a person who lawfully practices mental health technology as defined in this act.

(d) An “approved course in mental health technology” means a program of training and study including a basic curriculum which shall be prescribed and approved by the board in accordance with the standards prescribed herein, the successful completion of which shall be required before licensure as a mental health technician, except as hereinafter provided.

Sec. 45. K.S.A. 65-4212 is hereby amended to read as follows: 65-4212. The provisions of this act shall not be construed as prohibiting: (a)

Gratuitous care of the mentally ill, emotionally disturbed or ~~mentally retarded~~ *people with intellectual disability* by friends or members of the family;

(b) The practice of mental health technology by students enrolled in approved courses of mental health technology;

(c) The practice of mental health technology by graduates of an approved course in mental health technology who are practicing as mental health technicians pending the results of the first licensing examination scheduled by the board following graduation;

(d) Practice by short-term trainees exploring the practice of mental health technology as a prospective vocation;

(e) Service conducted in accordance with the practice of the tenets of any religious denomination in which persons of good faith rely solely upon spiritual means or prayer in the exercise of their religion to prevent or cure disease;

(f) The practice of any legally qualified mental health technician of this state or another who is employed by the United States government of any bureau, division or agency thereof, while in the discharge of official duties;

(g) Temporary assistance in the therapeutic care of patients where adequate medical, nursing, and/or other supervision is provided;

(h) Subsidiary workers in hospitals or related institutions from assisting in the nursing care of patients where adequate medical and nursing supervision is provided; and

(i) The employment of psychiatric aides who have received at least three months instruction in an approved basic aide training program and who work under the supervision of licensed personnel.

Sec. 46. K.S.A. 65-4411 is hereby amended to read as follows: 65-4411. K.S.A. 65-4411 to 65-4415, inclusive, and amendments thereto, shall be known and may be cited as the Kansas community ~~mental retardation~~ *facilities for people with intellectual disability* assistance act.

Sec. 47. K.S.A. 65-4412 is hereby amended to read as follows: 65-4412. (a) “Community ~~mental retardation~~ *facilities for people with intellectual disability*” means: (1) Any community facility for ~~the mentally retarded people with intellectual disability~~ organized pursuant to the provisions of K.S.A. 19-4001 to 19-4015, inclusive, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b, and amendments thereto; or (2) any ~~mental retardation~~ *intellectual disability* governing board which contracts with a nonprofit corporation to provide services for ~~the mentally retarded people with intellectual disability~~.

(b) “Secretary” means secretary of social and rehabilitation services.

Sec. 48. K.S.A. 65-4413 is hereby amended to read as follows: 65-4413. (a) For the purpose of insuring that adequate community ~~mental retardation~~ *intellectual disability* services are available to all inhabitants

of Kansas, the state shall participate in the financing of community ~~mental retardation~~ facilities *for people with intellectual disability* in the manner provided by this section.

(b) Subject to the provisions of appropriations acts and the provisions of K.S.A. 65-4414, and amendments thereto, the secretary shall make grants to community ~~mental-retardation~~ facilities *for people with intellectual disability* based on full-time equivalent clients served and *per diem* amounts per client as provided in this section. The secretary, in accordance with the provisions of this section, shall adopt rules and regulations (1) defining full-time equivalent clients and prescribing the method of computing full-time equivalent clients and (2) establishing statewide *per diem* amounts per client for the purposes of determining grants to community ~~mental-retardation~~ facilities *for people with intellectual disability*. A client accepted for a program by a facility ~~on and after July 1, 1987~~, shall constitute a full-time equivalent client only if the client was accepted by the facility on a first-come, first-serve basis in order of the time at which an application for admission was made to such facility on behalf of the client, except that a client accepted for a program by a facility on other than a first-come, first-serve basis because of a family crisis occasioned by family circumstances shall constitute a full-time equivalent client. The secretary shall adopt rules and regulations to define the parameters for agency boards of directors to follow in identifying "family crisis occasioned by family circumstances." Such rules and regulations shall require that each agency board of directors establish standards and guidelines, within parameters defined by the rules and regulations, which are consistent with the needs of clients and their families. The standards and guidelines established by the agency board of directors shall specify to the extent known the types of family crises most likely to necessitate admission to a facility and shall establish criteria for determining the appropriateness of such admission. In addition the rules and regulations shall establish procedures for review by the secretary of the appropriateness of any such admission.

(c) The secretary shall make grant payments each calendar quarter. Subject to the provisions of K.S.A. 65-4414, and amendments thereto: (1) The first year of *per diem* payments made under this section shall be based on the number of clients served during the base calendar year 1983; and (2) payments in subsequent years shall be based on actual clients served during the calendar year immediately preceding the year in which such grant payments are to be made. In the event that sufficient moneys to pay to all community ~~mental-retardation~~ facilities *for people with intellectual disability*, the full amount of grant payments determined in accordance with the number of actual clients served thereby and the current *per diem* amounts per client for any calendar quarter have not been appropriated or are not available, the entire amount available such calendar quarter for grant payments shall be prorated by the secretary

among all the community ~~mental-retardation~~ facilities *for people with intellectual disability* applying for such grant payments in proportion to the amount each such community ~~mental-retardation~~ facility *for people with intellectual disability* would have received if sufficient moneys had been appropriated and available therefor, subject to the provisions of K.S.A. 65-4414, and amendments thereto. A client funded by special state funding shall not constitute a client for purposes of *per diem* funding under this section.

(d) The secretary shall adopt rules and regulations for the administration of the provisions of the Kansas community ~~mental-retardation~~ facilities *for people with intellectual disability* assistance act.

Sec. 49. K.S.A. 65-4414 is hereby amended to read as follows: 65-4414. During each fiscal year commencing after June 30, 1986, each community ~~mental-retardation~~ facility *for people with intellectual disability* which was eligible for grant payments under K.S.A. 65-4413, *and amendments thereto*, and which received assistance under the provisions of K.S.A. 65-4401 to 65-4408, inclusive, *and amendments thereto*, for the fiscal year ending June 30, 1986, shall receive a total amount of grant payments under K.S.A. 65-4413, *and amendments thereto*, for such fiscal year in an amount which is not less than the total amount of assistance earned by such community ~~mental-retardation~~ facility *for people with intellectual disability* under the provisions of K.S.A. 65-4401 to 65-4408, inclusive, *and amendments thereto*, for the fiscal year ending June 30, 1986. In the event that sufficient funds are not appropriated to pay all such community ~~mental-retardation~~ facilities *for people with intellectual disability*, which are applying for grants, the minimum amounts which such facilities are eligible to receive under this section, the secretary shall prorate the entire amount appropriated for grants among those community ~~mental-retardation~~ facilities *for people with intellectual disability* which are applying for grants and which are eligible under this section, in proportion to the amount each such community ~~mental-retardation~~ facility *for people with intellectual disability* received during the base year ending June 30, 1986.

Sec. 50. K.S.A. 65-4415 is hereby amended to read as follows: 65-4415. (a) The secretary upon determination that a program included in the proposed budget of a community ~~mental-retardation~~ facility *for people with intellectual disability*: (1) Is a new program not included in previous budgets of such community ~~mental-retardation~~ center *for people with intellectual disability*; and (2) duplicates an existing program which is adequately serving the geographic area served by such community ~~mental-retardation~~ facility *for people with intellectual disability*, may subtract the full-time equivalent clients served by the program from the total full-time equivalent computation for purposes of granting financial assistance under the Kansas community ~~mental-retardation~~ facilities *for people with*

*intellectual disability* assistance act or may require such community ~~mental-retardation~~ facility for people with intellectual disability to purchase the service from or otherwise cooperate with such other program.

(b) The secretary shall administer the provisions of the Kansas community ~~mental-retardation~~ facilities for people with intellectual disability assistance act. In administering the provisions of the Kansas community ~~mental-retardation~~ facilities for people with intellectual disability assistance act, the secretary shall review the budgets and expenditures of the facilities, from time to time during the fiscal year, and may withdraw funds from any facility which is not being administered substantially in accordance with the provisions of the annual budget submitted to the secretary.

(c) The secretary shall provide consultative staff service to community ~~mental-retardation~~ facilities for people with intellectual disability to assist in ascertaining local needs, in obtaining federal funds and assistance and in the delivery of ~~mental-retardation~~ services for people with intellectual disability at the local level.

(d) In the event any community ~~mental-retardation~~ facility for people with intellectual disability is paid more than it is entitled to receive under any distribution made under the Kansas community ~~mental-retardation~~ facilities for people with intellectual disability assistance act, the secretary shall notify the governing board of the community ~~mental-retardation~~ facility for people with intellectual disability of the amount of such overpayment, and such governing board shall remit the same to the secretary. The secretary shall remit any moneys so received to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. If any such governing board fails so to remit, the secretary shall deduct the excess amount so paid from future payments becoming due to such community ~~mental-retardation~~ facility for people with intellectual disability.

(e) In the event any community ~~mental-retardation~~ facility for people with intellectual disability is paid less than the amount to which it is entitled under any distribution made under the Kansas community ~~mental-retardation~~ facilities for people with intellectual disability assistance act, the secretary shall pay the additional amount due at any time within the fiscal year in which the underpayment was made or within 60 days after the end of such year.

Sec. 51. K.S.A. 2011 Supp. 65-4915 is hereby amended to read as follows: 65-4915. (a) As used in this section:

(1) "Health care provider" means: (A) Those persons and entities defined as a health care provider under K.S.A. 40-3401, and amendments thereto; and (B) a dentist licensed by the Kansas dental board, a dental hygienist licensed by the Kansas dental board, a professional nurse li-

censed by the board of nursing, a practical nurse licensed by the board of nursing, a mental health technician licensed by the board of nursing, a physical therapist licensed by the state board of healing arts, a physical therapist assistant certified by the state board of healing arts, an occupational therapist licensed by the state board of healing arts, an occupational therapy assistant licensed by the state board of healing arts, a respiratory therapist licensed by the state board of healing arts, a physician assistant licensed by the state board of healing arts and attendants and ambulance services certified by the emergency medical services board.

(2) “Health care provider group” means:

(A) A state or local association of health care providers or one or more committees thereof;

(B) the board of governors created under K.S.A. 40-3403, and amendments thereto;

(C) an organization of health care providers formed pursuant to state or federal law and authorized to evaluate medical and health care services;

(D) a review committee operating pursuant to K.S.A. 65-2840c, and amendments thereto;

(E) an organized medical staff of a licensed medical care facility as defined by K.S.A. 65-425, and amendments thereto, an organized medical staff of a private psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto, or an organized medical staff of a state psychiatric hospital or state institution for ~~the mentally retarded~~ *people with intellectual disability*, as follows: Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center;

(F) a health care provider;

(G) a professional society of health care providers or one or more committees thereof;

(H) a Kansas corporation whose stockholders or members are health care providers or an association of health care providers, which corporation evaluates medical and health care services; or

(I) an insurance company, health maintenance organization or administrator of a health benefits plan which engages in any of the functions defined as peer review under this section.

(3) “Peer review” means any of the following functions:

(A) Evaluate and improve the quality of health care services rendered by health care providers;

(B) determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care;

(C) determine that the cost of health care rendered was considered reasonable by the providers of professional health services in this area;

(D) evaluate the qualifications, competence and performance of the

providers of health care or to act upon matters relating to the discipline of any individual provider of health care;

- (E) reduce morbidity or mortality;
- (F) establish and enforce guidelines designed to keep within reasonable bounds the cost of health care;
- (G) conduct of research;
- (H) determine if a hospital's facilities are being properly utilized;
- (I) supervise, discipline, admit, determine privileges or control members of a hospital's medical staff;
- (J) review the professional qualifications or activities of health care providers;
- (K) evaluate the quantity, quality and timeliness of health care services rendered to patients in the facility;
- (L) evaluate, review or improve methods, procedures or treatments being utilized by the medical care facility or by health care providers in a facility rendering health care.

(4) "Peer review officer or committee" means:

- (A) An individual employed, designated or appointed by, or a committee of or employed, designated or appointed by, a health care provider group and authorized to perform peer review; or
- (B) a health care provider monitoring the delivery of health care at correctional institutions under the jurisdiction of the secretary of corrections.

(b) Except as provided by K.S.A. 60-437, and amendments thereto, and by subsections (c) and (d), the reports, statements, memoranda, proceedings, findings and other records submitted to or generated by peer review committees or officers shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. Information contained in such records shall not be discoverable or admissible at trial in the form of testimony by an individual who participated in the peer review process. The peer review officer or committee creating or initially receiving the record is the holder of the privilege established by this section. This privilege may be claimed by the legal entity creating the peer review committee or officer, or by the commissioner of insurance for any records or proceedings of the board of governors.

(c) Subsection (b) shall not apply to proceedings in which a health care provider contests the revocation, denial, restriction or termination of staff privileges or the license, registration, certification or other authorization to practice of the health care provider. A licensing agency in conducting a disciplinary proceeding in which admission of any peer review committee report, record or testimony is proposed shall hold the hearing in closed session when any such report, record or testimony is disclosed. Unless otherwise provided by law, a licensing agency conduct-

ing a disciplinary proceeding may close only that portion of the hearing in which disclosure of a report or record privileged under this section is proposed. In closing a portion of a hearing as provided by this section, the presiding officer may exclude any person from the hearing location except the licensee, the licensee's attorney, the agency's attorney, the witness, the court reporter and appropriate staff support for either counsel. The licensing agency shall make the portions of the agency record in which such report or record is disclosed subject to a protective order prohibiting further disclosure of such report or record. Such report or record shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity. No person in attendance at a closed portion of a disciplinary proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a report or record privileged under this section which was disclosed in a closed portion of a hearing, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. A licensing agency conducting a disciplinary proceeding may review peer review committee records, testimony or reports but must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding in open meeting of the licensing agency. Offering such testimony or records in an open public hearing shall not be deemed a waiver of the peer review privilege relating to any peer review committee testimony, records or report.

(d) Nothing in this section shall limit the authority, which may otherwise be provided by law, of the commissioner of insurance, the state board of healing arts or other health care provider licensing or disciplinary boards of this state to require a peer review committee or officer to report to it any disciplinary action or recommendation of such committee or officer; to transfer to it records of such committee's or officer's proceedings or actions to restrict or revoke the license, registration, certification or other authorization to practice of a health care provider; or to terminate the liability of the fund for all claims against a specific health care provider for damages for death or personal injury pursuant to subsection (i) of K.S.A. 40-3403, and amendments thereto. Reports and records so furnished shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a disciplinary proceeding by the state board of healing arts or other health care provider licensing or disciplinary boards of this state.

(e) A peer review committee or officer may report to and discuss its activities, information and findings to other peer review committees or officers or to a board of directors or an administrative officer of a health care provider without waiver of the privilege provided by subsection (b)

and the records of all such committees or officers relating to such report shall be privileged as provided by subsection (b).

(f) Nothing in this section shall be construed to prevent an insured from obtaining information pertaining to payment of benefits under a contract with an insurance company, a health maintenance organization or an administrator of a health benefits plan.

Sec. 52. K.S.A. 2011 Supp. 65-4921 is hereby amended to read as follows: 65-4921. As used in K.S.A. 65-4921 through 65-4930, and amendments thereto:

(a) “Appropriate licensing agency” means the agency that issued the license to the individual or health care provider who is the subject of a report under this act.

(b) “Department” means the department of health and environment.

(c) “Health care provider” means: (1) Those persons and entities defined as a health care provider under K.S.A. 40-3401, and amendments thereto; and (2) a dentist licensed by the Kansas dental board, a dental hygienist licensed by the Kansas dental board, a professional nurse licensed by the board of nursing, a practical nurse licensed by the board of nursing, a mental health technician licensed by the board of nursing, a physical therapist licensed by the state board of healing arts, a physical therapist assistant certified by the state board of healing arts, an occupational therapist licensed by the state board of healing arts, an occupational therapy assistant licensed by the state board of healing arts and a respiratory therapist licensed by the state board of healing arts.

(d) “License,” “licensee” and “licensing” include comparable terms which relate to regulation similar to licensure, such as registration.

(e) “Medical care facility” means: (1) A medical care facility licensed under K.S.A. 65-425 *et seq.*, and amendments thereto; (2) a private psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto; and (3) state psychiatric hospitals and state institutions for ~~the mentally retarded people with intellectual disability~~, as follows: Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

(f) “Reportable incident” means an act by a health care provider which: (1) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or (2) may be grounds for disciplinary action by the appropriate licensing agency.

(g) “Risk manager” means the individual designated by a medical care facility to administer its internal risk management program and to receive reports of reportable incidents within the facility.

(h) “Secretary” means the secretary of health and environment.

Sec. 53. K.S.A. 65-5601 is hereby amended to read as follows: 65-

5601. As used in K.S.A. 65-5601 to 65-5605, inclusive, *and amendments thereto*:

(a) “Patient” means a person who consults or is examined or interviewed by treatment personnel.

(b) “Treatment personnel” means any employee of a treatment facility who receives a confidential communication from a patient while engaged in the diagnosis or treatment of a mental, alcoholic, drug dependency or emotional condition, if such communication was not intended to be disclosed to third persons.

(c) “Ancillary personnel” means any employee of a treatment facility who is not included in the definition of treatment personnel.

(d) “Treatment facility” means a community mental health center, community service provider, psychiatric hospital and state institution for ~~the mentally retarded~~ *people with intellectual disability*.

(e) “Head of the treatment facility” means the administrative director of a treatment facility or the designee of the administrative director.

(f) “Community mental health center” means a mental health clinic or community mental health center licensed under K.S.A. 75-3307b, and amendments thereto.

(g) “Psychiatric hospital” means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Topeka state hospital and hospitals licensed under K.S.A. 75-3307b, and amendments thereto.

(h) “State institution for ~~the mentally retarded~~ *people with intellectual disability*” means Winfield state hospital and training center, Parsons state hospital and training center and the Kansas neurological institute.

(i) “Community service provider” means: (1) A community facility for ~~the mentally retarded~~ *people with intellectual disability* organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b, and amendments thereto; (2) community service provider as provided in the developmental disabilities reform act; or (3) a nonprofit corporation which provides services for ~~the mentally retarded~~ *people with intellectual disability* pursuant to a contract with ~~a mental retardation~~ *an intellectual disability* governing board.

Sec. 54. K.S.A. 2011 Supp. 65-6805 is hereby amended to read as follows: 65-6805. Each medical care facility as defined by subsection (h) of K.S.A. 65-425, and amendments thereto; health care provider as defined in K.S.A. 40-3401, and amendments thereto; providers of health care as defined in subsection (f) of K.S.A. 65-5001, and amendments thereto; health care personnel as defined in subsection (e) of K.S.A. 65-5001, and amendments thereto; home health agency as defined by subsection (b) of K.S.A. 65-5101, and amendments thereto; psychiatric hospitals licensed under K.S.A. 75-3307b, and amendments thereto; state institutions for ~~the mentally retarded~~ *people with intellectual disability*;

community ~~mental-retardation~~ facilities *for people with intellectual disability* as defined under K.S.A. 65-4412, and amendments thereto; community mental health center as defined under K.S.A. 65-4432, and amendments thereto; adult care homes as defined by K.S.A. 39-923, and amendments thereto; laboratories described in K.S.A. 65-1,107, and amendments thereto; pharmacies; board of nursing; Kansas dental board; board of examiners in optometry; state board of pharmacy; state board of healing arts and third-party payors, including, but not limited to, licensed insurers, medical and hospital service corporations, health maintenance organizations, fiscal intermediaries for government-funded programs and self-funded employee health plans, shall file health care data with the Kansas health policy authority as prescribed by the authority. The provisions of this section shall not apply to any individual, facility or other entity under this section which uses spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination for the treatment or cure of disease.

Sec. 55. K.S.A. 2011 Supp. 72-962 is hereby amended to read as follows: 72-962. As used in this act:

- (a) "School district" means any public school district.
- (b) "Board" means the board of education of any school district.
- (c) "State board" means the state board of education.
- (d) "Department" means the state department of education.
- (e) "State institution" means any institution under the jurisdiction of a state agency.
- (f) "State agency" means the department of social and rehabilitation services, the department of corrections and the juvenile justice authority.
- (g) "Exceptional children" means persons who are children with disabilities or gifted children and are school age, to be determined in accordance with rules and regulations adopted by the state board, which age may differ from the ages of children required to attend school under the provisions of K.S.A. 72-1111, and amendments thereto.
- (h) "Gifted children" means exceptional children who are determined to be within the gifted category of exceptionality as such category is defined by the state board.
- (i) "Special education" means specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child, including:
  - (1) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
  - (2) instruction in physical education.
- (j) "Special teacher" means a person, employed by or under contract with a school district or a state institution to provide special education or related services, who is: (1) Qualified to provide special education or related services to exceptional children as determined pursuant to stan-

dards established by the state board; or (2) qualified to assist in the provision of special education or related services to exceptional children as determined pursuant to standards established by the state board.

(k) “State plan” means the state plan for special education and related services authorized by this act.

(l) “Agency” means boards and the state agencies.

(m) “Parent” means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as parent; (4) a legal guardian; (5) an education advocate; or (6) a foster parent, if the foster parent has been appointed the education advocate of an exceptional child.

(n) “Person acting as parent” means a person such as a grandparent, stepparent or other relative with whom a child lives or a person other than a parent who is legally responsible for the welfare of a child.

(o) “Education advocate” means a person appointed by the state board in accordance with the provisions of K.S.A. 2011 Supp. 38-2218, and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child.

(p) “Free appropriate public education” means special education and related services that: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program.

(q) “Federal law” means the individuals with disabilities education act, as amended.

(r) “Individualized education program” or “IEP” means a written statement for each exceptional child that is developed, reviewed, and revised in accordance with the provisions of K.S.A. 72-987, and amendments thereto.

(s) (1) “Related services” means transportation, and such developmental, corrective, and other supportive services, including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the child’s IEP, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only, as may be required to assist an exceptional

child to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(2) “Related services” shall not mean any medical device that is surgically implanted or the replacement of any such device.

(t) “Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

(u) “Individualized education program team” or “IEP team” means a group of individuals composed of: (1) The parents of a child; (2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment; (3) at least one special education teacher or, where appropriate, at least one special education provider of the child; (4) a representative of the agency directly involved in providing educational services for the child who: (A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children; (B) is knowledgeable about the general curriculum; and (C) is knowledgeable about the availability of resources of the agency; (5) an individual who can interpret the instructional implications of evaluation results; (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) whenever appropriate, the child.

(v) “Evaluation” means a multisourced and multidisciplinary examination, conducted in accordance with the provisions of K.S.A. 72-986, and amendments thereto, to determine whether a child is an exceptional child.

(w) “Independent educational evaluation” means an examination which is obtained by the parent of an exceptional child and performed by an individual or group of individuals who meet state and local standards to conduct such an examination.

(x) “Elementary school” means any nonprofit institutional day or residential school that offers instruction in any or all of the grades kindergarten through nine.

(y) “Secondary school” means any nonprofit institutional day or residential school that offers instruction in any or all of the grades nine through 12.

(z) “Children with disabilities” means: (1) Children with ~~mental retardation~~ *intellectual disability*, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and who, by reason thereof, need special education and related services; and (2) children experiencing one or more developmental delays and, by reason

thereof, need special education and related services if such children are ages three through nine.

(aa) “Substantial change in placement” means the movement of an exceptional child, for more than 25% of the child’s school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

(bb) “Material change in services” means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service or a supplementary aid or a service specified on the IEP of an exceptional child.

(cc) “Developmental delay” means such a deviation from average development in one or more of the following developmental areas, as determined by appropriate diagnostic instruments and procedures, as indicates that special education and related services are required: (1) Physical; (2) cognitive; (3) adaptive behavior; (4) communication; or (5) social or emotional development.

(dd) “Homeless children” means “homeless children and youths” as defined in the federal McKinney-Vento homeless assistance act, 42 U.S.C. § 11434a.

(ee) “Limited English proficient” means an individual who meets the qualifications specified in section 9101 of the federal elementary and secondary education act of 1965, as amended.

Sec. 56. K.S.A. 72-6203 is hereby amended to read as follows: 72-6203. (a) It is hereby declared to be a policy of the state of Kansas to cooperate with the federal government in doing research in the field of special education within this state to determine the needs of educable ~~mentally retarded~~ children *with intellectual disability* in areas where population is not sufficiently large to make possible the organization of day school special classes in centers within travel distance for children.

(b) The state board of education is designated the “educational agency” responsible for carrying out the purposes of this act, and is authorized to make and file applications for federal funds as provided in the federal act of July 26, 1954 (68 Stat. 533). The state board of education is authorized and empowered to receive from the federal government, or any of its agencies, any funds made available under existing law, rules or regulations, or that may hereafter be made available for expenses of doing research, and such board may expend the same for ~~said~~ *such* purposes in accordance with the rules, regulations and requirements under which such funds are made available.

(c) The state board of education is authorized and directed to require such reports, make such inspections and investigations, and prescribe such regulations, as it deems necessary in carrying out the provisions of this act, and shall make such reports to federal agencies as may be required by such agencies in granting federal funds.

(d) The state treasurer is designated the custodian of all funds made available for the purposes of this act. The state board of education shall deposit all such funds received from the federal government in the state treasury, and the treasurer of the state shall credit same to the proper accounts. The director of accounts and reports is hereby authorized to draw his warrants upon the treasurer of state against such accounts upon duly authorized vouchers approved by the state board of education as provided by law.

Sec. 57. K.S.A. 2011 Supp. 74-5344 is hereby amended to read as follows: 74-5344. Nothing contained in the licensure of psychologists act of the state of Kansas shall be construed: (a) To prevent qualified members of other professional groups such as, but not limited to, ministers, Christian Science practitioners, social workers and sociologists from doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions so long as they do not hold themselves out to the public by any title or description of services incorporating the words “psychologic,” “psychological,” “psychologist” or “psychology”;

(b) in any way to restrict any person from carrying on any of the aforesaid activities in the free expression or exchange of ideas concerning the practice of psychology, the application of its principles, the teaching of such subject matter and the conducting of research on problems relating to human behavior if such person does not represent such person or such person’s services in any manner prohibited by such act;

(c) to limit the practice of psychology of a licensed masters level psychologist or a person who holds a temporary license to practice as a licensed masters level psychologist insofar as such practice is a part of the duties of any such person’s salaried position, and insofar as such practice is performed solely on behalf of such person’s employer or insofar as such person is engaged in public speaking with or without remuneration;

(d) to limit the practice of psychology or services of a student, intern or resident in psychology pursuing a degree in psychology in a school, college, university or other institution, with educational standards consistent with those of the state universities of Kansas if such practice or services are supervised as a part of such person’s degree program. Nothing contained in this section shall be construed as permitting such persons to offer their services as psychologists to any other person and to accept remuneration for such psychological services other than as specifically excepted herein, unless they have been licensed under the provisions of the licensure of psychologists act of the state of Kansas, registered under the provisions of K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto, or granted a temporary license under the provisions of K.S.A. 74-5367, and amendments thereto;

(e) to prevent the employment, by a person, association, partnership

or a corporation furnishing psychological services for remuneration, of persons licensed as psychologists under the provisions of the licensure of psychologists act of the state of Kansas;

(f) to restrict the use of tools, tests, instruments or techniques usually denominated "psychological" so long as the user does not represent oneself to be a licensed psychologist or a licensed masters level psychologist;

(g) to permit persons licensed as psychologists to engage in the practice of medicine as defined in the laws of this state, nor to require such licensed psychologists to comply with the Kansas healing arts act;

(h) to restrict the use of the term "social psychologist" by any person who has received a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a school or college as defined in the licensure of psychologists act of the state of Kansas, and who has passed comprehensive examination in the field of social psychology as a part of the requirements for the doctoral degree or has had equivalent specialized training in social psychology;

(i) to restrict the practice of psychology by a person who is certified as a school psychologist by the state department of education so long as such practice is conducted as a part of the duties of employment by a unified school district or as part of an independent evaluation conducted in accordance with K.S.A. 72-963, and amendments thereto, including the use of the term "school psychologist" by such person in conjunction with such practice; or

(j) to restrict the use of the term psychologist or the practice of psychology by psychologists not licensed under the licensure of psychologists act of the state of Kansas in institutions for ~~the mentally retarded people~~ *with intellectual disability*, in a juvenile correctional facility, as defined in K.S.A. 2011 Supp. 38-2302, and amendments thereto, or in institutions within the department of corrections insofar as such term is used or such practice of psychology is performed solely in conjunction with such person's employment by any such institution or juvenile correctional facility.

(k) Any person not licensed as a psychologist but who immediately prior to the effective date of this act was engaged in the practice of psychology in accordance with subsection (e) as it existed immediately prior to the effective date of this act under the supervision of a licensed psychologist may continue on and after the effective date of this act to engage in such practice in the manner authorized by subsection (e) as it existed immediately prior to the effective date of this act.

Sec. 58. K.S.A. 74-8917 is hereby amended to read as follows: 74-8917. The provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto, shall not prohibit the issuance of bonds by the Kansas development finance authority for the purpose of making loans to organizations which provide community mental health, ~~mental retardation~~

*tellectual disability* and drug and alcohol abuse services to the Kansas department of social and rehabilitation services and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto.

Sec. 59. K.S.A. 2011 Supp. 75-4265 is hereby amended to read as follows: 75-4265. (a) The secretary of social and rehabilitation services and the secretary of aging shall take necessary actions to establish an intergovernmental transfer program as a part of the nursing facility services payment program within the medicaid state plan.

(b) In implementing the intergovernmental transfer program, the secretary of aging shall disburse moneys received from the federal government for the intergovernmental transfer program and moneys transferred from the state general fund to the intergovernmental transfer fund for the program to units of government which have entered into participation agreements with the secretary of aging and the secretary of social and rehabilitation services. The amount of moneys disbursed to the units of government from moneys transferred from the state general fund to the intergovernmental transfer fund for the program shall not exceed the amount necessary to match federal funds available to the state under the intergovernmental transfer program. The secretary of aging shall periodically calculate the amount of federal funds available under the program according to the methodology prescribed for the intergovernmental transfer program in the medicaid state plan.

(c) The secretary of social and rehabilitation services and the secretary of aging are authorized to enter into intergovernmental transfer program participation agreements with units of government which own and operate nursing facilities. The participation agreements may permit the units of government to retain a participation fee specified by the secretary of aging from moneys received under the intergovernmental transfer program which are otherwise required to be transferred back to the secretary of aging.

(d) (1) There is hereby established the intergovernmental transfer fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the intergovernmental transfer fund shall be to disburse the state match amount under the intergovernmental transfer program and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Subject to the provisions of appropriation acts, when the secretary of aging determines that an amount of federal medicaid moneys is available for the intergovernmental transfer program, the secretary of aging shall determine the amount required as the state match and shall certify that amount to the director of accounts and reports. Upon receipt of each such state match certification, the director of accounts

and reports shall transfer the amount certified by revenue transfer from the state general fund to the intergovernmental transfer fund. Upon the crediting of such state match amount in the intergovernmental transfer fund, the secretary of aging shall disburse the amount of federal moneys and the state match amount to the units of government that have entered into participation agreements under the program.

(2) Each unit of government receiving a disbursement under the intergovernmental transfer program shall reimburse the amount of money received, less the amount of the participation fee, to the secretary of aging. Upon receipt of each amount of moneys from participating units of government under the intergovernmental transfer program, the secretary of aging shall deposit the entire amount in the state treasury to the credit of the intergovernmental transfer fund. The secretary of aging shall determine the amount of each such deposit that was transferred from the state general fund to match medicaid federal funds under the intergovernmental transfer program and shall certify such amount to the director of accounts and reports. Upon receipt of each such certification, the director of accounts and reports shall retransfer the amount certified from the intergovernmental transfer fund to the state general fund.

(e) There is hereby established the intergovernmental transfer administration fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the intergovernmental transfer administration fund shall be to pay the costs of administering the intergovernmental transfer program and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. The secretary of aging shall recover the costs of administering the intergovernmental transfer program from the intergovernmental transfer fund by certifying the amount of such costs to the director of accounts and reports each calendar quarter. Upon receipt of each certification of costs from the secretary of aging under this subsection, the director of accounts and reports shall transfer the amount certified from the intergovernmental transfer fund to the intergovernmental transfer administration fund.

(f) After each amount of moneys is credited to the intergovernmental transfer fund and the amount of the state match that had been transferred from the state general fund has been transferred back to the state general fund pursuant to subsection (d)(2), and after the transfer of the amount certified by the secretary of aging to the intergovernmental transfer administration fund pursuant to subsection (e), if any, the director of accounts and reports shall transfer the remaining amount in the intergovernmental transfer fund as follows:

~~(1) During the period from the effective date of this act through June 30, 2001, 60% of such amount shall be transferred to the senior services trust fund established by K.S.A. 2011 Supp. 75-4266 and amendments~~

~~thereto, 9.7% of such amount shall be transferred to the state medicaid match fund — department on aging established by subsection (o)(1); 15.3% of such amount shall be transferred to the state medicaid match fund — SRS established by subsection (o)(2), 10% of such amount shall be transferred to the long-term care loan and grant fund established by subsection (h) and 5% of such amount shall be transferred to the HCBS programs fund established by subsection (p); and~~

~~(2) after June 30, 2001, 70%~~ *Seventy percent* of such amount shall be transferred to the senior services trust fund, 5% of such amount shall be transferred to the long-term care loan and grant fund and 25% of such amount shall be transferred to the following special revenue funds in an amount specified by appropriation acts of the legislature for each such fund: State medicaid match — fund — department on aging and the state medicaid match fund — SRS.

(g) There is hereby established the senior services fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the senior services fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Moneys in the senior services fund shall be used by the secretary of aging only for projects intended (1) to reduce future medicaid costs to the state, (2) to help seniors avoid premature institutionalization, (3) to improve the quality of care or the quality of life of seniors who are customers of long-term care programs, (4) to satisfy state matching requirements for senior service programs authorized by federal law, or (5) to provide financial assistance under the senior pharmacy assistance program. Moneys credited to the senior services fund from income of investments of the moneys in the senior services trust fund shall not be used to create or fund any entitlement program not in existence on the effective date of this act.

(h) There is hereby established the long-term care loan and grant fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the long-term care loan and grant fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Moneys in the long-term care loan and grant fund shall be used to make loans under the long-term care loan program developed by the secretary of aging in accordance with this section and grants under the long-term grant program developed by the secretary of aging in accordance with this section.

(i) The secretary of aging is hereby authorized to develop and implement a long-term care loan program in accordance with this section. Subject to the provisions of this section and the provisions of appropriation acts, the secretary of aging may enter into loan agreements for market-

rate, low-interest or no-interest, fully or partially secured or unsecured loans with repayment provisions and other terms and conditions as may be prescribed by the secretary under such program. Loans under the long-term care loan program may be made for the following:

(1) Converting all or parts of some types of licensed adult care homes from their existing licensure types to different licensure types to meet demonstrated changing service demands in their communities;

(2) converting private residences to licensed homes plus facilities, as defined by K.S.A. 39-923, and amendments thereto;

(3) converting space in rural hospitals to hospital-based long-term care facilities;

(4) improving quality in some types of licensed adult care homes;

(5) rural hospitals contracting for physician, physician assistant or licensed professional nurse services; or

(6) building congregate housing for seniors in Kansas cities with populations of 2,500 or less.

(j) The secretary of aging may consider the following factors to prioritize and select loans under the long-term care loan program, grants under the long-term care grant program and projects financed from the senior services fund:

(1) Type of loan — higher interest is preferable to lower interest and more secured is preferable to less secured;

(2) size of facility — facilities having less than 60 beds are preferable to facilities having 60 beds or more;

(3) availability and utilization of the same type of facilities or services in the proposed loan or project area;

(4) type of facility owner or borrower — unit of government, not-for-profit organizations, for-profit organizations, and individuals, in that order of preference; and

(5) type of research project organization — geriatric schools or programs in Kansas colleges or universities, Kansas colleges or universities, educational foundations, foreign colleges or universities, Kansas not-for-profit organizations, Kansas for-profit organizations, foreign not-for-profit organizations, foreign for-profit organizations, and individuals, in that order of preference.

(k) All moneys received from repayments of principal and interest of any loan made under this act shall be deposited in the state treasury and credited to the long-term care loan and grant fund within the state treasury and used to make new loans or grants under this section. The repayment of a loan or of a senior services fund project contract or grant may not be forgiven, in whole or in part, except as authorized by law.

(l) The secretary of aging is hereby authorized to develop and implement a long-term care grant program in accordance with this section. Subject to the provisions of this section and the provisions of appropriation acts, the secretary of aging may make competitive matching grants

under such terms and conditions as may be prescribed by the secretary under such program. Grants under the long-term care grant program may be made only from the amount of moneys received for interest payments under loan agreements under the long-term care loan program and credited to the long-term care loan and grant fund. Grants under the long-term care grant program may be made for the following:

(1) Grants for improvements in the quality of case management services under home and community-based services (HCBS) programs and for improvements for adult care homes; and

(2) financial assurance grants for community service providers under home and community-based services (HCBS) programs.

(m) For purposes of this section, “units of government” and “units of government which own and operate nursing facilities” which are eligible to enter into intergovernmental transfer program participation agreements shall be limited to cities of the first class, cities of the second class, counties, hospital districts, or health care facilities and services hospital districts which hold legal title to and are actively involved in the day-to-day operations of any of the following:

(1) Medicaid-certified nursing facilities and nursing facilities for mental health, as defined in K.S.A. 39-923, and amendments thereto;

(2) medicaid-certified long-term care facilities which are operated in connection with city hospitals established under K.S.A. 13-14b01 *et seq.*, and amendments thereto or K.S.A. 14-601 *et seq.*, and amendments thereto, county hospitals established under K.S.A. 19-4601 *et seq.*, and amendments thereto, or district hospitals established under K.S.A. 80-2501 *et seq.*, and amendments thereto; or

(3) medicaid-certified long-term care facilities operated under authority of K.S.A. 80-2550 *et seq.*, and amendments thereto.

(n) Entities eligible to apply for loans under the long-term care loan program under this section shall be limited to the owners of:

(1) Licensed adult care homes, excluding nursing facilities for mental health and intermediate care facilities for ~~the mentally retarded~~ *people with intellectual disability*, as defined in K.S.A. 39-923, and amendments thereto;

(2) medicaid-certified licensed hospitals and medicaid-certified long-term care facilities based in or operated in connection with licensed hospitals as defined in K.S.A. 65-425, and amendments thereto;

(3) private residences which the owners will contract to convert into licensed homes plus facilities, as defined in K.S.A. 39-923, and amendments thereto, and in which the owners will reside after the conversion and licensure; or

(4) congregate senior housing projects being built with loans in Kansas cities with a population of 2,500 or less.

(o) (1) There is hereby established the state medicaid match fund — department on aging in the state treasury which shall be administered by

the secretary of aging in accordance with this act. All expenditures from the state medicaid match fund — department on aging shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Moneys in the state medicaid match fund — department on aging shall be used to match moneys for federal medicaid programs which are the most cost efficient in providing services.

(2) There is hereby established the state medicaid match fund — SRS in the state treasury which shall be administered as provided by law and in accordance with this act. All expenditures from the state medicaid match fund — SRS shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved as provided by law. Moneys in the state medicaid match fund — SRS shall be used to match moneys for federal medicaid programs which are the most cost efficient in providing services.

(p) There is hereby established the HCBS programs fund in the state treasury which shall be administered by the secretary of social and rehabilitation services. All moneys in the HCBS programs fund shall be used for programs and services under the home and community-based services (HCBS) programs and as otherwise provided by law. All expenditures from the HCBS programs fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of social and rehabilitation services or the secretary's designee.

Sec. 60. K.S.A. 75-4375 is hereby amended to read as follows: 75-4375. (a) Each state officer or employee (1) who is employed by an institution that is closed or abolished or otherwise ceases operations or that is scheduled for such closure, abolition or cessation of operations and has a budget reduction imposed that is associated with such closure, abolition or cessation of operations, and (2) who is a direct care employee as defined by this section, and (3) who is laid off from employment with such institution for the reason of such closure, abolition, or cessation of operations or such imposition of a budget reduction, and (4) who remains in such employment until the date the employee is laid off, shall receive compensation from the department of social and rehabilitation services for the following:

(A) Forty hours of pay at the state officer or employee's regular hourly rate of pay on the date the employee is laid off if such employee has completed one full year of service but less than two full years of service on the layoff date;

(B) eighty hours of pay at the state officer or employee's regular hourly rate of pay on the date the employee is laid off if such employee has completed two full years of service but less than three full years of service on the layoff date;

(C) one hundred twenty hours of pay at the state officer or employee's regular hourly rate of pay on the date the employee is laid off if such employee has completed three full years of service but less than four full years of service on the layoff date; or

(D) one hundred sixty hours of pay at the state officer or employee's regular hourly rate of pay on the date the employee is laid off if the employee has completed four full years of service or more on the layoff date.

(b) As used in this section, "direct care employee" means state officers or employees in the classified service under the Kansas civil service act who: (1) Are exempt from the provisions of K.S.A. 75-6801, and amendments thereto, as prescribed in policies and procedures prescribed by the secretary of administration, including, but not limited to, state officers and employees whose positions are in the following job class series: (A) Activity therapist, (B) activity therapy technician, (C) licensed mental health technician, (D) licensed mental health technician specialist, (E) licensed practical nurse, (F) licensed practical nurse, senior, (G) mental health aide, (H) radiologic technologist, (I) registered nurse, (J) activity specialist, (K) ~~mental retardation~~ *intellectual disability* specialist, (L) ~~mental retardation~~ *intellectual disability* technician, and (M) ~~mental retardation~~ *intellectual disability* trainee; or

(2) are in positions that are assigned to job classes or job class series that are designated as direct care employee job classes or job class series by the secretary of social and rehabilitation services for purposes of this section, except that no such designation shall be effective until the secretary of social and rehabilitation services has presented such designation to the SRS transition oversight committee created by K.S.A. 1997 Supp. 46-2701, and amendments thereto.

Sec. 61. K.S.A. 2011 Supp. 75-5321a is hereby amended to read as follows: 75-5321a. The secretary of social and rehabilitation services shall take necessary actions to transfer the administration of certain long-term care programs and services to the secretary of aging. The programs shall include the nursing facility services payment program, the home and community based services for the frail elderly waiver program, the case management for the frail elderly program and the income eligible (home care) program. Excluding nursing facility programs, the programs to be transferred shall not include long-term care programs for individuals under the age of 65 with mental illness, ~~mental retardation~~ *intellectual disability*, other mental disabilities or physical disabilities. All such transfers shall be made only in accordance with federal grant requirements related to such programs.

Sec. 62. K.S.A. 75-5399 is hereby amended to read as follows: 75-5399. When used in this act:

(a) "Individuals with disabilities" means individuals with ~~mental re-~~

~~tardation~~ *intellectual disability*, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities.

(b) “Transition services” means a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities shall be based upon the individual student’s needs, taking into account the student’s preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(c) “Transition planning services” means rehabilitation counseling, information and referral to community services for students age 16 and older in secondary special education programs.

(d) “Local education authority” means the special education inter-local or cooperative or school district responsible for the local special education program.

(e) “Special education program” means services that are provided pursuant to public law 94-142 (the education of all handicapped children’s act) as implemented in Kansas through K.S.A. 72-961 *et seq.*, and amendments thereto, and public law 101-476 (the individuals with disabilities education act).

(f) “Secretary” means the secretary of social and rehabilitation services or the designee of the secretary.

(g) “Local transition council” means a representative group of persons with disabilities and their families, school personnel, adult service agency personnel and members of the general public such as employers which develops an annual plan to improve secondary special education, transition and transition planning services.

Sec. 63. K.S.A. 2011 Supp. 75-6506 is hereby amended to read as follows: 75-6506. (a) The participation of a person qualified to participate in the state health care benefits program shall be voluntary, and the cost of the state health care benefits program for such person shall be established by the Kansas state employees health care commission.

(b) Periodic deductions from state payrolls may be made in accordance with procedures prescribed by the secretary of administration to cover the costs of the state health care benefits program payable by persons who are on the state payroll when authorized by such persons. Any such periodic payroll deductions in effect on an implementation date for

biweekly payroll periods shall be collected in the manner prescribed by the secretary of administration.

(c) In the event that the Kansas state employees health care commission designates by rules and regulations a group of persons on the payroll of a county, township, city, special district or other local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, nonprofit community facility for ~~the mentally-retarded~~ *people with intellectual disability*, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101, and amendments thereto, as qualified to participate in the state health care benefits program, periodic deductions from payrolls of the local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, nonprofit community facility for ~~the mentally-retarded~~ *people with intellectual disability*, as provided in K.S.A. 19-4001 *et seq.* and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101 and amendments thereto, may be made to cover the costs of the state health care benefits program payable by such persons when authorized by such persons. All such moneys deducted from payrolls shall be remitted to the Kansas state employees health care commission in accordance with the directions of the commission.

(d) ~~On and after July 1, 2002,~~ Whenever the Kansas state employees health care commission designates any entity listed in subsection (c) as qualified to participate in the state health care benefits program, such entity's participation shall be conditioned upon the following:

(1) At least 70% of such entity's employees shall participate in the state health care plan;

(2) except as provided by paragraph (6) of this subsection, the rate of the premium paid by the entity as the employer's share of the total amount of premium paid shall be at least equal to the rate paid by the state of Kansas for its employees;

(3) the entity shall not create, maintain or permit any exemption from participation in the state health care plan for such entity's employees;

(4) the rate charged to such entity shall be sufficient to pay for any administrative or underwriting costs incurred by the state employees health care commission;

(5) the rate charged to such entity shall not increase the rate of premium paid by the state of Kansas for its employees;

(6) the entity shall elect to participate for a minimum of three consecutive years in the state health care benefits program; and

(7) the commission may authorize an entity to pay less than the state rate for the employee coverage for no more than three years and no more than five years for dependent coverage on the condition that the entity elects to participate for at least three consecutive years after first paying the state rate for employee coverage.

Sec. 64. K.S.A. 75-6508 is hereby amended to read as follows: 75-6508. (a) (1) Each state agency which has on its payroll persons participating in the state health care benefits program shall pay from any moneys available to the agency for such purpose an amount specified by the Kansas state employees health care commission, including any amounts prescribed under a cafeteria plan established under K.S.A. 75-6512, and amendments thereto. All such payments shall continue on the behalf of employees otherwise eligible for participation in the state health care benefits program in accordance with the continuation provisions of the federal family and medical leave act of 1993, P.L. 103-03, 107 Stat. 6. The commission may charge each state agency a uniform amount per person as the cost to the agency for the state's contribution for persons participating in the state health care benefits program. Such amounts may include the costs of administering the program.

(2) In the event that the Kansas state employees health care commission designates by rules and regulations a group of persons on the payroll of a county, township, city, special district or other local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, nonprofit community facility for ~~the mentally retarded~~ *people with intellectual disability*, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101, and amendments thereto, as qualified to participate in the state health care benefits program, each local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, nonprofit community facility for ~~the mentally retarded~~ *people with intellectual disability*, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, or nonprofit independent living agency, as defined

in K.S.A. 65-5101, and amendments thereto, which has on its payroll persons participating in the state health care benefits program shall pay from any moneys available to the local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, nonprofit community facility for ~~the mentally retarded~~ *people with intellectual disability*, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101, and amendments thereto, for such purpose an amount specified by the commission. The commission may charge each local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, nonprofit community facility for ~~the mentally retarded~~ *people with intellectual disability*, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101, and amendments thereto, a uniform amount per person as the cost to the local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, nonprofit community facility for ~~the mentally retarded~~ *people with intellectual disability*, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101, and amendments thereto, for the contribution of the local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, nonprofit community facility for ~~the mentally retarded~~ *people with intellectual disability*, as provided in K.S.A. 19-4001 *et seq.*, and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101, and amendments thereto, for persons participating in the state health care benefits program. Such amounts may include the costs of administering the program.

(b) Payments from public funds for coverage under the state health care benefits program for persons participating in that program shall not

be deemed a payment or supplement of wages of such person notwithstanding any other provision of law or rules and regulations relating to wages of any such person.

Sec. 65. K.S.A. 2011 Supp. 75-6609 is hereby amended to read as follows: 75-6609. (a) When used in this section, "surplus real estate" means real estate which is no longer needed by the state agency which owns such real estate as determined in accordance with this section.

(b) (1) The secretary of administration shall develop criteria for the identification of surplus real estate, including but not limited to, a review of any legal restrictions associated with the real estate and the reasons for the state agency to keep the real estate. In accordance with such criteria, the secretary shall assist state agencies in the identification of surplus real estate. The secretary of administration shall periodically review the status of all real estate of state agencies subject to this section to determine if any of the real estate owned by state agencies is potentially surplus real estate. If any real estate owned by a state agency is determined by the secretary of administration, in consultation with the head of the state agency, to be surplus real estate in accordance with the criteria developed under subsection (a), then the secretary of administration shall recommend to the governor that such real estate be sold under the procedures prescribed by this section.

(2) The secretary of administration shall develop guidelines for the sale of surplus real estate. In accordance with such guidelines and upon the approval of the governor, after consultation with the head of the state agency which owns such surplus real estate, after consultation with the joint committee on state building construction and after approval by the state finance council under subsection (c), the secretary may offer such property for sale by one of the following means: (A) Public auction; (B) by listing the surplus property with a licensed real estate broker or salesperson; or (C) by sealed bid. Subject to the approval of the state finance council as required by subsection (c), the secretary of administration may sell surplus real estate and any improvements thereon on behalf of the state agency which owns such property.

(c) Prior to the sale of any surplus real estate under subsection (b), the state finance council shall approve the sale, which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711, and amendments thereto. The matter may be submitted to the state finance council for approval at any time, including periods of time during which the legislature is in session.

(d) Prior to offering any real estate for sale, such property shall be appraised pursuant to K.S.A. 75-3043a, and amendments thereto, unless the appraisal is waived as provided in this subsection. The secretary of administration may waive the requirement for appraisal for any parcel of

surplus real estate that is to be sold at public auction under this section if the secretary of administration determines that it is in the best interests of the state to waive the requirement for appraisal for such parcel of surplus real estate. The costs of any such appraisal may be paid from the proceeds of the sale.

(e) Conveyance of title in surplus real estate offered for sale by the secretary of administration shall be executed on behalf of the state agency by the secretary of administration. The deed for the conveyance may be by warranty deed or by quitclaim deed as determined to be in the best interests of the state by the secretary of administration in consultation with the head of the state agency which owns the surplus real estate.

(f) (1) Any proceeds from the sale of surplus real estate and any improvements thereon, after deduction of the expenses of such sale and any cost of appraisal of the surplus real estate, shall be deposited in the state treasury as prescribed by this subsection, unless otherwise authorized by law. On and after the effective date of this act, 20% of the proceeds from each such sale deposited in the state treasury shall be credited to the surplus real estate fund or another appropriate special revenue fund of the state agency which owned the surplus real estate, as is prescribed by law or as may be determined by the state agency, unless otherwise required by state or federal law or by the limitations or restrictions of the state's title to the real estate being sold. In the case of proceeds from the sale of surplus real estate at a state mental health institution or a state ~~mental-retardation~~ institution *for people with intellectual disability*, such portion of the proceeds shall be credited to the client benefit fund of such institution or to another special revenue fund of such institution for (A) rehabilitation and repair or other capital improvements for such institution, or (B) one-time expenditures for community mental health organizations if the real estate sold was at a state mental health institution or for community developmental disabilities organizations if the real estate sold was at a state ~~mental-retardation~~ institution *for people with intellectual disability*, and, in any such case, shall be expended in accordance with the provisions of appropriation acts. The remaining 80% of the proceeds from each such sale deposited in the state treasury shall be credited to the state general fund.

(2) The amount of expenses and the cost of appraisal for each sale of surplus real estate pursuant to this section shall be transferred and credited to the property contingency fund created under K.S.A. 75-3652, and amendments thereto, and may be expended for any operations of the department of administration.

(3) Any state agency owning real estate may apply to the director of accounts and reports to establish a surplus real estate special revenue fund in the state treasury. Subject to the provisions of appropriation acts, moneys in a surplus real estate special revenue fund may be expended for the operating expenditures of the state agency.

(g) Any sale of property by the secretary of transportation pursuant to K.S.A. 68-413, and amendments thereto, shall not be subject to the provisions of this section. The provisions of this section shall not be applicable to real estate given as an endowment, bequest, or gift to a state educational institution as defined in K.S.A. 72-4412, and amendments thereto, or to the university of Kansas medical center.

(h) Sale of the Olathe travel information center shall not be subject to the provisions of this section.

Sec. 66. K.S.A. 2011 Supp. 75-6610 is hereby amended to read as follows: 75-6610. If a mental health institution or ~~mental-retardation institution~~ *an institution for people with intellectual disability* is closed and all or part of the real estate of such institution is sold, the proceeds from the sale of such real estate, after deduction of the costs of the sale and any costs of appraisal of such surplus real estate, shall be deposited in the state treasury to the credit of a new or existing special revenue fund. All expenditures of such moneys in any such special revenue fund shall be in accordance with the provisions of appropriation acts and shall be used (a) for capital improvement or operating expenditures for another state institution providing either mental health services or ~~mental-retardation services~~ *for people with intellectual disability*, whichever were provided by the closed institution or (b) to provide either mental health services or ~~mental-retardation services~~ *for people with intellectual disability*, whichever was provided by the closed institution, through community organizations in communities.

Sec. 67. K.S.A. 2011 Supp. 75-7303 is hereby amended to read as follows: 75-7303. As used in the long-term care ombudsman act:

(a) "Ombudsman" means the state long-term care ombudsman, any regional long-term care ombudsman or any individual designated as an ombudsman under subsection (h) of K.S.A. 2011 Supp. 75-7306, and amendments thereto, who has received the training required under subsection (f) of K.S.A. 2011 Supp. 75-7306, and amendments thereto, and who has been designated by the state long-term care ombudsman to carry out the powers, duties and functions of the office of the state long-term care ombudsman.

(b) "Volunteer ombudsman" means an individual who has satisfactorily completed the training prescribed by the state long-term care ombudsman under subsection (f) of K.S.A. 2011 Supp. 75-7306, and amendments thereto, who is a volunteer assisting in providing ombudsman services and who receives no payment for such service other than reimbursement for expenses incurred in accordance with guidelines adopted therefor by the state long-term care ombudsman.

(c) "Facility" means an adult care home as such term is defined in K.S.A. 39-923, and amendments thereto, except that facility does not include any nursing facility for mental health or any intermediate care

facility for ~~the mentally retarded~~ *people with intellectual disability*, as such terms are defined in K.S.A. 39-923, and amendments thereto.

(d) “Resident” means a resident as such term is defined in K.S.A. 39-923, and amendments thereto.

(e) “State long-term care ombudsman” means the individual appointed by the governor to administer the office of the state long-term care ombudsman.

(f) “Regional long-term care ombudsman” means an individual appointed by the state long-term care ombudsman under K.S.A. 2011 Supp. 75-7304, and amendments thereto.

(g) “Office” means the office of the state long-term care ombudsman.

(h) “Conflict of interest” means (1) having a pecuniary or other interest in a facility, but not including interests that result only from having a relative who is a resident or from being the guardian of a resident, (2) being actively employed or otherwise having active involvement in representation of or advocacy for any facility or group of facilities, whether or not such representation or advocacy is individual or through an association or other entity, but not including any such active involvement that results only from having a relative who is a resident or from being the guardian of a resident, or (3) being employed by or having an active association with any entity that represents any resident or group of residents, including any area agency on aging, but not including any such active association that results only from having a relative who is a resident or from being the guardian of a resident.

Sec. 68. K.S.A. 76-12b01 is hereby amended to read as follows: 76-12b01. When used in this act:

(a) “Adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of that person’s age, cultural group and community.

(b) “Care” means supportive services, including, but not limited to, provision of room and board, supervision, protection, assistance in bathing, dressing, grooming, eating and other activities of daily living.

(c) “Institution” means a state institution for ~~the mentally retarded~~ *people with intellectual disability* including the following institutions: Kansas neurological institute, Parsons state hospital and training center and Winfield state hospital and training center.

(d) ~~“Mental retardation”~~ *“Intellectual disability”* means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from birth to age 18.

(e) “Respite care” means temporary, short-term care not exceeding 90 days per calendar year to provide relief from the daily pressures involved in caring for a ~~mentally retarded~~ *person with intellectual disability*.

(f) “Restraint” means the use of a totally enclosed crib or any material to restrict or inhibit the free movement of one or more limbs of a person except medical devices which limit movement for examination, treatment or to insure the healing process.

(g) “Seclusion” means being placed alone in a locked room where the individual’s freedom to leave is thereby restricted and where such placement is not under continuous observation.

(h) “Secretary” means the secretary of social and rehabilitation services or the designee of the secretary.

(i) “Significantly subaverage general intellectual functioning” means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified by the secretary.

(j) “Superintendent” means the chief administrative officer of the institution or the designee of the chief administrative officer.

(k) “Training” means the provision of specific environmental, physical, mental, social and educational interventions and therapies for the purpose of halting, controlling or reversing processes that cause, aggravate or complicate malfunctions or dysfunctions of development.

Sec. 69. K.S.A. 76-12b02 is hereby amended to read as follows: 76-12b02. The admission of a ~~mentally retarded~~ person *with intellectual disability* to an institution shall be at the discretion of the secretary.

Sec. 70. K.S.A. 76-12b03 is hereby amended to read as follows: 76-12b03. No person shall be admitted to an institution except for the purpose of diagnosis and evaluation unless the superintendent has found such person to be ~~mentally retarded~~ *a person with intellectual disability*, in need of care and training and that placement in the institution is the least restrictive alternative available. An admission for respite care shall not require a finding that a person is in need of training.

Sec. 71. K.S.A. 76-12b07 is hereby amended to read as follows: 76-12b07. The secretary may transfer a person from one institution to another institution whenever the secretary is of the opinion that the transfer is in the best interests of the person. The secretary may transfer temporarily a person to any other institution under the jurisdiction of the secretary for a period not to exceed 90 days to obtain treatment not available in an institution for ~~the mentally retarded~~ *people with intellectual disability*. The secretary shall consult with the person, natural guardian or guardian prior to any transfer under this section.

Sec. 72. K.S.A. 76-12b11 is hereby amended to read as follows: 76-12b11. (a) The records of any proposed resident, resident or former resident of a state institution for ~~the mentally retarded~~ *people with intellectual disability* that are in the possession of the institution shall be privileged and shall not be disclosed except under any of the following conditions:

(1) Upon the written consent of: (A) The proposed resident, resident

or former resident, if an adult who has no guardian; (B) the proposed resident's, resident's or former resident's guardian, if any; or (C) a parent, if the proposed resident, resident or former resident is under 18 years of age. The superintendent of the institution which has the records may refuse to disclose portions of such records if the superintendent states, in writing, that the disclosure will be injurious to the welfare of the proposed resident, resident or former resident.

(2) Upon the sole consent of the superintendent of the institution which has the records after a written statement by the superintendent that the disclosure is necessary for the care, training or treatment of the proposed resident, resident or former resident. The superintendent may make the disclosure to the proposed resident, resident or former resident, the person's next of kin, any state or national accreditation agency or any scholarly investigator without making that determination, but, before the disclosure is made, the superintendent shall require a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any proposed resident, resident or former resident to any person not otherwise authorized by law to receive that information.

(3) Upon the order of any court of record after a determination by the court that the records are necessary for the conduct of proceedings before it and are otherwise admissible as evidence.

(4) To any other person if such disclosure is required by federal law or regulation implementing a federal grant-in-aid program in which the state is participating.

(5) As provided in K.S.A. 74-5515, and amendments thereto.

(b) For the purposes of promoting the continuity of care between services provided in an institution and by a community provider, either in arranging admission to an institution, in making the determinations required as a function of the periodic reviews required by K.S.A. 76-12b05, and amendments thereto, or in planning for the discharge of a person from an institution to community care, the consent of a resident, former resident or proposed resident, or of the person's guardian, if one has been appointed, or of their parent, if the person is a minor, shall not be required for the release of records or exchange of information concerning that person between a state institution and any community developmental disability organization, as defined in K.S.A. 39-1803, and amendments thereto.

(c) Except as provided in subsections (a) or (b), to the extent the provisions of K.S.A. 65-5601 to 65-5605, inclusive, and amendments thereto, are applicable to the records of any proposed resident, resident or former resident of a state institution for ~~the mentally retarded people~~ *people with intellectual disability* that are in the possession of the institution, the provisions of K.S.A. 65-5601 to 65-5605, inclusive, and amendments

thereto, shall control the disposition of information contained in such records.

Sec. 73. K.S.A. 76-17c01 is hereby amended to read as follows: 76-17c01. There is hereby continued in existence an institution for ~~mentally retarded persons~~ *people with intellectual disability* known as the Kansas neurological institute. The object of said neurological institute shall be to provide for the evaluation, treatment and care of ~~the mentally retarded~~ *people with intellectual disability*, training of personnel, and for research into the causes and prevention and proper methods of treatment and training of ~~mentally retarded persons~~ *people with intellectual disability*.

Sec. 74. K.S.A. 2011 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301, and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817, and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02, and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, drycleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto, and gross receipts from regulated sports contests taxed pursuant to the Kansas professional regulated sports act, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored

by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school, a public or private nonprofit educational institution, state correctional institution including a privately constructed correctional institution contracted for state use and ownership, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital or public hospital authority, school, educational institution or a state correctional institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or district described in subsection (s), the total cost of which is paid from funds of such political subdivision or district and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. Nothing in this subsection or in the provisions of K.S.A. 12-3418, and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or any such district. As used in this subsection, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds of a political subdivision" shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, district described in subsection (s), public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school, public or private nonprofit educational institution, state correctional institution including a privately constructed correctional institution contracted for state use and ownership shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political sub-

division, district described in subsection (s), hospital or public hospital authority, school, educational institution or department of corrections concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, district described in subsection (s), hospital or public hospital authority, school, educational institution or the contractor contracting with the department of corrections for a correctional institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon

completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) sales of aircraft including remanufactured and modified aircraft sold to persons using directly or through an authorized agent such aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft for use outside of the United States and sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft;

(h) all rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) meals served without charge or food used in the preparation of such meals to employees of any restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;

(l) all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603, and amendments thereto;

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

(o) all sales of animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) all sales of drugs dispensed pursuant to a prescription order by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto. As used in this subsection, "drug" means a compound, substance or preparation and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages, recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary, and supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or intended to affect the structure or any function of the body;

(q) all sales of insulin dispensed by a person licensed by the state board of pharmacy to a person for treatment of diabetes at the direction of a person licensed to practice medicine by the board of healing arts;

(r) all sales of oxygen delivery equipment, kidney dialysis equipment, enteral feeding systems, prosthetic devices and mobility enhancing equipment prescribed in writing by a person licensed to practice the healing

arts, dentistry or optometry, and in addition to such sales, all sales of hearing aids, as defined by subsection (c) of K.S.A. 74-5807, and amendments thereto, and repair and replacement parts therefor, including batteries, by a person licensed in the practice of dispensing and fitting hearing aids pursuant to the provisions of K.S.A. 74-5808, and amendments thereto. For the purposes of this subsection: (1) “Mobility enhancing equipment” means equipment including repair and replacement parts to same, but does not include durable medical equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; is not generally used by persons with normal mobility; and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer; and (2) “prosthetic device” means a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction or support a weak or deformed portion of the body;

(s) except as provided in K.S.A. 2011 Supp. 82a-2101, and amendments thereto, all sales of tangible personal property or services purchased directly or indirectly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 *et seq.*, and amendments thereto, by a rural water district organized or operating under the authority of K.S.A. 82a-612, and amendments thereto, or by a water supply district organized or operating under the authority of K.S.A. 19-3501 *et seq.*, 19-3522 *et seq.*, or 19-3545, and amendments thereto, which property or services are used in the construction activities, operation or maintenance of the district;

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term “farm machinery and equipment or aquaculture machinery and equipment” shall include a work-site utility vehicle, as defined in K.S.A. 8-126, and amendments thereto, and is equipped with a bed or cargo box for hauling materials, and shall also include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto. “Farm machinery and equipment” includes precision farming equipment that is portable or is installed or purchased to be installed on farm machinery and equipment. “Precision farming equipment” includes the following items used only in computer-assisted farming, ranching or aquaculture production operations: Soil testing sensors, yield monitors, computers, monitors, software, global positioning and mapping systems, guiding systems, modems, data communications equipment and any nec-

essary mounting hardware, wiring and antennas. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

(u) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

(v) all sales of tangible personal property to any contractor for use in preparing meals for delivery to homebound elderly persons over 60 years of age and to homebound disabled persons or to be served at a group-sitting at a location outside of the home to otherwise homebound elderly persons over 60 years of age and to otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private nonprofit food service project available to all such elderly or disabled persons residing within an area of service designated by the private nonprofit organization, and all sales of tangible personal property for use in preparing meals for consumption by indigent or homeless individuals whether or not such meals are consumed at a place designated for such purpose, and all sales of food products by or on behalf of any such contractor or organization for any such purpose;

(w) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes: (1) To residential premises for noncommercial use by the occupant of such premises; (2) for agricultural use and also, for such use, all sales of propane gas; (3) for use in the severing of oil; and (4) to any property which is exempt from property taxation pursuant to K.S.A. 79-201b, *Second through Sixth*. As used in this paragraph, "severing" shall have the meaning ascribed thereto by subsection (k) of K.S.A. 79-4216, and amendments thereto. For all sales of natural gas, electricity and heat delivered through mains, lines or pipes pursuant to the provisions of subsection (w)(1) and (w)(2), the provisions of this subsection shall expire on December 31, 2005;

(x) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises occurring prior to January 1, 2006;

(y) all sales of materials and services used in the repairing, servicing, altering, maintaining, manufacturing, remanufacturing, or modification of railroad rolling stock for use in interstate or foreign commerce under authority of the laws of the United States;

(z) all sales of tangible personal property and services purchased directly by a port authority or by a contractor therefor as provided by the provisions of K.S.A. 12-3418, and amendments thereto;

(aa) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state for use in the transmission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

(bb) all sales of used mobile homes or manufactured homes. As used in this subsection: (1) “Mobile homes” and “manufactured homes” shall have the meanings ascribed thereto by K.S.A. 58-4202, and amendments thereto; and (2) “sales of used mobile homes or manufactured homes” means sales other than the original retail sale thereof;

(cc) all sales of tangible personal property or services purchased prior to January 1, 2012, except as otherwise provided, for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115, and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business, and all sales of tangible personal property or services purchased on or after January 1, 2012, for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business which meets the requirements established in K.S.A. 74-50,115(e), and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business or retail business, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the business or retail business a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. As used in this subsection, “business” and “retail business” have the meanings respectively ascribed thereto by K.S.A.

74-50,114, and amendments thereto. Project exemption certificates that have been previously issued under this subsection by the department of revenue pursuant to K.S.A. 74-50,115, and amendments thereto, but not including K.S.A. 74-50,115(e), and amendments thereto, prior to January 1, 2012, and have not expired will be effective for the term of the project or two years from the effective date of the certificate, whichever occurs earlier. Project exemption certificates that are submitted to the department of revenue prior to January 1, 2012, and are found to qualify will be issued a project exemption certificate that will be effective for a two-year period or for the term of the project, whichever occurs earlier;

(dd) all sales of tangible personal property purchased with food stamps issued by the United States department of agriculture;

(ee) all sales of lottery tickets and shares made as part of a lottery operated by the state of Kansas;

(ff) on and after July 1, 1988, all sales of new mobile homes or manufactured homes to the extent of 40% of the gross receipts, determined without regard to any trade-in allowance, received from such sale. As used in this subsection, "mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202, and amendments thereto;

(gg) all sales of tangible personal property purchased in accordance with vouchers issued pursuant to the federal special supplemental food program for women, infants and children;

(hh) all sales of medical supplies and equipment, including durable medical equipment, purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes. As used in this subsection, "durable medical equipment" means equipment including repair and replacement parts for such equipment, which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury and is not worn in or on the body, but does not include mobility enhancing equipment as defined in subsection (r), oxygen delivery equipment, kidney dialysis equipment or enteral feeding systems;

(ii) all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(jj) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based ~~mental-retardation~~ facility for people with

*intellectual disability* or mental health center organized pursuant to K.S.A. 19-4001 *et seq.*, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b, and amendments thereto, and all sales of tangible personal property or services purchased by contractors during the time period from July, 2003, through June, 2006, for the purpose of constructing, equipping, maintaining or furnishing a new facility for a community-based ~~mental-retardation~~ facility for people with *intellectual disability* or mental health center located in Riverton, Cherokee County, Kansas, which would have been eligible for sales tax exemption pursuant to this subsection if purchased directly by such facility or center. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(kk) (1) (A) all sales of machinery and equipment which are used in this state as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility;

(B) all sales of installation, repair and maintenance services performed on such machinery and equipment; and

(C) all sales of repair and replacement parts and accessories purchased for such machinery and equipment.

(2) For purposes of this subsection:

(A) “Integrated production operation” means an integrated series of operations engaged in at a manufacturing or processing plant or facility to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include: (i) Production line operations, including packaging operations; (ii) preproduction operations to handle, store and treat raw materials; (iii) post production handling, storage, warehousing and distribution operations; and (iv) waste, pollution and environmental control operations, if any;

(B) “production line” means the assemblage of machinery and equipment at a manufacturing or processing plant or facility where the actual transformation or processing of tangible personal property occurs;

(C) “manufacturing or processing plant or facility” means a single, fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail. Such term shall not include any facility primarily operated for the purpose of conveying or assisting in the conveyance of natural gas, electricity, oil or water. A business may operate one or more manufacturing or processing plants or facilities at different locations to manufacture or process a single product of tangible personal property to be ultimately sold at retail;

(D) “manufacturing or processing business” means a business that

utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation. (i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication of automobiles, airplanes, machinery or transportation equipment, the fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production, wholesale bottling, newspaper printing, ready mixed concrete production, and the remanufacturing of used parts for wholesale or retail sale. Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution. (ii) Agricultural commodity processing operations include, by way of illustration but not of limitation, meat packing, poultry slaughtering and dressing, processing and packaging farm and dairy products in sealed containers for wholesale and retail distribution, feed grinding, grain milling, frozen food processing, and grain handling, cleaning, blending, fumigation, drying and aeration operations engaged in by grain elevators or other grain storage facilities. (iii) Manufacturing or processing businesses do not include, by way of illustration but not of limitation, nonindustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook or prepare food products in the regular course of their retail trade, grocery stores, meat lockers and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade, contractors who alter, service, repair or improve real property, and retail businesses that clean, service or refurbish and repair tangible personal property for its owner;

(E) “repair and replacement parts and accessories” means all parts and accessories for exempt machinery and equipment, including, but not limited to, dies, jigs, molds, patterns and safety devices that are attached to exempt machinery or that are otherwise used in production, and parts and accessories that require periodic replacement such as belts, drill bits, grinding wheels, grinding balls, cutting bars, saws, refractory brick and other refractory items for exempt kiln equipment used in production operations;

(F) “primary” or “primarily” mean more than 50% of the time.

(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:

(A) To receive, transport, convey, handle, treat or store raw materials in preparation of its placement on the production line;

(B) to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility;

(C) to act upon, effect, promote or otherwise facilitate a physical change to the property undergoing manufacturing or processing;

(D) to guide, control or direct the movement of property undergoing manufacturing or processing;

(E) to test or measure raw materials, the property undergoing manufacturing or processing or the finished product, as a necessary part of the manufacturer's integrated production operations;

(F) to plan, manage, control or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of the property undergoing manufacturing or processing and the management of inventories of the finished product;

(G) to produce energy for, lubricate, control the operating of or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

(H) to package the property being manufactured or processed in a container or wrapping in which such property is normally sold or transported;

(I) to transmit or transport electricity, coke, gas, water, steam or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer's production operation; or, if purchased or delivered from offsite, from the point where the substance enters the site of the plant or facility to that manufacturer's production operations;

(J) to cool, heat, filter, refine or otherwise treat water, steam, acid, oil, solvents or other substances that are used in production operations;

(K) to provide and control an environment required to maintain certain levels of air quality, humidity or temperature in special and limited areas of the plant or facility, where such regulation of temperature or humidity is part of and essential to the production process;

(L) to treat, transport or store waste or other byproducts of production operations at the plant or facility; or

(M) to control pollution at the plant or facility where the pollution is produced by the manufacturing or processing operation.

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation: (A) Computers and related peripheral equipment that are utilized by a manufacturing or processing business for engineering of the finished product or for research and development

or product design; (B) machinery and equipment that is utilized by a manufacturing or processing business to manufacture or rebuild tangible personal property that is used in manufacturing or processing operations, including tools, dies, molds, forms and other parts of qualifying machinery and equipment; (C) portable plants for aggregate concrete, bulk cement and asphalt including cement mixing drums to be attached to a motor vehicle; (D) industrial fixtures, devices, support facilities and special foundations necessary for manufacturing and production operations, and materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities and foundations. An exemption certificate for such purchases shall be signed by the manufacturer or processor. If the fabricator purchases such material, the fabricator shall also sign the exemption certificate; and (E) a manufacturing or processing business' laboratory equipment that is not located at the plant or facility, but that would otherwise qualify for exemption under subsection (3)(E).

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include:

(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

(B) machinery, equipment and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

(C) transportation, transmission and distribution equipment not primarily used in a production, warehousing or material handling operation at the plant or facility, including the means of conveyance of natural gas, electricity, oil or water, and equipment related thereto, located outside the plant or facility;

(D) office machines and equipment including computers and related peripheral equipment not used directly and primarily to control or measure the manufacturing process;

(E) furniture and other furnishings;

(F) buildings, other than exempt machinery and equipment that is permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;

(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;

(H) machinery and equipment used for general plant heating, cooling and lighting;

(I) motor vehicles that are registered for operation on public highways; or

(J) employee apparel, except safety and protective apparel that is pur-

chased by an employer and furnished gratuitously to employees who are involved in production or research activities.

(6) Subsections (3) and (5) shall not be construed as exclusive listings of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purpose at other times, the primary use of the machinery or equipment shall determine whether or not such machinery or equipment qualifies for exemption.

(7) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this subsection;

(ll) all sales of educational materials purchased for distribution to the public at no charge by a nonprofit corporation organized for the purpose of encouraging, fostering and conducting programs for the improvement of public health;

(mm) all sales of seeds and tree seedlings; fertilizers, insecticides, herbicides, germicides, pesticides and fungicides; and services, purchased and used for the purpose of producing plants in order to prevent soil erosion on land devoted to agricultural use;

(nn) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof;

(oo) all sales of tangible personal property purchased by a community action group or agency for the exclusive purpose of repairing or weatherizing housing occupied by low income individuals;

(pp) all sales of drill bits and explosives actually utilized in the exploration and production of oil or gas;

(qq) all sales of tangible personal property and services purchased by a nonprofit museum or historical society or any combination thereof, including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space by providing educational information, exhibits and experiences, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(rr) all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(ss) all sales of tangible personal property and services purchased by a public broadcasting station licensed by the federal communications commission as a noncommercial educational television or radio station;

(tt) all sales of tangible personal property and services purchased by or on behalf of a not-for-profit corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal rev-

enue code of 1986, for the sole purpose of constructing a Kansas Korean War memorial;

(uu) all sales of tangible personal property and services purchased by or on behalf of any rural volunteer fire-fighting organization for use exclusively in the performance of its duties and functions;

(vv) all sales of tangible personal property purchased by any of the following organizations which are exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the following purposes, and all sales of any such property by or on behalf of any such organization for any such purpose:

(1) The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;

(2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;

(3) the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;

(4) the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;

(5) the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional education and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease;

(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers;

(7) the Kansas chapters of the Parkinson's disease association for the purpose of eliminating Parkinson's disease through medical research and public and professional education related to such disease;

(8) the National Kidney Foundation of Kansas and Western Missouri for the purpose of eliminating kidney disease through medical research and public and private education related to such disease;

(9) the heartstrings community foundation for the purpose of providing training, employment and activities for adults with developmental disabilities;

(10) the Cystic Fibrosis Foundation, Heart of America Chapter, for the purposes of assuring the development of the means to cure and con-

trol cystic fibrosis and improving the quality of life for those with the disease;

(11) the spina bifida association of Kansas for the purpose of providing financial, educational and practical aid to families and individuals with spina bifida. Such aid includes, but is not limited to, funding for medical devices, counseling and medical educational opportunities;

(12) the CHWC, Inc., for the purpose of rebuilding urban core neighborhoods through the construction of new homes, acquiring and renovating existing homes and other related activities, and promoting economic development in such neighborhoods;

(13) the cross-lines cooperative council for the purpose of providing social services to low income individuals and families;

(14) the Dreams Work, Inc., for the purpose of providing young adult day services to individuals with developmental disabilities and assisting families in avoiding institutional or nursing home care for a developmentally disabled member of their family;

(15) the KSDS, Inc., for the purpose of promoting the independence and inclusion of people with disabilities as fully participating and contributing members of their communities and society through the training and providing of guide and service dogs to people with disabilities, and providing disability education and awareness to the general public;

(16) the lyme association of greater Kansas City, Inc., for the purpose of providing support to persons with lyme disease and public education relating to the prevention, treatment and cure of lyme disease;

(17) the Dream Factory, Inc., for the purpose of granting the dreams of children with critical and chronic illnesses;

(18) the Ottawa Suzuki Strings, Inc., for the purpose of providing students and families with education and resources necessary to enable each child to develop fine character and musical ability to the fullest potential;

(19) the International Association of Lions Clubs for the purpose of creating and fostering a spirit of understanding among all people for humanitarian needs by providing voluntary services through community involvement and international cooperation;

(20) the Johnson county young matrons, inc., for the purpose of promoting a positive future for members of the community through volunteerism, financial support and education through the efforts of an all volunteer organization;

(21) the American Cancer Society, Inc., for the purpose of eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer, through research, education, advocacy and service;

(22) the community services of Shawnee, inc., for the purpose of providing food and clothing to those in need;

(23) the angel babies association, for the purpose of providing assis-

tance, support and items of necessity to teenage mothers and their babies; and

(24) the Kansas fairgrounds foundation for the purpose of the preservation, renovation and beautification of the Kansas state fairgrounds;

(ww) all sales of tangible personal property purchased by the Habitat for Humanity for the exclusive use of being incorporated within a housing project constructed by such organization;

(xx) all sales of tangible personal property and services purchased by a nonprofit zoo which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, or on behalf of such zoo by an entity itself exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986 contracted with to operate such zoo and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit zoo or the entity operating such zoo. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo. When any nonprofit zoo shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the nonprofit zoo concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney

fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(yy) all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;

(zz) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease;

(aaa) all sales of tangible personal property and services purchased by a religious organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and used exclusively for religious purposes, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of

taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 1998, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(bbb) all sales of food for human consumption by an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, pursuant to a food distribution program which offers such food at a price below cost in exchange for the performance of community service by the purchaser thereof;

(ccc) on and after July 1, 1999, all sales of tangible personal property and services purchased by a primary care clinic or health center the primary purpose of which is to provide services to medically underserved individuals and families, and which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center which would be exempt from taxation under the provisions of this section if purchased directly by such clinic or center. Nothing in this subsection shall be deemed to exempt the purchase of

any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center. When any such clinic or center shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such clinic or center concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such clinic or center concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ddd) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased by any class II or III railroad as classified by the federal surface transportation board for the construction, renovation, repair or replacement of class II or III railroad track and facilities used directly in interstate commerce. In the event any such track or facility for which materials and services were purchased sales tax exempt is not operational for five years succeeding the allowance of such exemption, the total amount of sales tax which would have been payable except for the operation of this subsection shall be recouped in accordance with rules and regulations adopted for such purpose by the secretary of revenue;

(eee) on and after January 1, 1999, and before January 1, 2001, all sales of materials and services purchased for the original construction, reconstruction, repair or replacement of grain storage facilities, including railroad sidings providing access thereto;

(fff) all sales of material handling equipment, racking systems and other related machinery and equipment that is used for the handling, movement or storage of tangible personal property in a warehouse or distribution facility in this state; all sales of installation, repair and maintenance services performed on such machinery and equipment; and all sales of repair and replacement parts for such machinery and equipment. For purposes of this subsection, a warehouse or distribution facility means a single, fixed location that consists of buildings or structures in a contiguous area where storage or distribution operations are conducted that are separate and apart from the business' retail operations, if any, and which do not otherwise qualify for exemption as occurring at a manufacturing or processing plant or facility. Material handling and storage equipment shall include aeration, dust control, cleaning, handling and other such equipment that is used in a public grain warehouse or other commercial grain storage facility, whether used for grain handling, grain storage, grain refining or processing, or other grain treatment operation;

(ggg) all sales of tangible personal property and services purchased by or on behalf of the Kansas Academy of Science which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and used solely by such academy for the preparation, publication and dissemination of education materials;

(hhh) all sales of tangible personal property and services purchased by or on behalf of all domestic violence shelters that are member agencies of the Kansas coalition against sexual and domestic violence;

(iii) all sales of personal property and services purchased by an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such personal property and services are used by any such organization in the collection, storage and distribution of food products to nonprofit organizations which distribute such food products to persons pursuant to a food distribution program on a charitable basis without fee or charge, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities used for the collection and storage of such food products for any such organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining,

repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in such facilities or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in such facilities reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 2005, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(jjj) all sales of dietary supplements dispensed pursuant to a prescription order by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto. As used in this subsection,

“dietary supplement” means any product, other than tobacco, intended to supplement the diet that: (1) Contains one or more of the following dietary ingredients: A vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract or combination of any such ingredient; (2) is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion, in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and (3) is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 C.F.R. § 101.36;

(lll) all sales of tangible personal property and services purchased by special olympics Kansas, inc. for the purpose of providing year-round sports training and athletic competition in a variety of olympic-type sports for individuals with intellectual disabilities by giving them continuing opportunities to develop physical fitness, demonstrate courage, experience joy and participate in a sharing of gifts, skills and friendship with their families, other special olympics athletes and the community, and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization;

(mmm) all sales of tangible personal property purchased by or on behalf of the Marillac Center, Inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing psycho-social-biological and special education services to children, and all sales of any such property by or on behalf of such organization for such purpose;

(nnn) all sales of tangible personal property and services purchased by the West Sedgwick County-Sunrise Rotary Club and Sunrise Charitable Fund for the purpose of constructing a boundless playground which is an integrated, barrier free and developmentally advantageous play environment for children of all abilities and disabilities;

(ooo) all sales of tangible personal property by or on behalf of a public library serving the general public and supported in whole or in part with tax money or a not-for-profit organization whose purpose is to raise funds for or provide services or other benefits to any such public library;

(ppp) all sales of tangible personal property and services purchased by or on behalf of a homeless shelter which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal income tax code of 1986, and used by any such homeless shelter to provide emergency and transitional housing for individuals and families experiencing homelessness, and all sales of any such property by or on behalf of any such homeless shelter for any such purpose;

(qqq) all sales of tangible personal property and services purchased by TLC for children and families, inc., hereinafter referred to as TLC,

which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing emergency shelter and treatment for abused and neglected children as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of TLC for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for TLC for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by TLC. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for TLC. When TLC contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to TLC a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, TLC shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(rrr) all sales of tangible personal property and services purchased by

any county law library maintained pursuant to law and sales of tangible personal property and services purchased by an organization which would have been exempt from taxation under the provisions of this subsection if purchased directly by the county law library for the purpose of providing legal resources to attorneys, judges, students and the general public, and all sales of any such property by or on behalf of any such county law library;

(sss) all sales of tangible personal property and services purchased by catholic charities or youthville, hereinafter referred to as charitable family providers, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing emergency shelter and treatment for abused and neglected children as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of charitable family providers for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for charitable family providers for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by charitable family providers. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for charitable family providers. When charitable family providers contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to charitable family providers a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, charitable

family providers shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ttt) all sales of tangible personal property or services purchased by a contractor for a project for the purpose of restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility owned by a nonprofit museum which has been granted an exemption pursuant to subsection (qq), which such home or facility is located in a city which has been designated as a qualified hometown pursuant to the provisions of K.S.A. 75-5071 *et seq.*, and amendments thereto, and which such project is related to the purposes of K.S.A. 75-5071 *et seq.*, and amendments thereto, and which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit museum. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility for any such nonprofit museum. When any such nonprofit museum shall contract for the purpose of restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project, the contractor shall furnish to such nonprofit museum a sworn statement on a form to be provided by the director of taxation that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in a home or facility or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for

the purpose for which such certificate was issued, such nonprofit museum shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(uuu) all sales of tangible personal property and services purchased by Kansas children's service league, hereinafter referred to as KCSL, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing for the prevention and treatment of child abuse and maltreatment as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of KCSL for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for KCSL for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by KCSL. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for KCSL. When KCSL contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to KCSL a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following

the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, KCSL shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(vvv) all sales of tangible personal property or services, including the renting and leasing of tangible personal property or services, purchased by Jazz in the Woods, Inc., a Kansas corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing Jazz in the Woods, an event benefiting children-in-need and other nonprofit charities assisting such children, and all sales of any such property by or on behalf of such organization for such purpose;

(www) all sales of tangible personal property purchased by or on behalf of the Frontenac Education Foundation, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing education support for students, and all sales of any such property by or on behalf of such organization for such purpose;

(xxx) all sales of personal property and services purchased by the booth theatre foundation, inc., an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such personal property and services are used by any such organization in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling of the booth theatre, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling the booth theatre for such organization, which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the con-

tractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in such facilities or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in such facilities reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after January 1, 2007, but prior to the effective date of this act upon the gross receipts received from any sale which would have been exempted by the provisions of this subsection had such sale occurred after the effective date of this act shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(yyy) all sales of tangible personal property and services purchased by TLC charities foundation, inc., hereinafter referred to as TLC charities, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of encouraging private philanthropy to further the vision, values, and goals of TLC for children and families, inc.; and all sales of such property and services by or on

behalf of TLC charities for any such purpose and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for TLC charities for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by TLC charities. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for TLC charities. When TLC charities contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to TLC charities a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be incorporated into the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, TLC charities shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(zzz) all sales of tangible personal property purchased by the rotary club of shawnee foundation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as amended, used for the purpose of providing contributions to community service organizations and scholarships;

(aaaa) all sales of personal property and services purchased by or on

benefit of victory in the valley, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing a cancer support group and services for persons with cancer, and all sales of any such property by or on behalf of any such organization for any such purpose;

(bbbb) all sales of entry or participation fees, charges or tickets by Guadalupe health foundation, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for such organization's annual fundraising event which purpose is to provide health care services for uninsured workers;

(cccc) all sales of tangible personal property or services purchased by or on behalf of wayside waifs, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing such organization's annual fundraiser, an event whose purpose is to support the care of homeless and abandoned animals, animal adoption efforts, education programs for children and efforts to reduce animal over-population and animal welfare services, and all sales of any such property, including entry or participation fees or charges, by or on behalf of such organization for such purpose;

(dddd) all sales of tangible personal property or services purchased by or on behalf of Goodwill Industries or Easter Seals of Kansas, Inc., both of which are exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing education, training and employment opportunities for people with disabilities and other barriers to employment;

(eeee) all sales of tangible personal property or services purchased by or on behalf of All American Beef Battalion, Inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of educating, promoting and participating as a contact group through the beef cattle industry in order to carry out such projects that provide support and morale to members of the United States armed forces and military services; ~~and~~

(ffff) all sales of tangible personal property and services purchased by sheltered living, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing residential and day services for people with developmental disabilities or ~~mental retardation~~ *intellectual disability*, or both, and all sales of any such property by or on behalf of sheltered living, inc. for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of rehabilitating, constructing, maintaining, repairing, enlarging, furnishing or remodeling homes and facilities for sheltered living, inc. for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by sheltered living, inc. Nothing in this subsection shall be deemed to exempt

the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such homes and facilities for sheltered living, inc. When sheltered living, inc. contracts for the purpose of rehabilitating, constructing, maintaining, repairing, enlarging, furnishing or remodeling such homes and facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to sheltered living, inc. a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, sheltered living, inc. shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto; *and*

*(ggg) all sales of game birds for which the primary purpose is use in hunting.*

Sec. 75. K.S.A. 17-1762, 19-4001, 19-4002, 19-4002a, 19-4002b, 19-4003, 19-4004, 19-4005, 19-4007, 19-4009, 19-4010, 19-4011, 39-927, 39-971, 39-1001, 39-1002, 39-1005, 39-1006, 39-1007, 39-1201, 39-1202, 39-1205, 39-1207, 39-1803, 58-24a16, 59-2946, 59-2972, 59-3077, 65-5a14, 65-3501, 65-4202, 65-4212, 65-4411, 65-4412, 65-4413, 65-4414, 65-4415, 65-5601, 72-6203, 74-8917, 75-4375, 75-5399, 75-6508, 76-12b01, 76-12b02, 76-12b03, 76-12b07, 76-12b11 and 76-17c01 and K.S.A. 2011 Supp. 12-1675, 21-5417, 21-6622, 39-923, 39-936, 39-1401, 39-1702, 40-3401, 50-676, 65-180, 65-1124, 65-1626, 65-4915, 65-4921, 65-6805, 72-

962, 74-5344, 75-4265, 75-5321a, 75-6506, 75-6609, 75-6610, 75-7303, 79-3606 and 79-3606g are hereby repealed.

Sec. 76. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 6, 2012.

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## CHAPTER 92

SENATE BILL No. 387

AN ACT concerning the state fire marshal; relating to the qualifications of the office; amending K.S.A. 2011 Supp. 75-1510 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 75-1510 is hereby amended to read as follows: 75-1510. There is hereby established the office of state fire marshal. The state fire marshal shall be appointed by the governor and shall serve at the pleasure of the governor. Any person appointed state fire marshal shall be subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed as state fire marshal shall exercise any power, duty or function as state fire marshal until confirmed by the senate. Any person appointed as state fire marshal ~~shall have a knowledge of building construction and~~ at the time of appointment, shall have had not less than five years' experience in fire *prevention and inspection*, safety inspection ~~and~~ or investigation, *or any combination thereof*. The state fire marshal shall maintain an office in the city of Topeka.

Sec. 2. K.S.A. 2011 Supp. 75-1510 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 6, 2012.

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## CHAPTER 93

## SENATE BILL No. 345\*

AN ACT enacting the Kansas appraisal management company registration act.

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

Section 1. The provisions of sections 1 through 25, and amendments thereto, shall be known and may be cited as the Kansas appraisal management company registration act.

Sec. 2. (a) It is the intent of the legislature to develop a process for real estate appraisal management company registration and regulation in order to protect lenders, financial institutions, clients, consumers and the public from economic and financial harm and the potential for such harm that may result from interference with the independence, objectivity and impartiality of the real estate appraisal process.

(b) The purpose of the Kansas appraisal management company registration act is to provide a process for the registration and regulation of entities conducting, performing or engaging in, or attempting to conduct, perform or engage in, real estate appraisal management services as a real estate appraisal management company within the state of Kansas.

Sec. 3. As used in this act: (a) "Appraisal" has the meaning specified in K.S.A. 58-4102, and amendments thereto.

(b) "Appraisal management company" or "AMC" means an individual, firm, partnership, association, corporation, limited liability company or any other business entity acting as an external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets:

(1) That performs appraisal management services, regardless of the use of any of the following terms: Appraisal management company, mortgage technology provider, mortgage services provider, lender processing services provider, loan processor, real estate closing services provider, vendor management company or any other like term; and

(2) such entity oversees an appraiser panel of:

(A) More than 15 appraisers who are certified or licensed in Kansas;

or

(B) a total of more than 25 appraisers who are certified or licensed in Kansas and in any other jurisdiction.

(c) "Appraisal management services" means to perform or attempt to perform, directly or indirectly, any one or more of the following functions on behalf of a lender, financial institution, client, or any other person:

(1) Administer an appraiser panel;

(2) recruit, qualify, verify licensing or certification and negotiate fees and service level expectations with any person who is part of an appraiser panel;

(3) receive an order for an appraisal from one entity and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion;

(4) track and determine the status of orders for appraisals;

(5) conduct quality control of a completed appraisal prior to the delivery of such appraisal to the person that ordered the appraisal; or

(6) submit a completed appraisal performed by an appraiser to one or more clients.

(d) “Appraiser” means an individual who holds a credential issued by the Kansas real estate appraisal board pursuant to the state certified and licensed real property appraiser act entitling that individual to perform an appraisal of real property in the state of Kansas consistent with the scope of practice for such credential.

(e) “Appraiser panel” means a network of one or more licensed or certified appraisers who are independent contractors to the AMC and have:

(1) Responded to an invitation, request, or solicitation from an AMC, in any form, to perform appraisals for persons that have ordered appraisals through the AMC, or to perform appraisals for the AMC directly, on a periodic basis, as requested and assigned by the AMC; and

(2) been selected and approved by an AMC to perform appraisals for any client of the AMC that has ordered an appraisal through the AMC, or to perform appraisals for the AMC directly, on a periodic basis, as assigned by the AMC.

(f) “Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal assignment related to the appraiser’s data collection, analysis, opinions of value, conclusions, estimate of value, or compliance with the uniform standards of professional appraisal practice. This term “appraisal review” does not include a general examination for:

(1) Grammatical, typographical or other similar errors; or

(2) Completeness including regulatory requirements, client requirements, or both such requirements as specified in the engagement letter that does not communicate an opinion.

(g) “Board” means the Kansas real estate appraisal board.

(h) “Credential” means a certificate, license or temporary permit issued by the board pursuant to the provisions of the state certified and licensed real estate appraisals act authorizing an individual to act as a temporary permitted appraiser, provisional appraiser, state licensed appraiser, certified residential appraiser or certified general appraiser in the state of Kansas.

(i) “Controlling person” means:

(1) An owner, officer, manager, or director of a corporation, part-

nership, firm, association, limited liability company, or other business entity seeking to offer appraisal management services in this state;

(2) an individual employed, appointed, or authorized by an AMC that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals; or

(3) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an AMC.

(j) “Person” means an individual, firm, partnership, association, corporation, or any other entity.

(k) “Uniform standards of professional appraisal practice” or “US-PAP” means the edition of the uniform standards of professional appraisal practice as specified in K.S.A. 58-4121, and amendments thereto.

Sec. 4. (a) The application for the registration shall be on a form approved by the board and shall, at a minimum, include the following information:

(1) The legal name and any other trade or business name of the entity seeking registration;

(2) the mailing and physical addresses of the entity seeking registration;

(3) the telephone, email, website, and facsimile contact information of the entity seeking registration;

(4) if the entity is a corporation, limited liability company, partnership, association, sole proprietorship or any other business entity that is not domiciled in this state:

(A) The name and contact information for the entity’s agent for service of process in this state pursuant to section 7, and amendments thereto; and

(B) proof that the entity is properly and currently registered with the Kansas office of the secretary of state;

(5) the name, mailing and physical addresses, telephone, email and facsimile contact for any person that owns 10% or more of the AMC;

(6) the name, mailing and physical addresses, telephone, email and facsimile contact for the named controlling person;

(7) a certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the AMC for appraisal services being performed in Kansas:

(A) Holds a credential in good standing in this state pursuant to the state certified and licensed real estate appraisers act and the regulations adopted thereunder if a license or certification is required to perform appraisals, pursuant to section 11, and amendments thereto; and

(B) is geographically competent and performs appraisal assignments within the appraiser’s scope of practice;

(8) a certification that the entity has a system in place to review an amount or percentage of the appraisal reports submitted by each appraiser who is performing real estate appraisal services for the AMC within Kansas as specified in rules and regulations of the board on an annual basis to validate that the real estate appraisal services are being conducted in accordance with USPAP and the state certified and licensed real estate appraisers act and the regulations adopted thereunder, pursuant to section 12, and amendments thereto;

(9) a certification that the entity maintains a detailed record of each service request that it receives and the appraiser that performs real estate appraisal services for the AMC, pursuant to section 13, and amendments thereto;

(10) an irrevocable consent to service of process pursuant to section 7, and amendments thereto;

(11) any other information reasonably required by the board to evaluate compliance with the application requirements in this act; and

(12) a certification that the entity requires that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the truth in lending act, as specified in subsection (a) of section 16, and amendments thereto.

(b) The board shall review each application that is properly submitted and either issue the registration to the applicant or deny such application in accordance with the provisions of this act.

Sec. 5. (a) The registration provisions of this act shall not apply to an AMC that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institutions regulatory agency.

(b) The provisions of this act shall not apply to:

(1) A person as defined in section 3, and amendments thereto, who exclusively employs appraisers on an employer and employee basis for the performance of appraisals; or

(2) an individual or individuals who are state-certified or state-licensed appraisers in good standing credentialed by the board and who are actively engaged in the practice of real estate appraising and, as a function of the practice, maintain a list of not more than 15 employees who are credentialed appraisers in good standing or independent contractor credentialed appraisers in good standing.

Sec. 6. (a) The registration period shall commence on October 1 and end on September 30 of the following year. A registration granted by the board may be renewed annually thereafter.

(b) To obtain renewal of a registration, the holder shall make application for renewal on a form provided by the board and pay the fee prescribed pursuant to section 8, and amendments thereto, not earlier

than 120 days nor later than 30 days prior to the expiration date of the registration.

(c) If the holder of the registration fails to apply for renewal prior to the date of expiration, the holder may obtain renewal of the registration if the holder, not later than three months after expiration of the registration, pays the renewal and late renewal fees prescribed pursuant to section 8, and amendments thereto.

Sec. 7. (a) Prior to the issuance of a registration to a nonresident applicant, the applicant must agree in writing to abide by all provisions of this act with respect to the applicant's appraisal management activities within this state and submit to the jurisdiction of the board and the state in all matters relating thereto. Such agreement shall be filed with the board and shall remain in force for so long as the nonresident is registered by this state and thereafter with respect to acts or omissions committed while registered as a nonresident.

(b) The board may investigate the actions of a nonresident registrant and, pursuant to the Kansas administrative procedures act, may revoke, condition, limit, suspend, censure or nonrenew the registration of the nonresident registrant for disciplinary action in relation to AMC practices, including, but not limited to, denial, revocation or suspension of a registration taken by another state, district or territory of the United States.

(c) Prior to the issuance of a registration to a nonresident AMC, the applicant shall file with the board a designation in writing that appoints the executive director of the board as the applicant's agent, upon whom all judicial and other process or legal notices directed to the applicant may be served in the event such applicant becomes a registrant. Any process or legal notices to a nonresident registrant shall be directed to the executive director and, in the case of a summons, shall require the nonresident registrant to answer within 40 days from the date of service on such registrant. A summons and a certified copy of the petition shall be forthwith forwarded by the clerk of the court to the executive director, who immediately shall forward a copy of the summons and the certified copy of the petition to the nonresident registrant. Thereafter, the executive director shall make return of the summons to the court from which it was issued, showing the date of its receipt by the executive director, the date of forwarding and the name and address of the person to whom the executive director forwarded a copy. Such return shall have the same force and effect as a return made by the sheriff on process directed to the sheriff.

Sec. 8. (a) The board shall establish by rules and regulations the fee to be paid by each AMC seeking registration or renewal of a registration under this act. The amount of the registration and renewal fees shall be sufficient for the administration of this act, but in no case shall the fees be more than \$3,500. The initial registration fee shall be prorated for an

applicant that initially applies for registration 11 or fewer months prior to September 30.

(b) The board shall establish by rules and regulations a late renewal fee not to exceed \$500.

(c) The executive director of the board shall remit all moneys, received pursuant to this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Other than amounts collected for the AMC federal registry fees, or for civil fines imposed pursuant to section 23, and amendments thereto, such deposit shall be credited to the appraiser fee fund. All expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board or by a person or persons designated by the chairperson. Civil fines shall be credited to the state general fund.

(d) All amounts required to be collected and actually collected for the AMC federal registry fees shall be credited totally to the AMC federal registry clearing fund which is hereby created in the state treasury. All disbursements from the AMC federal registry clearing fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board or by a person or persons designated by the chairperson. Amounts credited to the AMC federal registry clearing fund under this section shall not be subject to any limitations imposed by the appropriations act of the legislature.

Sec. 9. (a) No single interest in an AMC applying for, holding, or renewing a registration under this act shall exceed 10% when owned by:

(1) An individual who has held a credential issued by any appraiser-credentialing jurisdiction to act as an appraiser and such credential:

(A) Was refused, denied, suspended, revoked, or surrendered or non-renewed in lieu of a pending disciplinary proceeding in any jurisdiction against such individual; and

(B) not subsequently granted or reinstated; or

(C) is otherwise not in good standing; or

(2) any person who owns more than a 10% interest in an entity and such person has held a credential issued by any appraiser-credentialing jurisdiction to act as an appraiser that:

(A) Was refused, denied, revoked, suspended, or surrendered or non-renewed in lieu of a pending disciplinary proceeding in any jurisdiction against such person; and

(B) (i) not subsequently granted or reinstated, or

(ii) is otherwise not in good standing.

(b) (1) Each individual that owns more than a 10% interest in an AMC who applies for, holds, or renews a registration under this act shall

be of good moral character as determined by the board by rules and regulations.

(2) As a part of an application for an original registration, and for a renewal registration if required by the board, the board shall require the individual to be fingerprinted and submit to a state and national criminal history record check. The individual's fingerprints shall be used to identify the individual and to determine whether the individual has a record of criminal history in this state or other jurisdiction. The board shall require the individual to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The board shall use the information obtained from the fingerprinting and the criminal history for purposes of verifying the identification of the individual and in the official determination of the qualifications and fitness of the applicant to be issued, maintain, or renew a registration.

(3) Local and state law enforcement officers and agencies shall assist the board in taking and processing fingerprints of individuals for any registration and shall release all records of adult convictions to the board.

(4) The board may fix and collect a fee in an amount necessary to reimburse the board for the cost of fingerprinting and the criminal history record check. Such fee shall be established by rules and regulations.

(c) Each AMC applying for registration or for renewal of a registration under this act shall certify to the board on a form prescribed by the board that:

(1) Such AMC has reviewed each person or entity that owns more than a 10% interest in the AMC; and

(2) no person or entity that owns more than a 10% interest in the AMC has held a credential issued by any appraiser-credentialing jurisdiction to act as an appraiser and such credential:

(A) Was refused, denied, suspended, revoked, or surrendered or non-renewed in lieu of a pending disciplinary proceeding in any jurisdiction against such individual; and

(B) (i) was not subsequently granted or reinstated; or

(ii) is otherwise not in good standing.

Sec. 10. (a) Each AMC applying to the board for a registration or for a renewal of a registration in this state shall designate one controlling person that shall serve as the main contact for all communication between the board and the AMC.

(b) The controlling person designated pursuant to subsection (a) shall:

(1) Remain in good standing with any appraiser-credentialing jurisdictions from which the controlling person has obtained credentials, except that no provision in this section shall require that a designated controlling person hold an appraiser credential in any jurisdiction; or

(2) have never had a credential issued by any appraiser-credentialing jurisdiction to act as an appraiser that:

(A) Was refused, denied, suspended, revoked, or surrendered or non-renewed in lieu of a pending disciplinary proceeding, and:

(B) (i) Not had such credential subsequently reinstated or granted; or

(ii) is not otherwise in good standing in any jurisdiction.

(c) As a part of an application for an original registration and if required by the board for a renewal registration, the board shall require the controlling person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the controlling person has a record of criminal history in this state or other jurisdiction. The board shall require the controlling person to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The board shall use the information obtained from the fingerprinting and the criminal history for purposes of verifying the identification of the controlling person and in the official determination of the qualifications and fitness of the applicant to be issued, maintain or renew a registration.

(d) Local and state law enforcement officers and agencies shall assist the board in taking and processing fingerprints of applicants for any license and shall release all records of adult convictions to the board.

(e) The board may fix and collect a fee in an amount necessary to reimburse the board for the cost of fingerprinting and the criminal history record check. Such fee shall be established by rules and regulations. Any moneys collected under this subsection shall be deposited in the state treasury and credited to the real estate appraisal board's appraiser fee fund established pursuant to K.S.A. 58-4107, and amendments thereto.

Sec. 11. (a) If a license or certification is required to perform an appraisal, prior to placing an assignment with an appraiser on the appraiser panel of an AMC, the AMC shall verify that the appraiser receiving the assignment holds a credential in good standing in this state issued pursuant to this act and the rules and regulations adopted thereunder. A letter of engagement shall include instructions to the appraiser to decline the assignment in the event the appraiser is not geographically competent or the assignment falls outside the appraiser's scope of practice.

(b) Any employee of, or independent contractor to, the AMC that performs an appraisal review for a property located in Kansas shall be an appraiser credentialed in good standing in the state of Kansas.

(c) No AMC registered in this state pursuant to this act shall enter into any contract or agreement with an appraiser for the performance of appraisals in Kansas unless such AMC verifies that the individual is cre-

denied in good standing to perform the appraisal pursuant to the state certified and licensed real property appraisers act.

(d) Each AMC registered or seeking to be registered in this state shall certify to the board on an annual basis on a form prescribed by the board that such AMC has a system and process in place to verify that any individual being added to the appraiser panel of the AMC for appraisal services in Kansas:

(1) Holds a credential in good standing in this state pursuant to the state certified and licensed real estate appraisers act; and

(2) is geographically competent and performs appraisal assignments within the appraiser's scope of practice.

Sec. 12. Each AMC seeking to be registered or to renew a registration in this state shall certify to the board on an annual basis on a form prescribed by the board that such AMC has a system in place to perform an appraisal review on a number or percentage of the appraisal reports submitted by each appraiser who is performing appraisals for such AMC on a periodic basis as specified in rules and regulations of the board to validate that the appraisals are being conducted in accordance with:

(a) The USPAP; and

(b) the state certified and licensed real property appraisers act and the regulations adopted thereunder.

Sec. 13. (a) Each AMC seeking to be registered or to renew an existing registration in this state shall certify to the board on an annual basis on a form prescribed by the board that such AMC maintains a detailed record of each service request that it receives for appraisal of real property located in Kansas.

(b) An AMC registered under the provisions of this act shall retain for a period of five years all records required to be maintained under this act. This five-year period shall commence on:

(1) The date of the final action by the AMC for each individual transaction; or

(2) if the AMC is notified that the transaction is involved in litigation, the date that the final judgment has been issued and all appeals, if any, have been taken.

(c) All records required to be maintained by the registered AMC pursuant to the provisions of this act shall be made available by the registration holder for inspection and copying by the board or its designee on reasonable notice to the AMC.

Sec. 14. (a) An AMC shall be required to have a system in place to disclose to its client the fees paid:

(1) For appraisal management services; and

(2) to the appraiser for the completion of an appraisal assignment.

(b) No AMC shall prohibit an appraiser that is part of an appraiser panel of the AMC from recording the fee that the appraiser was paid by

the AMC for the performance of the appraisal within the body of the appraisal that is submitted by the appraiser to the AMC.

Sec. 15. Except as provided by section 5, and amendments thereto, it shall be unlawful for any person to do any of the following without first obtaining a registration issued by the board pursuant to section 4, and amendments thereto:

- (a) Directly or indirectly engage or attempt to engage in business as an AMC;
- (b) directly or indirectly perform or attempt to perform appraisal management services as an AMC; or
- (c) advertise or hold such person out as engaging in or conducting business as an AMC.

Sec. 16. (a) It shall be unlawful and a violation of this act for any employee, partner, director, officer or agent of an AMC to influence or attempt to influence the development, reporting, result or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or in any other manner, including, but not limited to:

- (1) Withholding or threatening to withhold timely payment or partial payment for an appraisal unless such appraisal is substandard or noncompliant.
- (2) Withholding or threatening to withhold, either expressly or by implication, future business from an appraiser.
- (3) Demoting or terminating or threatening to demote or terminate an appraiser.
- (4) Promising, either expressly or by implication, future business, promotions or increased compensation for an appraiser.
- (5) Conditioning an assignment of an appraisal or the payment of an appraisal fee or salary or bonus on:
  - (A) The opinion, conclusion or valuation to be reached by an appraiser; or
  - (B) a preliminary estimate or opinion requested from an appraiser.
- (6) Requesting that an appraiser provide at any time prior to the appraiser's completion of an appraisal:
  - (A) An estimated, predetermined or desired valuation in an appraisal; or
  - (B) estimated values or comparable sales, except that a copy of the sales contract for purchase transactions may be provided.
- (7) Providing to an appraiser:
  - (A) An anticipated, estimated, encouraged or desired value for a subject property; or
  - (B) a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

(8) Providing to an appraiser, or any entity or individual related to the appraiser, stock or other financial or nonfinancial benefit or thing of value.

(9) Without prior written notice to such appraiser:

(A) Allowing or directing the removal of an appraiser from an appraiser panel; or

(B) the addition of an appraiser to an exclusionary list of disapproved appraisers used by any entity.

(10) Committing any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

(11) Submitting or attempting to submit false, misleading or inaccurate information in any application for registration or renewal.

(b) No provision of subsection (a) shall be construed to prohibit the AMC from requesting that an appraiser:

(1) Provide additional information about the basis for a valuation including consideration of additional comparable data; or

(2) correct objective factual errors in an appraisal.

(c) It shall be unlawful and a violation of this act for any employee, partner, director, officer, agent or independent contractor of an AMC to:

(1) Require an appraiser to sign any sort of indemnification agreement that requires the appraiser to defend and hold harmless the appraisal management company or any of its agents, employees or independent contractors for any liability, damage, losses or claims arising out of the services performed by the AMC or its agents, employees or independent contractors but does not also include the services performed by the appraiser;

(2) employ any person who has had a credential to act as an appraiser issued by any appraiser-credentialing jurisdiction that:

(A) Was refused, denied, suspended, revoked, or surrendered or non-renewed in lieu of a pending disciplinary proceeding in any jurisdiction against such individual; and

(B) (i) was not subsequently granted or reinstated; or

(ii) is otherwise not in good standing in any jurisdiction;

(3) knowingly enter into any independent contractor arrangement, whether in verbal, written or other form for the performance of appraisal or appraisal management services, with any person who has had a credential to act as an appraiser that was issued by any appraiser-credentialing jurisdiction that:

(A) Was refused, denied, suspended, revoked, or surrendered or non-renewed in lieu of a pending disciplinary proceeding in any jurisdiction against such individual; and

(B) (i) was not subsequently granted or reinstated; or

(ii) is otherwise not in good standing in any jurisdiction;

(4) knowingly enter into any contract, agreement, or other business relationship, whether in verbal, written, or any other form, with any entity

that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement or other business relationship, whether in verbal, written or any other form for the performance of appraisal or appraisal management services, with any person who has ever had a credential issued by any appraiser-credentialing jurisdiction to act as an appraiser that:

(A) Was refused, denied, suspended, revoked or surrendered or non-renewed in lieu of a pending disciplinary proceeding in any jurisdiction against such individual; and

(B) (i) was not subsequently granted or reinstated; or  
 (ii) is otherwise not in good standing in any jurisdiction;  
 (5) commit an act of unprofessional conduct as defined by rules and regulations of the board;

(6) fail to report to the board the results of any appraisal reviews in which an appraisal is found to be substantially noncompliant with USPAP;

(7) fail to timely respond to any subpoena or any other request for information from the board;

(8) fail to timely obey an administrative order of the board; or  
 (9) fail to fully cooperate in any investigation by the board.

(d) It shall be unlawful and a violation of this act for an AMC to include on the panel of the AMC for appraisal services in Kansas any appraiser who:

(1) Does not hold a credential in good standing in this state pursuant to the state certified and licensed real estate appraisers act; or

(2) is not geographically competent to perform appraisal assignments within the appraiser's scope of practice.

An attestation provided by an appraiser that such appraiser is geographically competent within the appraiser's scope of practice will satisfy an AMC's responsibility pursuant to this subsection.

Sec. 17. No AMC shall perform or attempt to perform any of the following acts:

(a) Require an appraiser to modify any aspect of an appraisal unless the modification complies with subsection (b) of section 16, and amendments thereto;

(b) require an appraiser to prepare an appraisal if the appraiser, in the appraiser's own independent professional judgment:

(1) Believes the appraiser does not have the necessary expertise for the assignment or for the specific geographic area; and

(2) the appraiser has notified the AMC and declined the assignment;

(c) require an appraiser to prepare an appraisal under a time frame that the appraiser, in the appraiser's own professional judgment:

(1) Believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations; and

(2) the appraiser has notified the AMC and declined the assignment;

(d) prohibit or inhibit legal or other allowable communication between the appraiser and the lender, a real estate licensee, or any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;

(e) require the appraiser to do anything that does not comply with USPAP, the state certified and licensed real estate appraisers act or the regulations adopted thereunder, or any assignment conditions and certifications required by the client; or

(f) make any portion of the appraiser's fee or the AMC's fee contingent on a predetermined or favorable outcome, including, but not limited, to a loan closing or a specific dollar amount being achieved by the appraiser in the appraisal.

Sec. 18. Except in *bona fide* cases of breach of contract or substandard performance of services, each AMC shall make payment to an appraiser for the completion of an appraisal or valuation assignment within 45 days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation study to the AMC or its assignee unless a mutually agreed upon alternate arrangement has been previously established in good faith.

Sec. 19. (a) No AMC shall alter, modify, or otherwise change or attempt to alter, modify, or otherwise change a completed appraisal submitted by an appraiser.

(b) No AMC shall require an appraiser to provide the AMC with the appraiser's digital signature. No provision of this subsection shall be deemed to prohibit an appraiser from voluntarily providing such appraiser's digital signature to another person in the manner permitted by the provisions of the USPAP.

Sec. 20. (a) The board shall issue a unique registration number to each AMC that is registered in this state.

(b) The board shall maintain on its website a list of the AMCs that have registered with the board pursuant to this act and have been issued a registration number pursuant to subsection (a) of this section.

(c) An AMC registered in this state shall place its registration number on any instrument utilized by the AMC for procurement of appraisal services in this state.

Sec. 21. (a) Except within the first 30 days after an appraiser is first added to the appraiser panel of an AMC, no AMC shall remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an appraiser without:

(1) Notifying the appraiser in writing of the reasons why such appraiser is being removed from the appraiser panel of the AMC;

(2) providing an opportunity for the appraiser to respond to the written notification of the AMC either personally or through legal counsel; and

(3) if the appraiser is being removed from the panel for illegal conduct, violation of the USPAP, or a violation of this act or the regulations adopted thereunder, providing notice to the appraiser and to the board detailing allegations of fact and alleged violations of USPAP, regulations or laws.

Sec. 22. The board may deny the issuance of a registration or a renewal of a registration to an applicant for failure to comply with any requirement of this act, or any rule or regulation adopted pursuant thereto, or for any of the following acts or omissions:

(a) That the applicant, in the case of an application for renewal of a registration has, within 12 months preceding the date of the application, violated any provision of this act or any regulation adopted thereunder, or any provision of the state certified and licensed real property appraiser act or any regulation adopted thereunder;

(b) that the applicant is not of good moral character; or

(c) that the applicant has been the holder of a registration that:

(1) Was denied, revoked or suspended for cause; or

(2) (A) surrendered or nonrenewed in lieu of disciplinary proceedings and not subsequently granted or reinstated; or

(B) is otherwise not in good standing in any jurisdiction;

(d) when in the case of an application for renewal of a registration, the applicant has, in the conduct of affairs under the registration, demonstrated:

(1) Incompetency;

(2) untrustworthiness;

(3) conduct or practices rendering the registrant unfit to carry on appraisal management services;

(4) conduct or practices making continuance in the business detrimental to the public interest; or

(5) that the registrant is no longer in good faith carrying on appraisal management services, and for this conduct is found to be a source of detriment, injury or loss to the public; or

(e) that the applicant, the controlling person or any owner of an interest in the AMC of 10% or more has been convicted of a felony and has not been sufficiently rehabilitated to merit the public trust.

Sec. 23. (a) The board may censure an AMC, condition, limit, suspend or revoke the registration of an AMC, and in addition to or in lieu of any other administrative, civil or criminal remedy provided by law may impose a civil fine not to exceed \$2,000 per violation for any of the following acts or omissions:

(1) Committing any violation of this act;

(2) violating any regulation adopted by the board to implement or administer the provisions of this act;

(3) procuring a registration or renewal of a registration for the AMC or committing any other act by fraud, misrepresentation, or deceit; or

(4) employing a controlling person or any individual who owns more than 10% of the AMC who has been convicted of a felony and who has not been sufficiently rehabilitated to merit the public trust.

(b) Administrative proceedings under this act shall be conducted in accordance with the Kansas administrative procedure act.

(c) A violation of this act, or of any rule or regulation adopted pursuant thereto, shall be a class C misdemeanor.

Sec. 24. (a) The costs incurred by the board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the AMC if the order of the board is adverse to the AMC in such proportion as the board determines upon consideration of all relevant circumstances including the nature of the proceeding and the level of participation by the parties. The board may reduce any such assessment to judgment by filing a petition in the district court of Shawnee county. No registration shall be reinstated, renewed or issued if an assessment for costs has not been paid by the applicant or registrant.

(b) (1) Except as provided in paragraph (2), for purposes of this section, costs include the fees and expenses of the presiding officer, costs of making and preparing the record, witness fees and expenses, mileage, travel allowances and subsistence expenses of board employees and fees and expenses of agents of the board who provide services to the board.

(2) Costs shall not include fees and expenses or costs of making and preparing the record unless the board has designated or retained the services of the office of administrative hearings to perform such functions.

(c) The board shall make any assessment of costs incurred as part of the final order rendered in the proceeding. Such order shall include findings and conclusions in support of the assessment of costs.

Sec. 25. In accordance with the provisions of the rules and regulations filing act, K.S.A. 77-415 *et seq.*, and amendments thereto, the board may adopt, amend and revoke rules and regulations governing the administration and enforcement of this act, including, but not limited to:

(a) Any fee required by this act;

(b) any report, record or other information which may be required to be kept, and maintained pursuant to this act; and

(c) such other rules and regulations as the board may deem necessary to carry out the provisions of this act.

Sec. 26. This act shall take effect and be in force from and after its publication in the statute book.

(See Messages from the Governor)

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## CHAPTER 94

## HOUSE BILL No. 2505

AN ACT concerning limitations on loans and borrowing; relating to derivative transactions; amending K.S.A. 9-1104 and 9-2111 and repealing the existing sections.

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

Section 1. From and after January 21, 2013, K.S.A. 9-1104 is hereby amended to read as follows: 9-1104. (a) *Definitions*. As used in this section:

(1) “Borrower” means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, limited liability company, not-for-profit corporation, government unit or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(2) “Capital” means the total of capital stock, surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures, and reserve for contingencies. Intangibles, such as goodwill, shall not be included in the definition of capital when determining lending limits.

(3) “Loan” means:

(A) A bank’s direct or indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds;

(B) a contractual commitment to advance funds;

(C) an overdraft;

(D) loans that have been charged off the bank’s books in whole or in part, unless the loan is unenforceable by reason of:

(i) Discharge in bankruptcy;

(ii) expiration of the statute of limitations;

(iii) judicial decision; or

(iv) the bank’s forgiveness of the debt;

(E) *any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction or securities borrowing transaction between a bank and that borrower.*

(4) “*Derivative transaction*” means *any transaction that is a contract, agreement, swap, warrant, note or option that is based in whole, or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices or other assets.*

(b) *General Lending Limit Rule*. Subject to the provisions in (d), (e) and (f), loans to one borrower, including any bank officer or employee, shall not exceed 25% of a bank’s capital.

(c) *Calculation of the Lending Limit*. (1) The bank’s lending limit shall be calculated on the date the loan or written commitment is made.

The renewal or refinancing of a loan shall not constitute a new lending limit calculation date unless new funds are advanced.

(2) If the bank's lending limit increases subsequent to the origination date, a bank may use the current lending limit to determine compliance when advancing funds. An advance of funds includes the lending of money or the repurchase of any portion of a participation.

(3) If the bank's lending limit decreases subsequent to the origination date, a bank is not prohibited from advancing on a prior commitment that was legal on the date the commitment was made.

(d) *Exemptions.* That portion of a loan which is continuously secured on a dollar for dollar basis by any of the following will be exempt from any lending limit:

(1) A guaranty, commitment or agreement to take over or to purchase, made by any federal reserve bank or by any department, bureau, board, commission, agency or establishment of the United States of America, including any corporation wholly owned, directly or indirectly by the United States;

(2) a perfected interest in a time deposit account in the lending bank. In the case of a time deposit which may be withdrawn in whole or in part prior to maturity, the bank shall establish written internal procedures to prevent the release of the deposit;

(3) a bonded warehouse receipt issued to the borrower by some other person;

(4) treasury bills, certificates of indebtedness, or bonds or notes of the United States of America or instrumentalities or agencies thereof, or those fully guaranteed by them;

(5) general obligation bonds or notes of the state of Kansas or any other state in the United States of America;

(6) general obligation bonds or notes of any Kansas municipality or quasi-municipality; or

(7) a perfected interest in a repurchase agreement of United States government securities with the lending bank.

(e) *Special Rules.* (1) The total liability of any borrower may exceed the general 25% limit by up to an additional 10% of the bank's capital. To qualify for this expanded limit:

(A) The bank shall have as collateral a first lien or liens on real estate securing a portion of the liability equal to at least the amount by which the total liability exceeds the 25% limit;

(B) the amount of the recorded lien or liens shall equal at least the amount of the excess liability;

(C) the appraised value of the real estate shall equal at least twice the amount of the excess liability; and

(D) a portion of the loan equal to at least the excess liability shall have installment payments sufficient to amortize that portion within 20 years.

(2) That portion of any loan endorsed or guaranteed by a borrower will not be added to that borrower's liability until the endorsed or guaranteed loan is past due 10 days.

(3) If the total liability of any active bank officer will exceed \$50,000, prior approval from the bank's board of directors shall be noted in the minutes.

(4) To the extent they are insured by the federal deposit insurance corporation, time deposits purchased by a bank from another financial institution shall not be considered a loan to that financial institution and shall not be subject to the bank's lending limit.

(5) Third-party paper purchased by the bank will not be considered a loan to the seller unless and until the bank has the right under the agreement to require the seller to repurchase the paper.

(f) *Combination Rules.*

(1) *General Rule.* Loans to one borrower will be attributed to another borrower and their total liability will be combined:

(A) When proceeds of a loan are to be used for the direct benefit of the other borrower, to the extent of the proceeds so used; or

(B) when a common enterprise is deemed to exist between the borrowers.

(2) *Direct Benefit.* The proceeds of a loan to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a *bona fide* arm's length transaction where the proceeds are used to acquire property, goods or services.

(3) *Common Enterprise.* A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(A) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid;

(B) when both of the following circumstances are present:

(i) Loans are made to borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower. Common control means to own, control or have the power to vote 25% or more of any class of voting securities or voting interests or to control, in any manner, the election of a majority of the directors, or to have the power to exercise a controlling influence over the management or policies of another person; and

(ii) substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues,

expenses, intercompany loans, dividends, capital contributions and similar receipts or payments; or

(C) when separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than 50% of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loan.

(D) An employer will not be treated as a source of repayment for purposes of determining a common enterprise because of wages and salaries paid to an employee.

(4) *Special Rules for Loans to a Corporate Group.* (A) Loans by a bank to a borrower and the borrower's subsidiaries shall not, in the aggregate, exceed 50% of the bank's capital. At no time shall loans to any one borrower or to any one subsidiary exceed the general lending limit of 25%, except as allowed by other provisions of this section. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a borrower if the borrower owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or company.

(B) Loans to a borrower and a borrower's subsidiaries that do not meet the test contained in subsection (f)(4)(A) will not be combined unless either the direct benefit or the common enterprise test is met.

(5) *Special Rules for Loans to Partnerships, Joint Ventures and Associations.* (A) As used in this subpart (5), the term "partnership" shall include a partnership, joint venture or association. The term partner shall include a partner in a partnership or a member in a joint venture or association.

(B) *General Partner.* Loans to a partnership are considered to be loans to a partner, if by the terms of the partnership agreement that partner is held generally liable for debts or actions of the partnership.

(C) *Limited Partner.* If the liability of a partner is limited by the terms of the partnership agreement, the amount of the partnership debt attributable to the partner is in direct proportion to that partner's limited partnership liability.

(D) Notwithstanding the provisions of subsections (f)(5)(B) and (f)(5)(C), if by the terms of the loan agreement the liability of any partner is different than delineated in the partnership agreement, for the purpose of attributing debt to the partner the loan agreement shall control.

(E) Loans to a partner are not attributed to the partnership unless either the direct benefit or the common enterprise test is met.

(F) Loans to one partner are not attributed to other partners unless either the direct benefit or common enterprise test is met.

(G) When a loan is made to a partner to purchase an interest in a partnership, both the direct benefit and common enterprise tests are deemed to be met, and the loan is attributed to the partnership.

(6) Notwithstanding the provisions of this subsection, the commissioner may determine, based upon an evaluation of the facts and circumstances of a particular transaction, that a loan to one borrower may be attributed to another borrower.

(g) The commissioner may order a bank to correct any loan not in compliance with this section. A violation of this section shall be deemed corrected if that portion of the borrower's liability which created the violation could be legally advanced under current lending limits. Failure to comply with the commissioner's order within 60 days shall be grounds for the proposed removal of a bank officer or director pursuant to K.S.A. 9-1805, and amendments thereto.

Sec. 2. K.S.A. 9-2111 is hereby amended to read as follows: 9-2111.

(a) Except as provided in K.S.A. 9-2107, and amendments thereto, no trust company, trust department of a bank, corporation or other business entity, the home office of which is located outside the state of Kansas, shall establish or operate a trust facility within the state of Kansas, *unless the laws of the state where the home office of the nonresident trust company, trust department of a bank, corporation or other business entity is located, reciprocally authorize a Kansas chartered trust company, trust department of a bank, corporation or other business entity to establish or operate a trust facility within that state.*

(b) *Before any nonresident trust company, trust department of a bank, corporation or other business entity establishes a trust facility in Kansas, a copy of the application submitted to the home state, and proof that the home state has reciprocity with Kansas, must be filed by the applicant with the commissioner.*

(c) *No Kansas trust company shall establish an out-of-state trust facility until an application has been filed with the commissioner and approval has been received. An application filed pursuant to this section shall be subject to the provisions in K.S.A. 9-2108, and amendments thereto.*

(d) *No Kansas bank with a trust department shall establish an out-of-state trust facility until an application has been filed with the commissioner and approval has been received. An application filed pursuant to this section shall be subject to the provisions in K.S.A. 9-1135, and amendments thereto.*

~~(b)(e)~~(e) As used in this section, "trust facility" means any office, agency, desk or other place of business, at which trust business, ~~as defined by K.S.A. 9-701 and amendments thereto,~~ is conducted.

Sec. 3. K.S.A. 9-2111 is hereby repealed.

Sec. 4. On January 21, 2013, K.S.A. 9-1104 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

(See Messages from the Governor)

Published in the *Kansas Register* April 19, 2012.

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## CHAPTER 95

### HOUSE BILL No. 2743

AN ACT concerning abstracters; relating to license fees; amending K.S.A. 58-2801 and repealing the existing section.

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

Section 1. K.S.A. 58-2801 is hereby amended to read as follows: 58-2801. (a) Every person, firm, partnership, association or corporation, which makes, compiles or completes and sells abstracts of title to real estate in the state of Kansas shall first secure and hold a valid license issued in accordance with the provisions of this act. The annual fee for each abstractor's license shall be fixed by the abstractors' board of examiners by rules and regulations in an amount not to exceed ~~\$50~~ \$75 for each year or part of a year. The board may establish rules and regulations for the proration of license fees for licenses to be effective for a period of time less than one year.

(b) The board shall determine annually the amount necessary to carry out and enforce the provisions of this act for the next ensuing year and shall fix the license fee for such year at the sum deemed necessary for such purposes. Such fee shall accompany the application for license and shall be returned to the applicant if the license is not issued. Every license issued under the provisions of this act shall expire on December 31 of the year for which issued. In the absence of any condition or reason which might warrant the refusal of the granting of a renewal license, the board shall issue a license each year upon receipt of a written request of the applicant together with the annual fee established by the board in accordance with the provisions of this section.

(c) The board may adopt rules and regulations which authorize the issuance of inactive licenses to licensees eligible for such inactive license in accordance with the rules and regulations. The license fee for an inactive license shall be the same as the annual fee for an abstractor's license established under this section.

~~(d) All fees charged and collected by the board on and after July 1, 1983, and prior to the effective date of this act for the annual fee for an abstractor's license are hereby specifically authorized and validated.~~

Sec. 2. K.S.A. 58-2801 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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CHAPTER 96  
HOUSE BILL No. 2461

AN ACT concerning retirement and benefits, relating to the Kansas public employees retirement fund; alternative investments; amending K.S.A. 2011 Supp. 74-4921 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 74-4921 is hereby amended to read as follows: 74-4921. (1) There is hereby created in the state treasury the Kansas public employees retirement fund. All employee and employer contributions shall be deposited in the state treasury to be credited to the Kansas public employees retirement fund. The fund is a trust fund and shall be used solely for the exclusive purpose of providing benefits to members and member beneficiaries and defraying reasonable expenses of administering the fund. Investment income of the fund shall be added or credited to the fund as provided by law. All benefits payable under the system, refund of contributions and overpayments, purchases or investments under the law and expenses in connection with the system unless otherwise provided by law shall be paid from the fund. The director of accounts and reports is authorized to draw warrants on the state treasurer and against such fund upon the filing in the director's office of proper vouchers executed by the chairperson or the executive director of the board. As an alternative, payments from the fund may be made by credits to the accounts of recipients of payments in banks, savings and loan associations and credit unions. A payment shall be so made only upon the written authorization and direction of the recipient of payment and upon receipt of such authorization such payments shall be made in accordance therewith. Orders for payment of such claims may be contained on (a) a letter, memorandum, telegram, computer printout or similar writing, or (b) any form of communication, other than voice, which is registered upon magnetic tape, disc or any other medium designed to capture and contain in durable form conventional signals used for the electronic communication of messages.

(2) The board shall have the responsibility for the management of the fund and shall discharge the board's duties with respect to the fund solely in the interests of the members and beneficiaries of the system for the exclusive purpose of providing benefits to members and such member's beneficiaries and defraying reasonable expenses of administering

the fund and shall invest and reinvest moneys in the fund and acquire, retain, manage, including the exercise of any voting rights and disposal of investments of the fund within the limitations and according to the powers, duties and purposes as prescribed by this section.

(3) Moneys in the fund shall be invested and reinvested to achieve the investment objective which is preservation of the fund to provide benefits to members and member beneficiaries, as provided by law and accordingly providing that the moneys are as productive as possible, subject to the standards set forth in this act. No moneys in the fund shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

(4) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund, the board shall exercise the judgment, care, skill, prudence and diligence under the circumstances then prevailing, which persons of prudence, discretion and intelligence acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and not in regard to speculation but in regard to the permanent disposition of similar funds, considering the probable income as well as the probable safety of their capital.

(5) Notwithstanding subsection (4): (a) Total investments in common stock may be made in the amount of up to 60% of the total book value of the fund;

(b) the board may invest or reinvest moneys of the fund in alternative investments if the following conditions are satisfied:

(i) The total of the annual *net commitment to alternative investment investments* does not exceed ~~more than 1%~~ 5% of the total market value of investment assets of the fund as measured from the end of the preceding calendar year;

(ii) if in addition to the system, there are at least two other ~~sophisticated investors~~ *qualified institutional buyers*, as defined by section ~~301~~ of the ~~(a)(1)(i) of rule 144A, securities and exchange act of 1933;~~

(iii) the system's share in any individual alternative investment is limited to an investment representing not more than 20% of any such individual alternative investment;

(iv) the system has received a favorable and appropriate recommendation from a qualified, independent expert in investment management or analysis in that particular type of alternative investment;

(v) the alternative investment is consistent with the system's investment policies and objectives as provided in subsection (6);

(vi) the individual alternative investment does not exceed more than 2.5% of the total alternative investments made under this subsection. If the alternative investment is made pursuant to participation by the system

in a multi-investor pool, the 2.5% limitation contained in this subsection is applied to the underlying individual assets of such pool and not to investment in the pool itself. The total of such alternative investments made pursuant to participation by the system in any one individual multi-investor pool shall not exceed more than 20% of the total of alternative investments made by the system pursuant to this subsection. Nothing in this subsection requires the board to liquidate or sell the system's holdings in any alternative investments made pursuant to participation by the system in any one individual multi-investor pool held by the system on the effective date of this act, unless such liquidation or sale would be in the best interest of the members and beneficiaries of the system and be prudent under the standards contained in this section. The 20% limitation contained in this subsection shall not have been violated if the total of such investment in any one individual multi-investor pool exceeds 20% of the total alternative investments of the fund as a result of market forces acting to increase the value of such a multi-investor pool relative to the rest of the system's alternative investments; however, the board shall not invest or reinvest any moneys of the fund in any such individual multi-investor pool until the value of such individual multi-investor pool is less than 20% of the total alternative investments of the fund;

(vii) the board has received and considered the investment manager's due diligence findings submitted to the board as required by subsection (6)(c); ~~and~~

(viii) prior to the time the alternative investment is made, the system has in place procedures and systems to ensure that the investment is properly monitored and investment performance is accurately measured; *and*

(ix) *the total of alternative investments does not exceed 15% of the total investment assets of the fund. The 15% limitation contained in this subsection shall not have been violated if the total of such alternative investments exceeds 15% of the total investment assets of the fund, based on the fund total market value, as a result of market forces acting to increase the value of such alternative investments relative to the rest of the system's investments. However, the board shall not invest or reinvest any moneys of the fund in alternative investments until the total value of such alternative investments is less than 15% of the total investment assets of the fund based on the market value. If the total value of the alternative investments exceeds 15% of the total investment assets of the fund, the board shall not be required to liquidate or sell the system's holdings in any alternative investment held by the system, unless such liquidation or sale would be in the best interest of the members and beneficiaries of the system and is prudent under the standards contained in this section.*

For purposes of this act, "alternative investment" ~~means nontraditional investments outside the established nationally recognized public stock exchanges and government securities market. Alternative investments~~

~~shall include, but not be limited to, private placements, venture capital, partnerships, limited partnerships and leveraged buyout partnerships, and includes a broad group of investments that are not one of the traditional asset types of public equities, fixed income, cash or real estate. Alternative investments are generally made through limited partnership or similar structures, are not regularly traded on nationally recognized exchanges and thus are relatively illiquid, and exhibit lower correlations with more liquid asset types such as stocks and bonds. Alternative investments generally include, but are not limited to, private equity, private credit, hedge funds, infrastructure, commodities and other investments which have the characteristics described in this paragraph; and~~

(c) except as otherwise provided, the board may invest or reinvest moneys of the fund in real estate investments if the following conditions are satisfied:

(i) The system has received a favorable and appropriate recommendation from a qualified, independent expert in investment management or analysis in that particular type of real estate investment;

(ii) the real estate investment is consistent with the system's investment policies and objectives as provided in subsection (6); and

(iii) the system has received and considered the investment manager's due diligence findings.

(6) Subject to the objective set forth in subsection (3) and the standards set forth in subsections (4) and (5) the board shall formulate policies and objectives for the investment and reinvestment of moneys in the fund and the acquisition, retention, management and disposition of investments of the fund. Such policies and objectives shall include:

(a) Specific asset allocation standards and objectives;

(b) establishment of criteria for evaluating the risk versus the potential return on a particular investment;

(c) a requirement that all investment managers submit such manager's due diligence findings on each investment to the board or investment advisory committee for approval or rejection prior to making any alternative investment;

(d) a requirement that all investment managers shall immediately report all instances of default on investments to the board and provide the board with recommendations and options, including, but not limited to, curing the default or withdrawal from the investment; and

(e) establishment of criteria that would be used as a guideline for determining when no additional add-on investments or reinvestments would be made and when the investment would be liquidated.

The board shall review such policies and objectives, make changes considered necessary or desirable and readopt such policies and objectives on an annual basis.

(7) The board may enter into contracts with one or more persons whom the board determines to be qualified, whereby the persons under-

take to perform the functions specified in subsection (2) to the extent provided in the contract. Performance of functions under contract so entered into shall be paid pursuant to rates fixed by the board subject to provisions of appropriation acts and shall be based on specific contractual fee arrangements. The system shall not pay or reimburse any expenses of persons contracted with pursuant to this subsection, except that after approval of the board, the system may pay approved investment related expenses subject to provisions of appropriation acts. The board shall require that a person contracted with to obtain commercial insurance which provides for errors and omissions coverage for such person in an amount to be specified by the board, provided that such coverage shall be at least the greater of \$500,000 or 1% of the funds entrusted to such person up to a maximum of \$10,000,000. The board shall require a person contracted with to give a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the board, with corporate surety authorized to do business in this state. Such persons contracted with the board pursuant to this subsection and any persons contracted with such persons to perform the functions specified in subsection (2) shall be deemed to be agents of the board and the system in the performance of contractual obligations.

(8) (a) In the acquisition or disposition of securities, the board may rely on the written legal opinion of a reputable bond attorney or attorneys, the written opinion of the attorney of the investment counselor or managers, or the written opinion of the attorney general certifying the legality of the securities.

(b) The board shall employ or retain qualified investment counsel or counselors or may negotiate with a trust company to assist and advise in the judicious investment of funds as herein provided.

(9) (a) Except as provided in subsection (7) and this subsection, the custody of money and securities of the fund shall remain in the custody of the state treasurer, except that the board may arrange for the custody of such money and securities as it considers advisable with one or more member banks or trust companies of the federal reserve system or with one or more banks in the state of Kansas, or both, to be held in safekeeping by the banks or trust companies for the collection of the principal and interest or other income or of the proceeds of sale. The services provided by the banks or trust companies shall be paid pursuant to rates fixed by the board subject to provisions of appropriation acts.

(b) The state treasurer and the board shall collect the principal and interest or other income of investments or the proceeds of sale of securities in the custody of the state treasurer and pay same when so collected into the fund.

(c) The principal and interest or other income or the proceeds of sale of securities as provided in clause (a) of this subsection (9) shall be reported to the state treasurer and the board and credited to the fund.

(10) The board shall with the advice of the director of accounts and reports establish the requirements and procedure for reporting any and all activity relating to investment functions provided for in this act in order to prepare a record monthly of the investment income and changes made during the preceding month. The record will reflect a detailed summary of investment, reinvestment, purchase, sale and exchange transactions and such other information as the board may consider advisable to reflect a true accounting of the investment activity of the fund.

(11) The board shall provide for an examination of the investment program annually. The examination shall include an evaluation of current investment policies and practices and of specific investments of the fund in relation to the objective set forth in subsection (3), the standard set forth in subsection (4) and other criteria as may be appropriate, and recommendations relating to the fund investment policies and practices and to specific investments of the fund as are considered necessary or desirable. The board shall include in its annual report to the governor as provided in K.S.A. 74-4907, and amendments thereto, a report or a summary thereof covering the investments of the fund.

(12) (a) An annual financial-compliance audit of the system, including any performance audit subjects which are directed to be included in such annual audit by the legislative post audit committee, performance audits of the system as prescribed under the Kansas governmental operations law, and such other audits as are directed by the legislative post audit committee under the Kansas legislative post audit act shall be conducted. The annual financial-compliance audit shall include, but not be limited to, a review of alternative investments of the system with any estimates of permanent impairments to the value of such alternative investments reported by the system pursuant to K.S.A. 74-4907, and amendments thereto.

(b) In accordance with this subsection (12), the annual financial-compliance audit may include one or more performance audit subjects as directed by the legislative post audit committee. In considering performance audit subjects to be included in any financial-compliance audit conducted pursuant to this subsection (12), the legislative post audit committee shall consider recommendations and requests for performance audits, relating to the system or the management thereof, by the joint committee on pensions, investments and benefits or by any other committee or individual member of the legislature. Commencing with the financial-compliance audit for the fiscal year ending June 30, 1998, the legislative post audit committee shall specify if one or more performance audit subjects shall be included in the financial-compliance audit conducted pursuant to this subsection (12), in addition to such other subjects as may be directed to be included in the financial-compliance audit by the legislative post audit committee. Except as otherwise determined by the legislative post audit committee pursuant to this subsection (12), com-

mencing with the financial-compliance audit for the fiscal year ending June 30, 1998, one or more performance audit subjects specified by the legislative post audit committee shall be included at least once every two fiscal years in a financial-compliance audit conducted pursuant to this subsection (12). The legislative post audit committee may direct that one or more performance audit subjects are to be included in a financial-compliance audit conducted pursuant to this subsection (12) not more than once during a specific period of three fiscal years, in lieu of once every two fiscal years.

(c) The auditor to conduct the financial-compliance audit required pursuant to this subsection (12) shall be specified in accordance with K.S.A. 46-1122, and amendments thereto. If the legislative post audit committee specifies under such statute that a firm, as defined by K.S.A. 46-1112, and amendments thereto, is to perform all or part of the audit work of such audit, such firm shall be selected and shall perform such audit work as provided in K.S.A. 46-1123, and amendments thereto, and K.S.A. 46-1125 through 46-1127, and amendments thereto. The audits required pursuant to this subsection (12) shall be conducted in accordance with generally accepted governmental auditing standards. The financial-compliance audit required pursuant to this subsection (12) shall be conducted as soon after the close of the fiscal year as practicable, but shall be completed no later than six months after the close of the fiscal year. The post auditor shall annually compute the reasonably anticipated cost of providing the financial-compliance audit pursuant to this subsection (12), subject to review and approval by the contract audit committee established by K.S.A. 46-1120, and amendments thereto. Upon such approval, the system shall reimburse the division of post audit for the amount approved by the contract audit committee. The furnishing of the financial-compliance audit pursuant to this subsection (12) shall be a transaction between the legislative post auditor and the system and shall be settled in accordance with the provisions of K.S.A. 75-5516, and amendments thereto.

(d) Any internal assessment or examination of alternative investments of the system performed by any person or entity employed or retained by the board which evaluates or monitors the performance of alternative investments shall be reported to the legislative post auditor so that such report may be reviewed in accordance with the annual financial-compliance audits conducted pursuant to this subsection (12).

(e) *The board shall prepare and submit an alternative investment report to the joint committee on pensions, investments and benefits prior to January 1, 2016. Such report shall include a review of alternative investments of the system with an emphasis on the effects of changes in law pursuant to this act and includes specific investment cost and market value information of each individual alternative investment.*

Sec. 2. K.S.A. 2011 Supp. 74-4921 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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CHAPTER 97

HOUSE BILL No. 2685\*

AN ACT concerning water; relating to reservoir improvement districts.

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

Section 1. This act shall be known and may be cited as the reservoir improvement district act.

Sec. 2. As used in this act, unless context otherwise requires:

(a) “Board” means the board of directors of a reservoir improvement district;

(b) “district” means a reservoir district for which organization is proposed or has been organized under the provisions of this act, and amendments thereto;

(c) “eligible water right holder” means any person:

(1) Holding a water right or permit, pursuant to K.S.A. 82a-701 *et seq.*, and amendments thereto, to appropriate water from a reservoir;

(2) with a contract to withdraw and use water pursuant to K.S.A. 82a-1301 *et seq.*, and amendments thereto; or

(3) with a water appropriation right in a water assurance district pursuant to K.S.A. 82a-1330 *et seq.*, and amendments thereto;

(d) “general plan” means a preliminary engineering report describing the characteristics of the reservoir, the nature and methods of dealing with the bed and water problems in the reservoir or the reservoir watershed and the projects proposed to be undertaken by the district. It shall include maps, descriptions and any other data as may be necessary for the location, identification and establishment of the character of the work to be undertaken and any other data and information as the director of the Kansas water office may require;

(e) “person” means any person, firm, partnership, association or corporation;

(f) “specific project” means any project outlined and proposed by the board of directors and may constitute all or part of the general plan;

(g) “steering committee” means the group of eligible water right holders, not less than the number to be chosen for the board of directors, who shall serve as the governing body of the proposed reservoir improvement district until the first board of directors is elected;

(h) “water right” shall have the meaning provided in K.S.A. 82a-701, and amendments thereto; and

(i) “watershed” means all the area within the state draining toward a selected point on a reservoir.

Sec. 3. Before any reservoir improvement district is organized, a petition shall be filed in the office of the secretary of state, signed by the eligible water right holders who have water rights totaling more than 20% of the combined quantities of all eligible water rights within the proposed district as shown by a verified enumeration of the eligible water right holders and the total combined quantities of all eligible rights taken by the director of the Kansas water office. A verified copy of the enumeration shall be attached to and filed with the petition in the office of the secretary of state.

Sec. 4. (a) Every petition filed pursuant to section 3, and amendments thereto, shall state:

(1) The name of the proposed district which shall include the name of the reservoir and end with the words “reservoir improvement district”;

(2) a list of the water rights, by file number as recorded in the Kansas water office, to be included within the proposed district;

(3) a statement of the purposes for which the district is to be organized;

(4) a statement of the number of persons that will constitute the board of directors of the district, which shall be an odd number of not less than three nor more than five, together with the names and addresses of the persons who will constitute the original steering committee;

(5) any other matter deemed essential; and

(6) a request for the organization of the district as a nonprofit corporation.

(b) The petition shall be in substantially the following form:

BEFORE THE SECRETARY OF STATE OF THE  
STATE OF KANSAS

In the Matter of \_\_\_\_\_ Reservoir Improvement District

PETITION

Come now the undersigned persons and state that they own water rights or are an eligible water right holder in the \_\_\_\_\_ reservoir, for which a reservoir improvement district is proposed, and that each signer states that the signer’s respective post office address is set forth beside the signer’s name. That the purposes for which this district is organized are (state purposes). That a steering committee for the organization of the district is hereby fixed and constituted with five members; that the names of persons who will serve on the original steering committee, of which the first named shall be acting chairperson, and their respective addresses are as follows:

(List names and addresses.)

The governing body of the district shall be constituted in a board of directors composed of (number) qualified members.

Wherefore, the undersigned, individually and collectively, request that a reservoir improvement district be organized in the manner provided by law, for the purposes set forth

herein, and that the secretary of state and the director of the Kansas water office proceed diligently in the performance of their duties so that the organization of this proposed district may be completed and approved at the earliest possible time.

Submitted to the secretary of state this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

Sec. 5. A copy of the full petition, as required by section 3, and amendments thereto, shall be circulated among the eligible water right holders of the proposed district. All counterparts shall be filed with the secretary of state at the same time and shall be received and treated by the secretary as a single petition. The secretary of state shall determine the sufficiency or insufficiency of the petition on the basis of the information as to the number and qualification of signers as shown by the verified enumeration filed with the petition. The secretary of state shall endorse the findings and the date thereof on the face of the petition and shall notify in writing the person designated in the petition as the acting chairperson of the steering committee of the findings.

Sec. 6. (a) If the secretary of state finds the petition, as required by section 3, and amendments thereto, to be sufficient as to form and the number and qualifications of the petitioners, the secretary of state shall prepare a certified copy of the petition and transmit the same to the director of the Kansas water office within five days from the date of such finding. Upon receipt of such certified copy, the director of the Kansas water office shall institute an investigation of the proposed district, its water usage and purposes. Within 90 days after receipt of the copy, the director of the Kansas water office shall transmit a written report of the findings on the petition and the director's written approval or disapproval of the petition to the secretary of state and the acting chairperson of the steering committee named in the petition.

(b) The director of the Kansas water office shall approve such petition if the director finds that construction of works of improvement on the reservoir for which the district is proposed would benefit the sustainability, conservation and maintenance of such reservoir.

If the director of the Kansas water office approves such petition, the director shall transmit a certified copy of the report containing all findings to the secretary of state and to the chairperson of the steering committee named in the petition.

Sec. 7. (a) Within 10 days after receipt of a certified copy of the report from the director of the Kansas water office approving the petition or the petition as amended, the chairperson of the steering committee of the proposed district shall call a meeting of the committee by mailing a written notice fixing the time and place of such meeting to each eligible water right holder in the proposed district. The committee shall meet at the time and place fixed in the notice for the purpose of adopting a resolution giving notice of an election at which all eligible water right holders shall be entitled to vote on the question of whether the district should be

formed in accordance with the petition as approved by the director. A copy of such resolution shall be mailed to all eligible water right holders of the proposed district not less than 21 days prior to such vote. The resolution shall state when and where the election shall be held and the proposition to be voted on. It shall contain a copy of the petition as approved by the director and shall be signed by the chairperson and attested by the secretary of the steering committee. The steering committee shall conduct the election, canvass the vote and certify the results to the secretary of state and to the director of the Kansas water office.

(b) If eligible water right holders representing more than 50% of the combined quantities of the eligible water rights of the proposed district vote in favor of the organization and creation of the district, the secretary of state shall issue a certificate of incorporation for the district to the steering committee, such certificate shall be filed in the office of the register of deeds of each county in which all or a portion of the district lies. Upon the recordation of the certificate of incorporation, the district shall be authorized to function in accordance with the provision of this act and its certificate of incorporation.

(c) If eligible water right holders representing more than 50% of the combined quantities of the water rights within the proposed district vote against the organization and creation of the district, the secretary of state shall endorse that fact on the face of the petition and the proceedings shall be closed.

(d) No action attacking the legal incorporation of any reservoir improvement district organized under this section shall be maintained unless filed within 90 days after the issuance of the certificate of incorporation for such district by the secretary of state, nor shall the alleged illegality of the incorporation of any such district be interposed as a defense to any action brought after such time.

Sec. 8. If the organization of the proposed reservoir improvement district is defeated at the election or if the petition is disapproved by the director of the Kansas water office, the steering committee named in the petition shall determine the amount of money necessary to pay all of the costs and expenses incurred in the preparation and filing of the petition, and in the conduct of the election and the steering committee shall assume the obligation for the payment of such costs and expenses by assessing the eligible water right holders a fee in proportion to each such holder's water right to the total of such water right. No cost shall be assessed by any state agency.

Sec. 9. All powers granted to reservoir improvement districts incorporated under the provisions of this act shall be exercised by a board of directors which shall be composed of an odd number of directors not less than three nor more than five as specified in the petition for creation of the district. Each director shall serve for a term of three years, and until

a successor is elected and qualified, except that as nearly as possible  $\frac{1}{3}$  of the original board members designated in the petition for organization of the district shall serve for a term of one year,  $\frac{1}{3}$  for a term of two years and  $\frac{1}{3}$  for a term of three years. Such directors shall serve without compensation, but shall be allowed actual and necessary expenses incurred in the performance of their official duties.

Sec. 10. (a) Within not more than 90 days after the recording of the certificate of incorporation, a meeting open to all eligible water right holders of the district shall be held by the steering committee for the election of the initial board of directors of the district. A notice of the meeting shall be mailed to all eligible water right holders by the steering committee at least 10 days prior to the date thereof.

(b) Each eligible water right holder shall have one vote and one additional vote for every 10% of the combined quantities of all water rights within the district. Each eligible water right holder in the district shall be entitled to vote for as many candidates as the number of directors that are to be elected.

(c) The candidates receiving the greatest number of votes cast shall respectively be declared elected. The board of directors, after being duly elected, shall elect from its number a president, vice-president, secretary and a treasurer. In districts having only three directors, the board shall elect one director to hold the offices of secretary and treasurer.

(d) A majority of the directors shall constitute a quorum for the transaction of business and a majority of those voting shall determine all actions taken by the board. In the absence of any of the duly elected officers, those directors present at any meeting may select a director to act as an officer *pro tem*.

(e) The elected board shall fill any vacancy occurring on the board prior to the expiration of the term of any director by selecting a replacement from among the eligible water right holders of the district to serve for the unexpired term.

Sec. 11. (a) In not less than 12 months, nor more than 13 months after the recording of the certificates of incorporation, and annually thereafter, a meeting shall be held for the election of directors whose terms expire and also to render a report on the financial condition and activities of the district, including the estimated construction date of all proposed projects to be initiated within the next five years and the board's determination as to whether each of these projects is still cost effective and in the current public interest. Notice of the annual meeting shall be given at least 10 days prior to the date thereof to all members in the district.

(b) The number of directors of a district or the date of the annual meeting, or both, may be changed at an annual meeting if notice of the proposed changes is included in the notice for the annual meeting at which such changes are to be considered.

(c) Copies of the minutes of the annual meeting and report on the financial condition and activities of the district shall be furnished to the eligible water right holders of the district and the Kansas water office.

Sec. 12. Regular meetings of the board of directors shall be held no less than once each quarter on a day and place as is selected by the board of directors. Notice of such meeting shall be mailed to each director at least five days before the date of the meeting. Special meetings may be held at any time upon waiver of notice of such meeting by all directors or may be called by any two directors at any time. Notice in writing, signed by the persons calling any special meeting, shall be mailed to each director at least two days prior to the time fixed for such special meeting. A majority of directors shall constitute a quorum for the transaction of business and in the absence of any of the duly elected officers of the district a quorum at any meeting may select a director to act as such officer *pro tem*. Each meeting of the board, whether regular or special, shall be open to the public. Copies of the minutes of regular and special meetings shall be furnished to the eligible water right holders of the district and the Kansas water office.

Sec. 13. Each reservoir improvement district incorporated under the provisions of this act shall be a body politic and corporate and shall have the power to:

- (a) Adopt a seal;
- (b) sue and be sued by its corporate name;
- (c) purchase, hold, sell and convey real and personal property and to execute such contracts as the board of directors deems necessary or convenient to enable it to carry out the purpose for which organized;
- (d) construct, improve, maintain or operate works of improvement including such works necessary for the sustainability of reservoirs, including the conservation and maintenance of water for domestic, municipal, agricultural or industrial use;
- (e) employ such professional, technical and clerical services and other assistance as deemed necessary by the board of directors;
- (f) acquire real or personal property by gift;
- (g) impose charges and incur indebtedness within the limitations prescribed by this act;
- (h) cooperate and contract with:
  - (1) Persons, firms, associations, partnerships and private corporations;
  - (2) other reservoir improvement districts, watershed districts, drainage districts, cities or classes of this state;
  - (3) other local, state and federal governmental agencies; or
  - (4) drainage districts, watershed districts or other public corporations organized for similar purposes in any adjoining state;
- (i) dissolve the district as provided for in this act;

(j) select a residence or home office for the reservoir improvement district, which shall be at a place in a county where the reservoir or any part of the reservoir is located; and

(k) take any other action necessary to achieve the purposes of the reservoir improvement district.

Sec. 14. (a) Upon the incorporation of the reservoir improvement district, the board shall cause work to be commenced on the preparation of a general plan of the district. In addition, there shall be prepared an estimate of costs as to installation, maintenance and operation of the proposed improvements. Upon completion of the general plan and estimates of costs, the board shall carefully examine and consider such plan. If they approve the general plan and estimate of cost, they shall transmit a complete copy of the general plan to the director of the Kansas water office and additional copies shall be made available upon request by the director of the Kansas water office. Copies of such plans, estimates and information in the Kansas water office shall be open to inspection by the public at all reasonable times.

(b) The director of the Kansas water office shall examine and study such general plans as to:

- (1) Feasibility;
- (2) coordination of the plan with any other plan for the reservoir for which the district is formed;
- (3) the safety of the works and improvements proposed; and
- (4) conformity with the intents and purposes of this act.

(c) The director of the Kansas water office shall transmit a written report of the results of such study and investigation to the board of directors, which shall include any changes or modifications which have been deemed necessary and which shall include a specific approval or disapproval of the general plan.

Sec. 15. (a) When the general plan is approved by the director of the Kansas water office, the board shall propose by resolution, that the cost to the district of all improvements contemplated in the plan be paid by imposing a charge against each eligible water right holder of the district in proportion to each such holder's water right. The total of such charges shall be sufficient to enable the district to pay the cost of administering the general plan. The reservoir improvement district also may impose a charge against each eligible water right holder of the district in an amount sufficient to cover district operating costs. Charges paid by eligible water right holders of a reservoir improvement district may vary and shall be based on the principle of having each eligible water right holder pay for the *pro rata* quantity of water used from the reservoir. In determining the charge, the governing body of the district shall adopt rules which establish guidelines for prospective eligible water right holders.

(b) The board shall fix a time and place conveniently near the res-

ervoir for a public hearing upon the general plan and the resolution proposing a method of financing costs of the works contemplated in the plan. A notice of such hearing shall be given in one publication at least 20 days prior to the date fixed for the hearing, setting forth the time and place of hearing upon the plan and resolution, that a copy of the plan and resolution is available for public inspection in the office of the secretary of the district. Any eligible water right holder of the district desiring to be heard in the matter must file, in duplicate, with the secretary of the board at the secretary's office, at least five days before the date of the hearing, a written statement of such holder's intent to appear at the hearing and the substance of the views they wish to express. Upon receipt of any such statements, the secretary of the board shall immediately transmit one copy of the statements to the director of the Kansas water office. The director of the Kansas water office or the director of the Kansas water office's duly appointed representative may attend the hearing. At the hearing any eligible water right holder of the district who has filed a written statement shall be heard and may present information in support of the eligible water right holder's position in the matter. After hearing all such statements, the board, by resolution, shall adopt as official or reject the general plan. The board shall also adopt as official or reject the proposed method of financing the costs of the works contemplated in the general plan or determine that the general plan or the proposed method of financing or both should be modified. The board shall notify the director of the Kansas water office of the board's action to accept or reject the general plan and proposed method of financing. If it is determined that the general plan should be modified, any proposed changes approved by the board shall be incorporated in a modified general plan which shall be submitted to the director of the Kansas water office for further consideration.

(c) The director of the Kansas water office shall review the modified plan and shall transmit a supplemental written report of the results of the director's study and investigation to the board, including the director of the Kansas water office's written approval or disapproval of the modified general plan. If the modified general plan is approved by the director of the Kansas water office, the board, by resolution, shall adopt the modified plan as the official general plan of the district and notify the director of the Kansas water office of the board's action. If it is determined that the proposed method of financing should be modified, the board shall give consideration to the modified method of financing and, following adoption of the general plan or an approved modification thereof, the board, by further resolution setting forth such modified method of financing, shall adopt it as the official method of the district for financing costs of the works contemplated in the official general plan. If a board is unable to carry out a general plan because insufficient funds have been provided, they may reconsider the general plan or the method of financing, or both,

and by following the procedure set forth in subsections (a) and (b), re-submit a general plan or method of financing, or both.

Sec. 16. (a) Following the adoption of the general plan and adoption of the method of financing, the board of directors may determine the order in which specific projects contemplated by the general plan shall be undertaken. The board shall then cause accurate surveys of all work deemed necessary to be done and accurate estimates and calculations to be made by a competent engineer who shall prepare detailed construction plans and specifications showing the location, amount, and character of work to be done and the estimated cost of right of way, construction, maintenance and operation, which plans, specifications and estimates of costs shall be filed in the office of the secretary of the board and shall at all reasonable times be open to public inspection. The board shall carefully examine and consider the same and if they approve such plans, specifications and estimates of costs, they shall transmit a complete copy thereof to the director of the Kansas water office, who shall examine and study the plans and specifications as to conformance to the general plan and other applicable state laws on water use and control and transmit a written report of the results of the director's study and investigation to the board which report shall include any changes or modifications, which the director deems necessary, and which shall include a specific approval or disapproval of the plans and specifications.

(b) Ten years following approval of the general plan and every five years thereafter, the board shall review the general plan to determine if projects proposed to be undertaken by the district in its original plan are still feasible. A report of the review shall be given at a public meeting called for that purpose. This review is not required of reservoir improvement districts that have completed all the projects in the general plans.

Any revisions or amendments to the general plan shall be submitted to the director of the Kansas water office in the manner provided by section 14, and amendments thereto.

Sec. 17. This act shall be deemed to be supplemental to existing laws relating to watershed districts, drainage districts, flood control, irrigation, soil conservation and related matters.

Sec. 18. (a) The board of directors of any reservoir improvement district, by resolution, may dissolve such district if such district has been incorporated under the provisions of this section for more than eight years and has not:

- (1) Adopted a general plan of work and projects to be undertaken by the district;
  - (2) constructed or contracted to construct any works of improvement;
- or
- (3) incurred any continuing obligations for maintenance of any works of improvement.

(b) The board of directors of any reservoir improvement district, by resolution, may dissolve such district if such district has been incorporated under the provisions of this section for more than four years and has not made substantial progress toward a general plan or work and projects to be undertaken by the district.

(c) A resolution to dissolve a reservoir improvement district shall be adopted by a  $\frac{2}{3}$  vote of all members of the board that are present and voting, but in no event less than a majority of all board members at a special meeting called for the purpose of dissolving the district.

(d) Notice of the special meeting to dissolve the district shall specify the purpose for which the meeting is to be called, provide for the calling of an election of eligible water right holders for the purpose of determining whether such district shall be dissolved. The board shall provide for the calling of such an election if written petitions signed by 20% of eligible water right holders in the district, as shown by a verified enumeration of such water rights are filed with the secretary of the board.

(e) The election to determine whether the district shall be dissolved shall be held and conducted in the same manner as provided by section 7, and amendments thereto, insofar as such provisions can be made applicable. If a majority of those voting on the proposition voted in favor of dissolution of the district, the board shall immediately certify the results of such election to the secretary of state, and the secretary of state thereupon shall issue and deliver to the secretary of such board a certificate of dissolution.

Sec. 19. (a) Upon receipt from the secretary of state of the certificate of dissolution of the reservoir improvement district under the provisions of this act, the secretary of the board of directors of the reservoir improvement district shall notify the directors of the reservoir improvement district of such certification.

(b) The directors shall immediately pay all obligations of said district, including all costs incurred by the district, the director of the Kansas water office and the secretary of state in regard to the dissolution proceedings.

(c) Upon receipt of such notification from the state treasurer, the secretary of the district shall have the certificate of dissolution published once in a newspaper of general circulation, located in a county where the reservoir or a part thereof is located and proof of such publication shall be filed with the secretary of state's office. The effective date of the dissolution, unless otherwise provided, shall be the date on which the proof of publication is filed in the office of the secretary of state, but in no event shall the date of dissolution be a date prior to the date of publication of the certificate of dissolution.

Sec. 20. Any funds of a reservoir improvement district which is totally disorganized and dissolved under the provisions of this act shall be apportioned and paid back to the eligible water right holders in the same

proportion as used in assessing fees. The reservoir improvement district treasurer, upon notification of receipt of a certificate of dissolution, shall immediately pay the amounts due each eligible water right holder, as such eligible water right holder may be entitled to receive.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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## CHAPTER 98

### HOUSE BILL No. 2674

AN ACT concerning the Kansas highway patrol; relating to the administration of the highway patrol; amending K.S.A. 2011 Supp. 74-2105 and repealing the existing section; also repealing K.S.A. 74-2112, 74-2116, 74-2119, 74-2125 and 74-2133.

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

Section 1. K.S.A. 2011 Supp. 74-2105 is hereby amended to read as follows: 74-2105. (a) (1) The principal function of the Kansas highway patrol shall be enforcement of the traffic and other laws of this state relating to highways, vehicles and drivers of vehicles except as otherwise provided in this subsection (a). The superintendent and members of the highway patrol in performing their duties under this act shall wear badges and uniforms of office. The superintendent may designate members to perform security duties for public officials and other duties as directed by the superintendent. The superintendent may perform duties under this act whether or not wearing a badge and uniform. Such members may serve without uniform and without open display of badges. ~~Officers and employees of the bureau of emergency medical services shall not wear badges and uniforms of office.~~

(2) The superintendent or the superintendent's designee shall designate the mode of transportation deemed necessary for the purpose of providing security for the governor and the governor's family.

(3) Subject to approval by the federal aviation administration of an exemption from applicable federal aviation administration regulations, when the governor elects to travel by state-owned vehicle or aircraft for political or personal business and the superintendent has not deemed such transportation necessary for the security of the governor or the governor's family, the governor may use such vehicle or aircraft and reimburse the state of Kansas for its use in an amount determined by the secretary of administration.

(b) In addition to the duties otherwise prescribed by law, the superintendent of the highway patrol shall supervise and manage the capitol police. In the supervision and management of the duties of the capitol

police in and around the state capitol building, the superintendent of the highway patrol shall advise with the legislative coordinating council.

~~(c) In addition to other duties, the superintendent of the highway patrol shall provide budgeting, purchasing and related management functions for the bureau of emergency medical services of the Kansas highway patrol as may be provided by law and shall perform other functions and duties pertaining to emergency medical services as may be specified by law.~~

Sec. 2. K.S.A. 74-2112, 74-2116, 74-2119, 74-2125 and 74-2133 and K.S.A. 2011 Supp. 74-2105 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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## CHAPTER 99

HOUSE BILL No. 2660  
(Amended by Chapter 166)

AN ACT concerning the department of health and environment; relating to the licensure of maternity centers and child care facilities; amending K.S.A. 2011 Supp. 65-503, 65-504, 65-506, 65-508, 65-516, 65-523 and 65-524 and repealing the existing sections; also repealing K.S.A. 65-502.

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

Section 1. K.S.A. 2011 Supp. 65-503 is hereby amended to read as follows: 65-503. As used in this act:

(a) “Child placement agency” means a business or service conducted, maintained or operated by a person engaged in finding homes for children by placing or arranging for the placement of such children for adoption or foster care.

(b) “Child care resource and referral agency” means a business or service conducted, maintained or operated by a person engaged in providing resource and referral services, including information of specific services provided by child care facilities, to assist parents to find child care.

(c) “Child care facility” means:

(1) A facility maintained by a person who has control or custody of one or more children under 16 years of age, unattended by parent or guardian, for the purpose of providing the children with food or lodging, or both, except children in the custody of the secretary of social and rehabilitation services who are placed with a prospective adoptive family pursuant to the provisions of an adoptive placement agreement or who are related to the person by blood, marriage or legal adoption;

(2) a children’s home, orphanage, maternity home, day care facility

or other facility of a type determined by the secretary to require regulation under the provisions of this act;

(3) a child placement agency or child care resource and referral agency, or a facility maintained by such an agency for the purpose of caring for children under 16 years of age; or

(4) any receiving or detention home for children under 16 years of age provided or maintained by, or receiving aid from, any city or county or the state.

(d) *“Day care facility” means a child care facility that includes a day care home, preschool, child care center, school-age program or other facility of a type determined by the secretary to require regulation under the provisions of K.S.A. 65-501 et seq., and amendments thereto.*

~~(d)~~(e) *“Person” means any individual, association, partnership, corporation, government, governmental subdivision or other entity.*

~~(e)~~(f) *“Boarding school” means a facility which provides 24-hour care to school age children, provides education as its primary function, and is accredited by an accrediting agency acceptable to the secretary of health and environment.*

(g) *“Maternity center” means a facility which provides delivery services for normal, uncomplicated pregnancies but does not include a medical care facility as defined by K.S.A. 65-425, and amendments thereto.*

Sec. 2. K.S.A. 2011 Supp. 65-504 is hereby amended to read as follows: 65-504. (a) The secretary of health and environment shall have the power to grant a license to a person to maintain a maternity center or child care facility for children under 16 years of age. ~~The A license granted to maintain a maternity center or child care facility shall state the name of the licensee, describe the particular premises in or at which the business shall be carried on, whether it shall receive and care for women or children, and the number of women or children that may be treated, maintained, boarded or cared for at any one time. No greater number of women or children than is authorized in the license shall be kept on those premises and the business shall not be carried on in a building or place not designated in the license. The license shall be kept posted in a conspicuous place on the premises where the business is conducted. The A license granted to maintain a day care facility shall have on its face an expiration sticker stating the date of expiration of the license.~~

The secretary of health and environment shall grant no license in any case until careful inspection of the maternity center or child care facility shall have been made according to the terms of this act and until such maternity center or child care facility has complied with all the requirements of this act. Except as provided by this subsection, no license shall be granted without the approval of the secretary of social and rehabilitation services. The secretary of health and environment may issue, without the approval of the secretary of social and rehabilitation services, a

temporary permit to operate for a period not to exceed 90 days upon receipt of an initial application for license. The secretary of health and environment may extend, without the approval of the secretary of social and rehabilitation services, the temporary permit to operate for an additional period not to exceed 90 days if an applicant is not in full compliance with the requirements of this act but has made efforts towards full compliance.

(b) (1) In all cases where the secretary of social and rehabilitation services deems it necessary, an investigation of the maternity center or child care facility shall be made under the supervision of the secretary of social and rehabilitation services or other designated qualified agents. For that purpose and for any subsequent investigations they shall have the right of entry and access to the premises of the center or facility and to any information deemed necessary to the completion of the investigation. In all cases where an investigation is made, a report of the investigation of such center or facility shall be filed with the secretary of health and environment.

(2) In cases where neither approval or disapproval can be given within a period of 30 days following formal request for such a study, the secretary of health and environment may issue a temporary license without fee pending final approval or disapproval of the center or facility.

(c) Whenever the secretary of health and environment refuses to grant a license to an applicant, the secretary shall issue an order to that effect stating the reasons for such denial and within five days after the issuance of such order shall notify the applicant of the refusal. Upon application not more than 15 days after the date of its issuance a hearing on the order shall be held in accordance with the provisions of the Kansas administrative procedure act.

(d) When the secretary of health and environment finds upon investigation or is advised by the secretary of social and rehabilitation services that any of the provisions of this act or the provisions of K.S.A. 59-2123, and amendments thereto, are being violated, or that the maternity center or child care facility is maintained without due regard to the health, *safety* ~~comfort~~ or welfare of ~~the residents~~ *any woman or child*, the secretary of health and environment ~~may issue an order revoking such license~~ after giving notice and conducting a hearing in accordance with the provisions of the Kansas administrative procedure act, ~~shall issue an order revoking such license~~. The order shall clearly state the reason for the revocation.

(e) If the secretary revokes or refuses to renew a license, the licensee who had a license revoked or not renewed shall not be eligible to apply for a license for a period of one year subsequent to the date such revocation or refusal to renew becomes final. If the secretary revokes or refuses to renew a license of a licensee who is a repeat, three or more times, violator of statutory requirements or rules and regulations or is found to have contributed to the death or serious bodily harm of a child under

such licensee's care, such licensee shall be permanently prohibited from applying for a new license to provide child care or from seeking employment under another licensee.

(f) Any applicant or licensee aggrieved by a final order of the secretary of health and environment denying or revoking a license under this act may appeal the order in accordance with the Kansas judicial review act.

Sec. 3. K.S.A. 2011 Supp. 65-506 is hereby amended to read as follows: 65-506. The secretary of health and environment shall serve notice of the issuance, *limitation, modification*, suspension or revocation of a license to conduct a maternity center or child care facility to the secretary of social and rehabilitation services, juvenile justice authority, department of education, office of the state fire marshal, county, city-county or multi-county department of health, and to any licensed child placement agency or licensed child care resource and referral agency serving the area where the center or facility is located. A maternity center or child care facility that has had a license *limited, modified*, suspended, revoked or denied by the secretary of health and environment shall notify in writing the parents or guardians of the enrollees of the *limitation, modification*, suspension, revocation or denial. Neither the secretary of social and rehabilitation services nor any other person shall place or cause to be placed any ~~maternity patient~~ woman or child under 16 years of age in any maternity center or child care facility not licensed by the secretary of health and environment.

Sec. 4. K.S.A. 2011 Supp. 65-508 is hereby amended to read as follows: 65-508. (a) Any maternity center or child care facility subject to the provisions of this act shall: (1) Be properly heated, plumbed, lighted and ventilated; (2) have plumbing, water and sewerage systems which conform to all applicable state and local laws; and (3) be operated with strict regard to the health, ~~comfort~~, safety and ~~social welfare of the residents~~ *any woman or child*.

(b) Every maternity center or child care facility shall furnish or cause to be furnished for the use of each resident and employee individual towel, wash cloth, comb and individual drinking cup or sanitary bubbling fountain, and toothbrushes for all other than infants, and shall keep or require such articles to be kept at all times in a clean and sanitary condition. Every maternity center or child care facility shall comply with all applicable fire codes and rules and regulations of the state fire marshal.

(c) (1) The secretary of health and environment with the cooperation of the secretary of social and rehabilitation services shall develop and adopt rules and regulations for the operation and maintenance of maternity centers and child care facilities. The rules and regulations for operating and maintaining maternity centers and child care facilities shall be designed to promote the health, safety and welfare of ~~the residents who are to be~~ *any woman or child* served in such facilities by ensuring safe

and adequate physical surroundings, healthful food, adequate handwashing, safe storage of toxic substances and hazardous chemicals, sanitary diapering and toileting, home sanitation, supervision and care of the residents by capable, qualified persons of sufficient number, after hour care, an adequate program of activities and services, sudden infant death syndrome and safe sleep practices training, prohibition on corporal punishment, crib safety, protection from electrical hazards, protection from swimming pools and other water sources, fire drills, emergency plans, safety of outdoor playground surfaces, door locks, safety gates and transportation and such appropriate parental participation as may be feasible under the circumstances. Boarding schools are excluded from requirements regarding the number of qualified persons who must supervise and provide care to residents. ~~The notice of hearing on initial rules and regulations proposed to be adopted to carry out the amendments to this subsection (c)(1) by this act shall be published in the Kansas register after February 14, 2011, but prior to March 11, 2011.~~

(2) Rules and regulations developed under this subsection shall include provisions for the competent supervision and care of children in ~~child day~~ care facilities. For purposes of such rules and regulations, competent supervision as this term relates to children less than five years of age includes, but is not limited to, direction of activities, adequate oversight including sight or sound monitoring, or both, physical proximity to children, diapering and toileting practices; and for all children, competent supervision includes, but is not limited to, planning and supervision of daily activities, safe sleep practices, including, but not limited to, visual or sound monitoring, periodic checking, emergency response procedures and drills, illness and injury response procedures, food service preparation and sanitation, playground supervision, pool and water safety practices. ~~The notice of hearing on initial rules and regulations proposed to be adopted under this subsection (c)(2) shall be published in the Kansas register after February 14, 2011, but prior to March 11, 2011.~~

(d) Each child cared for in a child care facility, including children of the person maintaining the facility, shall be required to have current such immunizations as the secretary of health and environment considers necessary. The person maintaining a child care facility shall maintain a record of each child's immunizations and shall provide to the secretary of health and environment such information relating thereto, in accordance with rules and regulations of the secretary, but the person maintaining a child care facility shall not have such person's license revoked solely for the failure to have or to maintain the immunization records required by this subsection.

(e) The immunization requirement of subsection (d) shall not apply if one of the following is obtained:

(1) Certification from a licensed physician stating that the physical

condition of the child is such that immunization would endanger the child's life or health; or

(2) a written statement signed by a parent or guardian that the parent or guardian is an adherent of a religious denomination whose teachings are opposed to immunizations.

Sec. 5. K.S.A. 2011 Supp. 65-516 is hereby amended to read as follows: 65-516.

(a) No person shall knowingly maintain a child care facility if, there resides, works or regularly volunteers any person who in this state or in other states or the federal government:

(1) (A) Has a felony conviction for a crime against persons; (B) has a felony conviction under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009; (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2011 Supp. 21-5301, and amendments thereto, to commit any such act or a conviction of conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2011 Supp. 21-5302, and amendments thereto, to commit such act, or similar statutes of other states or the federal government; or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2011 Supp. 21-6401, and amendments thereto, or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or similar statutes of other states or the federal government, or is any act described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2011 Supp. 21-6401, and amendments thereto, or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse and who is listed in the child abuse and neglect registry maintained by the department of social and rehabilitation services pursuant to K.S.A. 2011 Supp. 38-2226, and amendments thereto, and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of

social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child removed from home based on a court order pursuant to K.S.A. 2011 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan approved by the department of health and environment;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 2011 Supp. 38-2266 through 38-2270, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et seq.*, and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2011 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense; or

(7) has an infectious or contagious disease.

(b) No person shall maintain a child care facility if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto.

(c) Any person who resides in a child care facility and who has been found to be in need of a guardian or a conservator, or both, shall be counted in the total number of children allowed in care.

(d) In accordance with the provisions of this subsection, the secretary of health and environment shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information including, but not limited to, diversion agreements, in the possession of the Kansas bureau of investigation and any report of investigations as authorized by K.S.A. 2011 Supp. 38-2226, and amendments thereto, in the possession of the department of social and rehabilitation services or court of this state concerning persons working, regularly volunteering or residing in a child care facility. The secretary shall have access to these records for the purpose of determining whether or not the home meets the requirements of K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

(e) In accordance with the provisions of this subsection, the secretary is authorized to conduct national criminal history record checks to determine criminal history on persons residing, working or regularly volunteering in a child care facility. In order to conduct a national criminal history check the secretary shall require fingerprinting for identification and determination of criminal history. The secretary shall submit the fingerprints to the Kansas bureau of investigation and to the federal bureau

of investigation and receive a reply to enable the secretary to verify the identity of such person and whether such person has been convicted of any crime that would prohibit such person from residing, working or regularly volunteering in a child care facility. The secretary is authorized to use information obtained from the national criminal history record check to determine such person's fitness to reside, work or regularly volunteer in a child care facility.

(f) The secretary shall notify the child care applicant or licensee, within seven days by certified mail with return receipt requested, when the result of the national criminal history record check or other appropriate review reveals unfitness specified in subsection (a)(1) through (7) with regard to the person who is the subject of the review.

(g) No child care facility or the employees thereof, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such facility's or home's compliance with the provisions of this section if such home acts in good faith to comply with this section.

(h) For the purpose of subsection (a)(3), a person listed in the child abuse and neglect central registry shall not be prohibited from residing, working or volunteering in a child care facility unless such person has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the Kansas judicial review act.

(i) In regard to Kansas issued criminal history records:

(1) The secretary of health and environment shall provide in writing information available to the secretary to each child placement agency requesting information under this section, including the information provided by the Kansas bureau of investigation pursuant to this section, for the purpose of assessing the fitness of persons living, working or regularly volunteering in a family foster home under the child placement agency's sponsorship.

(2) The child placement agency is considered to be a governmental entity and the designee of the secretary of health and environment for the purposes of obtaining, using and disseminating information obtained under this section.

(3) The information shall be provided to the child placement agency regardless of whether the information discloses that the subject of the request has been convicted of any offense.

(4) Whenever the information available to the secretary reveals that the subject of the request has no criminal history on record, the secretary shall provide notice thereof in writing to each child placement agency requesting information under this section.

(5) Any staff person of a child placement agency who receives infor-

mation under this subsection shall keep such information confidential, except that the staff person may disclose such information on a need-to-know basis to: (A) The person who is the subject of the request for information; (B) the applicant or operator of the family foster home in which the person lives, works or regularly volunteers; (C) the department of health and environment; (D) the department of social and rehabilitation services; (E) the juvenile justice authority; and (F) the courts.

(6) A violation of the provisions of subsection (i)(5) shall be an unclassified misdemeanor punishable by a fine of \$100 for each violation.

(j) ~~Except as provided in this subsection,~~ No person shall maintain a child care facility unless such person is a high school graduate or the equivalent thereof, *except where extraordinary circumstances exist, the secretary of health and environment may exercise discretion to make exceptions to this requirement.* The provisions of this subsection shall not apply to any person who was maintaining a ~~child day~~ care facility on the day immediately prior to July 1, 2010 or who ~~has~~ had an application for an initial license or the renewal of an existing license pending on July 1, 2010.

Sec. 6. K.S.A. 2011 Supp. 65-523 is hereby amended to read as follows: 65-523. The secretary may *limit, modify or* suspend any license or temporary permit issued under the provisions of K.S.A. 65-501 through 65-516, and amendments thereto, upon any of the following grounds and in the manner provided in this act:

(a) Violation by the licensee or holder of a temporary permit of any provision of this act or of the rules and regulations promulgated under this act;

(b) aiding, abetting or permitting the violating of any provision of this act or of the rules and regulations promulgated under this act;

(c) conduct in the operation or maintenance, or both the operation and maintenance, of a *maternity center or* child care facility which is inimical to *the* health, *safety or* welfare ~~or safety of either an individual in or receiving services from the facility or home or the people of this state of any woman or child receiving services from such maternity center or child care facility, or the public;~~

(d) the conviction of a licensee or holder of a temporary permit, at any time during licensure or during the time the temporary permit is in effect, of crimes as defined in K.S.A. 65-516, and amendments thereto; and

(e) a third or subsequent violation by the licensee or holder of a temporary permit of subsection (b) of K.S.A. 65-530, and amendments thereto.

Sec. 7. K.S.A. 2011 Supp. 65-524 is hereby amended to read as follows: 65-524. The secretary may *limit, modify or* suspend any license or temporary permit issued under the provisions of K.S.A. 65-501 through

65-516, and amendments thereto, prior to any hearing when, in the opinion of the secretary, the action is necessary to protect any child in the child care facility from physical or mental abuse, abandonment or any other substantial threat to health ~~or~~, safety *or welfare*. Administrative proceedings under this section shall be conducted in accordance with the emergency adjudicative proceedings of the Kansas administrative procedure act and in accordance with other relevant provisions of the Kansas administrative procedure act.

Sec. 8. K.S.A. 65-502 and K.S.A. 2011 Supp. 65-503, 65-504, 65-506, 65-508, 65-516, 65-523 and 65-524 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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## CHAPTER 100

Substitute HOUSE BILL No. 2659

AN ACT relating to speech-language pathologists and audiologists; amending K.S.A. 65-6501, 65-6502 and 65-6503 and repealing the existing sections.

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

Section 1. K.S.A. 65-6501 is hereby amended to read as follows: 65-6501. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them in this section:

- (a) “Secretary” means the secretary of ~~health and environment~~ *aging*.
- (b) “Speech-language pathology” means the application of principles, methods and procedures related to the development and disorders of human communication. Disorders include any and all conditions, whether of organic or nonorganic origin, that impede the normal process of human communication including disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition/communication, and oral pharyngeal or laryngeal sensorimotor competencies, or both. Speech-language pathology does not mean diagnosis or treatment of medical conditions as defined by K.S.A. 65-2869, and amendments thereto.
- (c) “Practice of speech-language pathology” means:
  - (1) Rendering or offering to render to individuals or groups of individuals who have or are suspected of having disorders of communication, any service in speech-language pathology including prevention, identification, evaluation, consultation, habilitation and rehabilitation;
  - (2) determining the need for personal augmentative communication

systems, recommending such systems and providing training in utilization of such systems; and

(3) planning, directing, conducting or supervising such services.

(d) "Speech-language pathologist" means a person who engages in the practice of speech-language pathology and who meets the qualifications set forth in this act.

(e) "Audiology" means the application of principles, methods and procedures related to hearing and the disorders of hearing and to related language and speech disorders. Disorders include any and all conditions, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function or processing. Audiology does not mean diagnosis or treatment of medical conditions as defined by K.S.A. 65-2869, and amendments thereto.

(f) "Practice of audiology" means:

(1) Rendering or offering to render to individuals or groups of individuals who have or are suspected of having disorders of hearing, any service in audiology, including prevention, identification, evaluation, consultation and habilitation or rehabilitation (other than hearing aid or other assistive listening device dispensing);

(2) participating in hearing conservation;

(3) providing auditory training and speech reading;

(4) conducting tests of vestibular function;

(5) evaluating tinnitus; and

(6) planning, directing, conducting or supervising services.

(g) "Audiologist" means any person who engages in the practice of audiology and who meets the qualifications set forth in this act.

(h) "Speech-language pathology assistant" means an individual who meets minimum qualifications established by the secretary which are less than those established by this act as necessary for licensing as a speech-language pathologist; does not act independently; and works under the direction and supervision of a speech-language pathologist licensed under this act.

(i) "Audiology assistant" means an individual who meets minimum qualifications established by the secretary, which are less than those established by this act as necessary for licensing as an audiologist; does not act independently; and works under the direction and supervision of an audiologist licensed under this act.

(j) "Sponsor" means entities approved by the secretary of ~~health and environment~~ *aging* to provide continuing education programs or courses on an ongoing basis under this act and in accordance with any rules and regulations promulgated by the secretary in accordance with this act.

Sec. 2. K.S.A. 65-6502 is hereby amended to read as follows: 65-6502.

(a) There is hereby established a speech-language pathology and audiol-

ogy board. Such board shall be advisory to the secretary of health and environment in all matters concerning standards, rules and regulations and all matters relating to this act.

(b) The board shall be composed of five persons appointed by the secretary who have been residents of this state for at least two years. Two members shall be licensed, or initially eligible for licensure, as speech-language pathologists; one member shall be licensed, or initially eligible for licensure, as an audiologist; one member shall be a person licensed to practice medicine and surgery; and one member shall be a member of the general public who is not a health care provider. The secretary may make appointments from a list submitted by professional organizations representing speech pathologists and audiologists.

(c) Members of the board attending meetings of such board or attending a subcommittee meeting thereof authorized by such board shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(d) Board members shall be appointed for a term of two years and until their successors are appointed and qualified, except that of the initial appointments, which shall be made within 60 days after the effective date of this act, two members first appointed, as specified by the secretary, shall serve on the board for terms of one year and thereafter, upon expiration of such one-year terms, successors shall be appointed in the same manner as the original appointments. The chairperson of the board shall be elected annually from among the members of the board. Whenever a vacancy occurs on the board by reason other than the expiration of a term of office, the secretary shall appoint a successor of like qualifications for the remainder of the unexpired term. No person shall be appointed to serve more than ~~two~~ three successive two-year terms.

(e) Appointments to fill vacancies shall be made in the same manner as original appointments for the unexpired portion of the term. The secretary may terminate the appointment of any member for cause which in the opinion of the secretary reasonably justifies such termination.

Sec. 3. K.S.A. 65-6503 is hereby amended to read as follows: 65-6503. (a) The secretary shall:

~~(a)~~(1) Issue to each person who has met the education and training requirements listed in K.S.A. 65-6505, and amendments thereto and such other reasonable qualifications as may be established by rules and regulations promulgated by the secretary, the appropriate license as a speech-language pathologist or audiologist;

~~(b)~~(2) establish by rules and regulations the methods and procedures for examination of candidates for licensure;

~~(c)~~(3) appoint employees necessary to administer this act and fix their compensation within the limits of appropriations made for that purpose;

~~(d)~~(4) keep a record of the board's proceedings and a register of all applicants for and recipients of licenses; and

~~(e)~~(5) make all such reasonable rules and regulations as deemed necessary to carry out and enforce the provisions of this act.

(b) *All rules and regulations, orders and directives of the secretary of health and environment concerning speech-language pathologists and audiologists in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations, orders and directives of the secretary of aging until revised, amended, revoked or nullified pursuant to law.*

(c) *All records of the department of health and environment concerning speech-language pathologists and audiologists in existence on the effective date of this act are hereby transferred to the secretary of aging.*

(d) *Whenever a reference or designation is made to the department of health and environment concerning speech-language pathologists or audiologists by a contract or other document, such reference or designation shall be deemed to apply to the secretary of aging.*

Sec. 4. K.S.A. 65-6501, 65-6502 and 65-6503 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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## CHAPTER 101

SENATE Substitute for HOUSE BILL No. 2526

AN ACT concerning energy; relating to the state corporation commission, powers and duties; amending K.S.A. 55-152 and 66-131 and K.S.A. 2011 Supp. 66-1257 and 66-1260 and repealing the existing sections.

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

Section 1. K.S.A. 55-152 is hereby amended to read as follows: 55-152. (a) The commission shall adopt such rules and regulations necessary for the implementation of this act including provisions for the construction, operation and abandonment of any well and the protection of the usable water of this state from any actual or potential pollution from any well. *The commission may also promulgate rules and regulations necessary for the supervision and disclosure of any well on which a hydraulic fracturing treatment is performed.* Any such rules and regulations relating to wells providing cathodic protection to prevent corrosion to lines shall not preempt existing standards and policies adopted by the board of directors of a groundwater management district if such standards and policies provide protection of fresh water to a degree equal to or greater

than that provided by such rules and regulations. No rules and regulations promulgated pursuant to this section shall be adopted by the commission until recommendations have been received from the advisory committee established by K.S.A. 55-153, and amendments thereto.

(b) The commission annually shall review current drilling methods, geologic formation standards, plugging techniques and casing and cementing standards and materials. Based on such review, the commission, if necessary, shall amend its rules and regulations to reflect any changes to be made in such methods, standards, techniques and materials from the previous year.

Sec. 2. K.S.A. 66-131 is hereby amended to read as follows: 66-131.

(a) No common carrier or public utility, including that portion of any municipally owned utility defined as a public utility by K.S.A. 66-104, governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state. In no event shall such jurisdiction authorize the corporation commission to review, consider or effect the facilities or rates charged for services or in any way the operation of such municipally owned or operated electric or gas utility within the corporate limits or outside but within three ~~(3)~~ miles of the corporate limits of any city, or facilities, or rates charged for services or in any way the operation of facilities or their replacements now owned by any such utility ~~except as provided in K.S.A. 66-131a~~. No prescribed rates, orders or other regulatory supervision of the corporation commission shall be contrary to any lawful provision of any revenue bond ordinance authorizing the issuance of revenue bonds to finance all or any part of the municipally owned or operated electric or gas utility so subjected to the jurisdiction of the corporation commission. This section shall not apply to any common carrier or public utility governed by the provisions of this act now transacting business in this state, nor shall this section apply to the facilities and operations of any municipally owned or operated utility supplying electricity or gas outside of the corporate limits of any municipality where such facilities and operations are in existence on the effective date of this act, but any extension of such facilities or any new facilities located outside of and more than three ~~(3)~~ miles from the municipality's corporate limits, shall be subject to the requirements of this section, nor shall this section apply to any municipally owned or operated electric or gas utility furnishing electricity or gas to a facility owned or jointly owned by such municipality and located outside the corporate limits of such municipality.

(b) *The commission shall issue a decision on a common carrier or public utility's application for a certificate of public convenience within*

*180 days of receiving the application. Nothing in this subsection shall preclude an applicant and the commission from agreeing to a waiver or an extension of the 180-day period.*

Sec. 3. K.S.A. 2011 Supp. 66-1257 is hereby amended to read as follows: 66-1257. As used in the renewable energy standards act:

(a) “Affected utility” means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, but does not include any portion of any municipally owned or operated electric utility.

(b) “Commission” means the state corporation commission.

(c) “Net renewable generation capacity” means the gross generation capacity of the renewable energy resource over a four-hour period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.

(d) “Peak demand” means the demand imposed by the affected utility’s retail load in the state.

(e) “Renewable energy credit” means a credit representing energy produced by renewable energy resources issued as part of a program that has been approved by the state corporation commission.

(f) “Renewable energy resources” means net renewable generation capacity from:

- (1) Wind;
- (2) solar thermal sources;
- (3) photovoltaic cells and panels;
- (4) dedicated crops grown for energy production;
- (5) cellulosic agricultural residues;
- (6) plant residues;
- (7) methane from landfills or from wastewater treatment;
- (8) clean and untreated wood products such as pallets;
- (9) (A) existing hydropower;
- (B) new hydropower, ~~not including pumped storage, that has a name-plate rating of 10 megawatts or less;~~
- (10) fuel cells using hydrogen produced by one of the above-named renewable energy resources; ~~and~~
- (11) *energy storage that is connected to any renewable generation by means of energy storage equipment including, but not limited to, batteries, fly wheels, compressed air storage and pumped hydro; and*

~~(11)~~(12) other sources of energy, not including nuclear power, that become available after the effective date of this section, and that are certified as renewable by rules and regulations established by the commission pursuant to K.S.A. 2011 Supp. 66-1262, and amendments thereto.

Sec. 4. K.S.A. 2011 Supp. 66-1260 is hereby amended to read as

follows: 66-1260. (a) (1) For each affected utility, the commission shall determine whether investment in renewable energy resources required to meet the renewable portfolio requirement, as required by K.S.A. 2011 Supp. 66-1258, and amendments thereto, causes the affected utility's total revenue requirement to increase one percent or greater.

(2) ~~The commission shall annually determine the annual statewide retail rate impact shall be determined net of new nonrenewable alternative sources of electricity supply reasonably available at the time of the determination resulting from affected utilities meeting the renewable portfolio requirement.~~

(b) *Submission of information pertaining to an affected utility's portfolio requirement shall be determined by rules and regulations promulgated by the commission or by order of the commission.*

(c) *Beginning in 2013, on or before March 1 of each year, the commission shall submit a report of the annual statewide retail rate impact for the previous year to the governor, the senate committee on utilities and the house committee on energy and utilities.*

Sec. 5. K.S.A. 55-152 and 66-131 and K.S.A. 2011 Supp. 66-1257 and 66-1260 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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## CHAPTER 102

HOUSE BILL No. 2416  
(Amended by Chapter 166)

AN ACT concerning health care finance; relating to updating references and corresponding changes due to transfer of powers and duties from the Kansas health policy authority and hospital provider assessment; amending K.S.A. 22-4612 and K.S.A. 2011 Supp. 2-224a, 38-2001, 38-2006, 39-760, 39-7,116, 39-7,118, 39-7,119, 39-7,120, 39-7,121, 39-7,121a, 39-7,121d, 39-7,121e, 39-7,159, 39-968, 40-2134, 40-2136, 40-2251, 40-2252, 40-4702, 40-4706, 46-3501, 65-435a, 65-1685, 65-6208, 65-6801, 65-6803, 65-6804, 65-6805, 65-6806, 65-6807, 65-6809, 65-7405, 75-37,121, 75-5601, 75-6102, 75-7403, 75-7404, 75-7405, 75-7408, 75-7409, 75-7410, 75-7411, 75-7412, 75-7413, 75-7423, 75-7424, 75-7425, 75-7426, 75-7427, 75-7429, 75-7430, 75-7433, 75-7435, 75-7436 and 77-421 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 75-7401, 75-7402, 75-7414, 75-7415, 75-7416, 75-7417, 75-7418, 75-7419, 75-7420, 75-7421, 75-7422 and 75-7428.

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

Section 1. K.S.A. 2011 Supp. 2-224a is hereby amended to read as follows: 2-224a. (a) Notwithstanding the provisions of K.S.A. 44-576, and amendments thereto, the state fair board is hereby authorized to purchase workers compensation insurance from an admitted carrier. Any contract

for the purchase of workers compensation insurance entered into by the state fair board shall be purchased in the manner prescribed for the purchase of supplies, materials, equipment and contractual services as provided in K.S.A. 75-3738 through 75-3744, and amendments thereto, and any such contract having a premium or rate in excess of \$500 shall be purchased on the basis of sealed bids. Such contract shall not be subject to the provisions of K.S.A. 75-4101 through 75-4114 and K.S.A. 2011 Supp. 75-4125, and amendments thereto.

(b) If the state fair board enters into a contract for the purchase of workers compensation insurance as described in subsection (a), from and after the end of the payroll period in which such workers compensation policy takes effect, the state fair board shall not be subject to the self-insurance assessment prescribed by K.S.A. 44-576, and amendments thereto, and the director of accounts and reports shall cease to transfer any amounts for such self-assessment for the state fair board pursuant to such statute, except that any moneys paid relating to existing claims with the state workers compensation self-insurance fund made by the state fair board shall be assessed to the state fair board until all such claims have been closed and settled.

(c) Notwithstanding the provisions of K.S.A. 44-575, and amendments thereto, if the state fair board enters into a contract for the purchase of workers compensation insurance as described in subsection (a), the state workers compensation self-insurance fund shall not be liable for any compensation claims under the workers compensation act relating to the state fair board and arising during the term of such contract, or for any other amounts otherwise required to be paid under the workers compensation act during the term of such contract.

(d) The state fair board shall notify the secretary of administration and the ~~Kansas health policy authority~~ *secretary of health and environment* of the effective date of any workers compensation policy acquired pursuant to this section.

Sec. 2. K.S.A. 22-4612 is hereby amended to read as follows: 22-4612.

(a) Except as otherwise provided in this section, a county, a city, a county or city law enforcement agency, a county department of corrections or the Kansas highway patrol shall be liable to pay a health care provider for health care services rendered to persons in the custody of such agencies the lesser of the actual amount billed by such health care provider or the medicaid rate. The provisions of this section shall not apply if a person in the custody of a county or city law enforcement agency, a county department of corrections or the Kansas highway patrol is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract.

(b) Nothing in this section shall prevent a county or city law enforcement agency, a county department of corrections, the Kansas highway patrol or such agencies authorized vendors from entering into agreements with health care providers for the provision of health care services at terms, conditions and amounts which are different than the medicaid rate.

(c) It shall be the responsibility of the custodial county or city law enforcement agency, county department of corrections or the Kansas highway patrol or such agencies' agents, to determine, under agreement with the ~~Kansas health policy authority~~ *secretary of health and environment*, the amount payable for the services provided and to communicate that determination along with the remittance advice and payment for the services provided.

(d) Nothing in this section shall be construed to create a duty on the part of a health care provider to render health care services to a person in the custody of a county or city law enforcement agency, a county department of corrections or the Kansas highway patrol.

(e) As used in this section:

(1) "County or city law enforcement agency" means a city police department, a county sheriff's department, a county law enforcement department as defined in K.S.A. 19-4401, and amendments thereto, or a law enforcement agency established pursuant to the consolidated city-county powers in K.S.A. 12-345, and amendments thereto.

(2) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed physician assistant, a person licensed by the behavioral sciences regulatory board, a medical care facility licensed by the department of health and environment, a podiatrist licensed by the state board of healing arts, an optometrist licensed by the board of examiners in optometry, a registered nurse, and advanced nurse practitioner, a licensed professional nurse who is authorized to practice as a registered nurse anesthetist, a licensed practical nurse, a licensed physical therapist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection, a dentist certified by the state board of healing arts to

administer anesthetics under K.S.A. 65-2899, and amendments thereto, a psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto, a licensed social worker or a mental health center or mental health clinic licensed by the secretary of social and rehabilitation services and any health care provider licensed by the appropriate regulatory body in another state that has a current approved provider agreement with the ~~Kansas health policy authority~~ *secretary of health and environment*.

(3) “Medicaid rate” means the terms, conditions and amounts a health care provider would be paid for health care services rendered pursuant to a contract or provider agreement with the ~~Kansas health policy authority~~ *secretary of health and environment*.

Sec. 3. K.S.A. 2011 Supp. 38-2001 is hereby amended to read as follows: 38-2001. (a) The ~~Kansas health policy authority~~ *department of health and environment* shall develop and submit a plan consistent with federal guidelines established under section 4901 of public law 105-33 (42 U.S.C. 1397aa *et seq.*; title XXI).

(b) The plan developed under subsection (a) shall be a capitated managed care plan covering Kansas children from zero to 19 years which:

(1) Contains benefit levels at least equal to those for the early and periodic screening, diagnosis and treatment program;

(2) provides for presumptive eligibility for children where applicable;

(3) provides continuous eligibility for 12 months once a formal determination is made that a child is eligible subject to subsection (e);

(4) has performance based contracting with measurable outcomes indicating age appropriate utilization of plan services to include, but not limited to, such measurable services as immunizations, vision, hearing and dental exams, emergency room utilization, annual physical exams and asthma;

(5) shall use the same prior authorization standards and requirements as used for health care services under medicaid to further the goal of seamlessness of coverage between the two programs;

(6) shall provide targeted low-income children, as defined under section 4901 of public law 105-33 (42 U.S.C. § 1397aa, *et seq.*), coverage subject to appropriations;

(7) shall provide coverage, subject to appropriation of funds and eligibility requirements, for children residing in a household having a gross household income (A) for 2009, at or under 225% of the 2008 federal poverty income guidelines and (B) for 2010 and subsequent years, at or under 250% of the 2008 federal poverty income guidelines; the participants receiving coverage shall contribute to the payment for such coverage through a sliding-fee scale based upon ability to pay as established by rules and regulations of the ~~Kansas health policy authority~~ *secretary of health and environment*; and

(8) contains a provision which requires the newly enrolled partici-

pants with a family income over 200% of the federal poverty income guidelines to wait at least 8 months before participating in this program, if such participants previously had comprehensive health benefit coverage through an individual policy or a health benefit plan provided by any health insurer as defined in K.S.A. 40-4602, and amendments thereto. This waiting period provision shall not apply when the prior coverage ended due to loss of employment other than the voluntary termination, change to a new employer that does not provide an option for dependent coverage, discontinuation of health benefits to all employees, expiration of COBRA coverage period or any other situations where the prior coverage ended due to reasons unrelated to the availability of this program.

(c) ~~The Kansas health policy authority~~ *secretary of health and environment* is authorized to contract with entities authorized to transact health insurance business in this state to implement the health insurance coverage plan pursuant to subsection (a) providing for several plan options to enrollees which are coordinated with federal and state child health care programs, except that when contracting to provide managed mental health care services the ~~Kansas health policy authority~~ *secretary of health and environment* shall assure that contracted entities demonstrate the ability to provide a full array of mental health services in accordance with the early and periodic screening, diagnosis and treatment plan. ~~The Kansas health policy authority~~ *secretary of health and environment* shall not develop a request for proposal process which excludes community mental health centers from the opportunity to bid for managed mental health care services.

(d) When developing and implementing the plan in subsection (a), ~~the Kansas health policy authority~~ *secretary of health and environment* to the extent authorized by law:

(1) Shall include provisions that encourage contracting insurers to utilize and coordinate with existing community health care institutions and providers;

(2) may work with public health care providers and other community resources to provide educational programs promoting healthy lifestyles and appropriate use of the plan's health services;

(3) shall plan for outreach and maximum enrollment of eligible children through cooperation with local health departments, schools, child care facilities and other community institutions and providers;

(4) shall provide for a simplified enrollment plan;

(5) shall provide cost sharing as allowed by law;

(6) shall not count the caring program for children, the Kansas health insurance association plan or any charity health care plan as insurance under subsection (e)(1);

(7) may provide for payment of health insurance premiums, including contributions to a health savings account if applicable, and, in conjunction with an employer sponsored insurance premium assistance plan, may pro-

vide that supplemental benefits be purchased outside of the capitated managed care plan, if it is determined cost effective, taking into account the number of children to be served and the benefits to be provided;

(8) may provide that prescription drugs, transportation services and dental services are purchased outside of the capitated managed care plan to improve the efficiency, accessibility and effectiveness of the program; and

(9) shall include a provision that requires any individual to be a citizen or an alien lawfully admitted to the United States for purposes of establishing eligibility for benefits under the plan and to present satisfactory documentary evidence of citizenship or lawful admission of the individual. The criteria for determining whether the documentation is satisfactory shall be no more restrictive than the criteria used by the social security administration to determine citizenship. A document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe, such as a tribal enrollment card or certificate of degree of Indian blood shall be satisfactory documentary evidence of citizenship or lawful admission.

(e) A child shall not be eligible for coverage and shall lose coverage under the plan developed under subsection (a) of K.S.A. 38-2001, and amendments thereto, if such child's family has not paid the enrollee's applicable share of any premium due.

If the family pays all of the delinquent premiums owed during the year, such child will again be eligible for coverage for the remaining months of the continuous eligibility period.

(f) The plan developed under section 4901 of public law 105-33 (42 U.S.C. § 1397aa *et seq.*, and amendments thereto) is not an entitlement program. The availability of the plan benefits shall be subject to funds appropriated. The ~~Kansas health policy authority~~*secretary of health and environment* shall not utilize waiting lists, but shall monitor costs of the program and make necessary adjustments to stay within the program's appropriations.

(g) Eligibility and benefits under the plan prescribed by subsection (b)(7) are not and shall not be construed to be entitlements, are for legal residents of the state of Kansas and are subject to availability of state and federal funds and to any state and federal requirements and the provisions of appropriation acts. If the ~~Kansas health policy authority~~*secretary of health and environment* determines that the available federal funds and the state funds appropriated are insufficient to sustain coverage for the income eligibility levels prescribed by subsection (b)(7), a lower income level shall be adopted and implemented by the ~~Kansas health policy authority~~*secretary of health and environment*, within the limits of appropriations available therefor, and all such changes shall be published by the ~~Kansas health policy authority~~*secretary of health and environment* in the Kansas register.

Sec. 4. K.S.A. 2011 Supp. 38-2006 is hereby amended to read as follows: 38-2006. The secretary of *social and rehabilitation services* shall advise and consult with the ~~Kansas health policy authority~~ *secretary of health and environment* on issues relating to children's health status.

Sec. 5. K.S.A. 2011 Supp. 39-760 is hereby amended to read as follows: 39-760. (a) The ~~Kansas health policy authority~~ *secretary of health and environment* and the secretary of social and rehabilitation services are hereby directed to establish a system for the reporting of suspected abuse or fraud in connection with state welfare or medical assistance programs, either by recipients or health care providers. The system shall be designed to permit any person in the state at any time to place a toll-free call into the system and report suspected cases of welfare abuse or suspected cases of health care provider fraud.

(b) The ~~Kansas health policy authority~~ *secretary of health and environment* and the secretary of social and rehabilitation services are further directed to publicize the system throughout the state.

(c) Notice of the existence of the system established pursuant to this section shall be displayed prominently in the office or facility of every health care provider who provides services under the state medical assistance program.

(d) The ~~Kansas health policy authority~~ *secretary of health and environment* shall notify annually each recipient of state medical assistance of the toll-free number of the system established pursuant to this section and the purpose thereof. If possible, such notice shall be printed on the medical cards issued to recipients by the ~~authority~~ *secretary*.

Sec. 6. K.S.A. 2011 Supp. 39-7,116 is hereby amended to read as follows: 39-7,116. As used in this act:

(a) "Restrictive drug formulary" means a list of prescription-only drugs established by the department which excludes in whole or in part reimbursement by the department for such drugs under a program administered by the department.

(b) The words and phrases used in this section shall have the same meanings as are ascribed to such words and phrases under K.S.A. 65-1626, and amendments thereto.

(c) "Physician" means a person licensed to practice medicine and surgery.

(d) "~~Authority~~" means the ~~Kansas health policy authority~~ established by K.S.A. 2011 Supp. 75-7401, and amendments thereto. "*Department*" means the *department of health and environment*.

Sec. 7. K.S.A. 2011 Supp. 39-7,118 is hereby amended to read as follows: 39-7,118. The ~~Kansas health policy authority~~ *secretary of health and environment* shall implement a drug utilization review program with the assistance of a medicaid drug utilization review board as provided in K.S.A. 39-7,119, and amendments thereto, to assure the appropriate util-

ization of drugs by patients receiving medical assistance under the medicaid program. The drug utilization review program shall include:

- (a) Monitoring of prescription information including overutilization and underutilization of prescription-only drugs;
- (b) making periodic reports of findings and recommendations to the ~~Kansas health policy authority~~*secretary of health and environment* and the United States department of health and human services regarding the activities of the board, drug utilization review programs, summary of interventions, assessments of education interventions and drug utilization review cost estimates;
- (c) providing for prospective and retrospective drug utilization review, as specified in the federal omnibus budget reconciliation act of 1990 (public law 101-508);
- (d) monitoring provider and recipient compliance with program objectives;
- (e) providing educational information on state program objectives, directly or by contract, to private and public sector health care providers to improve prescribing and dispensing practices;
- (f) reviewing the increasing costs of purchasing prescription drugs and making recommendations on cost containment;
- (g) reviewing profiles of medicaid beneficiaries who have multiple prescriptions above a level specified by the board; and
- (h) recommending any modifications or changes to the medicaid prescription drug program.

Sec. 8. K.S.A. 2011 Supp. 39-7,119 is hereby amended to read as follows: 39-7,119. (a) There is hereby created the medicaid drug utilization review board which shall be responsible for the implementation of retrospective and prospective drug utilization programs under the Kansas medicaid program.

(b) Except as provided in subsection (i), the board shall consist of at least seven members appointed as follows:

- (1) Two licensed physicians actively engaged in the practice of medicine, nominated by the Kansas medical society and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of four nominees;
- (2) one licensed physician actively engaged in the practice of osteopathic medicine, nominated by the Kansas association of osteopathic medicine and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of four nominees;
- (3) two licensed pharmacists actively engaged in the practice of pharmacy, nominated by the Kansas pharmacy association and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of four nominees;
- (4) one person licensed as a pharmacist and actively engaged in ac-

ademic pharmacy, appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of four nominees provided by the university of Kansas;

(5) one licensed professional nurse actively engaged in long-term care nursing, nominated by the Kansas state nurses association and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of four nominees.

(c) The ~~Kansas health policy authority~~*secretary of health and environment* may add two additional members so long as no class of professional representatives exceeds 51% of the membership.

(d) The physician and pharmacist members shall have expertise in the clinically appropriate prescribing and dispensing of outpatient drugs.

(e) The appointments to the board shall be for terms of three years. In making the appointments, the ~~Kansas health policy authority~~*secretary of health and environment* shall provide for geographic balance in the representation on the board to the extent possible. Subject to the provisions of subsection (i), members may be reappointed.

(f) The board shall elect a chairperson from among board members who shall serve a one-year term. The chairperson may serve consecutive terms.

(g) The board, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed or executive meeting when it is considering matters relating to identifiable patients or providers.

(h) All actions of the medicaid drug utilization review board shall be upon the affirmative vote of five members of the board and the vote of each member present when action was taken shall be recorded by roll call vote.

(i) Upon the expiration of the term of office of any member of the medicaid drug utilization review board on or after the effective date of this act and in any case of a vacancy existing in the membership position of any member of the medicaid drug utilization review board on or after the effective date of this act, a successor shall be appointed by the ~~Kansas health policy authority~~*secretary of health and environment* so that as the terms of members expire, or vacancies occur, members are appointed and the composition of the board is changed in accordance with the following and such appointment shall be made by the ~~Kansas health policy authority~~*secretary of health and environment* in the following order of priority:

(1) One member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a hospital and who is nominated by the Kansas hospital association and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more nominees;

(2) one member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services

for a licensed adult care home and who is nominated by the state board of pharmacy and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more nominees;

(3) one member shall be a licensed physician who is actively engaged in the general practice of allopathic medicine and who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more nominees;

(4) one member shall be a licensed physician who is actively engaged in mental health practice providing care and treatment to persons with mental illness, who has practice experience with the state medicaid plan and who is nominated by the Kansas psychiatric society and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more nominees;

(5) one member shall be a licensed physician who is the medical director of a nursing facility, who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more nominees;

(6) one member shall be a licensed physician who is actively engaged in the general practice of osteopathic medicine, who has practice experience with the state medicaid plan and who is nominated by the Kansas association of osteopathic medicine and who is appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more nominees;

(7) one member shall be a licensed pharmacist who is actively engaged in retail pharmacy, who has practice experience with the state medicaid plan and who is nominated by the state board of pharmacy and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more nominees;

(8) one member shall be a licensed pharmacist who is actively engaged in or who has experience in research pharmacy and who is nominated jointly by the Kansas task force for the pharmaceutical research and manufacturers association and the university of Kansas and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more jointly nominated persons; and

(9) one member shall be a licensed advanced practice registered nurse or physician assistant actively engaged in the practice of providing the health care and treatment services such person is licensed to perform, who has practice experience with the state medicaid plan and who is nominated jointly by the Kansas state nurses' association and the Kansas academy of physician assistants and appointed by the ~~Kansas health policy authority~~*secretary of health and environment* from a list of two or more jointly nominated persons.

Sec. 9. K.S.A. 2011 Supp. 39-7,120 is hereby amended to read as follows: 39-7,120. (a) The ~~Kansas health policy authority~~*secretary of health and environment* shall not restrict patient access to prescription-only drugs pursuant to a program of prior authorization or a restrictive formulary except by rules and regulations adopted in accordance with K.S.A. ~~77-415 et seq.~~75-5625, and amendments thereto. Prior to the promulgation of any such rules and regulations, the ~~Kansas health policy authority~~*secretary of health and environment* shall submit such proposed rules and regulations to the medicaid drug utilization review board for written comment. The ~~Kansas health policy authority~~*secretary of health and environment* may not implement permanent prior authorization until 30 days after receipt of comments by the drug utilization review board.

(b) When considering recommendations from the medicaid drug utilization review board regarding the prior authorization of a drug, the ~~Kansas health policy authority~~*secretary of health and environment* shall consider the net economic impact of such prior authorization, including, but not limited to, the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. § 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services which may be related to the prior authorization of such drug.

Sec. 10. K.S.A. 2011 Supp. 39-7,121 is hereby amended to read as follows: 39-7,121. (a) The ~~Kansas health policy authority~~*department of health and environment* shall establish and implement an electronic pharmacy claims management system in order to provide for the on-line adjudication of claims and for electronic prospective drug utilization review.

(b) The system shall provide for electronic point-of-sale review of drug therapy using predetermined standards to screen for potential drug therapy problems including incorrect drug dosage, adverse drug-drug interactions, drug-disease contraindications, therapeutic duplication, incorrect duration of drug treatment, drug-allergy interactions and clinical abuse or misuse.

(c) The ~~Kansas health policy authority~~*department of health and environment* shall not utilize this system, or any other system or program to require that a recipient has utilized or failed with a drug usage or drug therapy prior to allowing the recipient to receive the product or therapy recommended by the recipient's physician.

Sec. 11. K.S.A. 2011 Supp. 39-7,121a is hereby amended to read as follows: 39-7,121a. (a) The ~~Kansas health policy authority~~*department of health and environment* may establish an advisory committee pursuant to K.S.A. ~~75-5313~~75-5616, and amendments thereto, to advise the ~~Kansas health policy authority~~*department of health and environment* in the development of a preferred formulary listing of covered drugs by the state medicaid program.

(b) The ~~Kansas health policy authority~~*department of health and en-*

*vironment* shall evaluate drugs and drug classes for inclusion in the state medicaid preferred drug formulary based on safety, effectiveness and clinical outcomes of such treatments. In addition, the ~~Kansas health policy authority~~ *department of health and environment* shall evaluate drugs and drug classes to determine whether inclusion of such drugs or drug classes in a starter dose program would be clinically efficacious and cost effective. If the factors of safety, effectiveness and clinical outcomes among drugs being considered in the same class indicate no therapeutic advantage, then the ~~Kansas health policy authority~~ *department of health and environment* shall consider the cost effectiveness and the net economic impact of such drugs in making recommendations for inclusion in the state medicaid preferred drug formulary. Drugs which do not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness or clinical outcomes over other drugs in the same class which have been selected for the preferred drug formulary may be excluded from the preferred drug formulary and may be subject to prior authorization in accordance with state and federal law, except, prior to July 1, 2003, where a prescriber has personally written "dispense as written" or "D.A.W.", or has signed the prescriber's name on the "dispense as written" signature line in accordance with K.S.A. 65-1637, and amendments thereto.

(c) The ~~Kansas health policy authority~~ *department of health and environment* shall consider the net economic impact of drugs selected or excluded from the preferred formulary and may gather information on the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. § 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services.

(d) The ~~Kansas health policy authority~~ *department of health and environment* may accept all services, including, but not limited to, disease state management, associated with the delivery of pharmacy benefits under the state medicaid program having a determinable cost effect in addition to the medicaid prescription drug rebates required pursuant to 42 U.S.C. ~~section~~ § 1396r-8.

(e) The state medicaid preferred drug formulary shall be submitted to the medicaid drug utilization review board for review and policy recommendations.

Sec. 12. K.S.A. 2011 Supp. 39-7,121d is hereby amended to read as follows: 39-7,121d. (a) The state medicaid plan shall include provisions for a program of differential dispensing fees for pharmacies that provide prescriptions for adult care homes under a unit dose system in accordance with rules and regulations of the state board of pharmacy and that participate in the return of unused medications program under the state medicaid plan.

(b) The state medicaid plan shall include provisions for differential

ingredient cost reimbursement of generic and brand name pharmaceuticals. The ~~Kansas health policy authority~~*department of health and environment* shall set the rates for differential cost reimbursement of generic and brand name pharmaceuticals by rules and regulations.

(c) ~~On and after May 23, 2007,~~ The state medicaid plan shall require that every pharmacy claim form under the plan include the prescriber's unique identification number.

Sec. 13. K.S.A. 2011 Supp. 39-7,121e is hereby amended to read as follows: 39-7,121e. (a) Except where a prescriber has personally written "dispense as written" or "D.A.W.," or has signed the prescriber's name on the "dispense as written" signature line in accordance with K.S.A. 65-1637, and amendments thereto, the ~~Kansas health policy authority~~*department of health and environment* may limit reimbursement for a prescription under the medicaid program to the multisource generic equivalent drug.

(b) No pharmacist participating in the medical assistance program shall be required to dispense a prescription-only drug that will not be reimbursed by the medical assistance program.

Sec. 14. K.S.A. 2011 Supp. 39-7,159 is hereby amended to read as follows: 39-7,159. (a) In the state of Kansas, long-term care services, including home and community based services, shall be provided through a comprehensive and coordinated system throughout the state.

(b) The system shall:

(1) Emphasize a delivery concept of self-direction, individual choice, home and community settings and privacy;

(2) ensure transparency, accountability, safety and high quality services;

(3) increase expedited eligibility determination;

(4) provide timely services;

(5) utilize informal services; and

(6) ensure the moneys follow the person into the community.

(c) All persons receiving services pursuant to this section shall be offered the appropriate services which are determined to be in aggregate the most economical available with regard to state general fund expenditures. For those persons moving from a nursing facility to the home and community based services, the nursing facility reimbursement shall follow the person into the community.

(d) The department on aging, the department of social and rehabilitation services and the ~~Kansas health policy authority~~*department of health and environment* shall design and implement the system, in consultation with stakeholders and advocates related to long-term care services.

(e) The department on aging and the department of social and rehabilitation services, in consultation with the ~~Kansas health policy au-~~

~~the~~ *department of health and environment*, shall submit an annual report on the long-term care system to the governor and the legislature annually, during the first week of the regular session.

Sec. 15. K.S.A. 2011 Supp. 39-968 is hereby amended to read as follows: 39-968. (a) To achieve a quality of life for Kansans with long-term care needs in an environment of choice that maximizes independent living capabilities and recognizes diversity, this act establishes a program which is intended to encourage a wide array of quality, cost-effective and affordable long-term care choices. This program shall be known as client assessment, referral and evaluation (CARE). The purposes of CARE is for data collection and individual assessment and referral to community-based services and appropriate placement in long-term care facilities.

(b) As used in this section:

(1) "Assessment services" means evaluation of an individual's health and functional status to determine the need for long-term care services and to identify appropriate service options which meet these needs utilizing the client assessment, referral and evaluation (CARE) form.

(2) "Health care data governing board" means the board abolished by K.S.A. 65-6803, and amendments thereto.

(3) "Medical care facility" shall have the meaning ascribed to such term under K.S.A. 65-425, and amendments thereto.

(4) "Nursing facility" shall have the meaning ascribed to such term under K.S.A. 39-923, and amendments thereto.

(5) "Secretary" means the secretary of aging.

(c) There is hereby established the client assessment, referral and evaluation (CARE) program. The CARE program shall be administered by the secretary of aging and shall be implemented on a phased-in basis in accordance with the provisions of this section.

(d) All rules and regulations adopted by the health care data governing board relating to client assessment, referral and evaluation (CARE) data entry form shall be deemed to be the rules and regulations of the ~~Kansas health policy authority~~ *department of health and environment* until revised, revoked or nullified pursuant to law. The purpose of this form is for data collection and referral services. Such form shall be concise and questions shall be limited to those necessary to carry out the stated purposes. The client assessment, referral and evaluation (CARE) data entry form shall include, but not be limited to, the preadmission screening and annual resident review (PASARR) questions. Prior to the adoption of the client assessment, referral and evaluation (CARE) data entry form by the health care data governing board, the secretary of aging shall approve the form. The client assessment, referral and evaluation (CARE) data entry form shall be used by all persons providing assessment services.

(e) (1) ~~On and after January 1, 1995,~~ Each individual prior to admission to a nursing facility as a resident of the facility shall receive assess-

ment services to be provided by the secretary of aging, with the assistance of area agencies on aging, except (A) such assessment services shall be provided by a medical care facility to a patient of the medical care facility who is considering becoming a resident of a nursing facility upon discharge from the medical care facility and (B) as authorized by rules and regulations adopted by the secretary of aging pursuant to subsection (i).

(2) The provisions of this subsection (e) shall not apply to any individual exempted from preadmission screening and annual resident review under 42 code of federal regulations 483.106.

(f) The secretary of aging shall cooperate with the area agencies on aging providing assessment services under this section.

(g) The secretary of aging shall assure that each area agency on aging shall compile comprehensive resource information for use by individuals and agencies related to long-term care resources including all area offices of the department of social and rehabilitation services and local health departments. This information shall include, but not be limited to, resources available to assist persons to choose alternatives to institutional care.

(h) Nursing facilities and medical care facilities shall make available information referenced in subsection (g) to each person seeking admission or upon discharge as appropriate. Any person licensed to practice the healing arts as defined in K.S.A. 65-2802, and amendments thereto, shall make the same resource information available to any person identified as seeking or needing long-term care. Each senior center and each area agency on aging shall make available such information.

(i) The secretary shall adopt rules and regulations to govern such matters as the secretary deems necessary for the administration of this act.

(j) (1) There is hereby established an eleven-member voluntary oversight council which shall meet monthly ~~prior to July 1, 1995~~, for the purpose of assisting the secretary of aging in restructuring the assessment and referral program in a manner consistent with this act and shall meet quarterly thereafter for the purpose of monitoring and advising the secretary regarding the CARE program. The council shall be advisory only, except that the secretary of aging shall file with the council each six months the secretary's response to council comments or recommendations.

(2) The secretary of aging shall appoint two representatives of hospitals, two representatives of nursing facilities, two consumers and two representatives of providers of home and community-based services. The secretary of health and environment and the secretary of social and rehabilitation services, or their designee, shall be members of the council in addition to the eight appointed members. The secretary of aging shall serve as chairperson of the council. The appointive members of the council shall serve at the pleasure of their appointing authority. Members of

the voluntary oversight council shall not be paid compensation, subsistence allowances, mileage or other expenses as otherwise may be authorized by law for attending meetings, or subcommittee meetings, of the council.

(k) The secretary of aging shall report to the governor and to the legislature on or before December 31, 1995, and each year thereafter on or before such date, an analysis of the information collected under this section. In addition, the secretary of aging shall provide data from the CARE data forms to the ~~Kansas health policy authority~~*department of health and environment*. Such data shall be provided in such a manner so as not to identify individuals.

Sec. 16. K.S.A. 2011 Supp. 40-2134 is hereby amended to read as follows: 40-2134. (a) Subject to the provisions of subsection (e), the ~~Kansas health policy authority~~*department of health and environment* in conjunction with the Kansas department of insurance shall establish a long-term care partnership program in Kansas to provide for the financing of long-term care through a combination of private insurance and medical assistance. The long-term care partnership program shall:

(1) Provide incentives for individuals to insure against the costs of providing for their long-term care needs;

(2) provide a mechanism for individuals to qualify for coverage under medical assistance while having certain assets disregarded for eligibility determinations and recovery; and

(3) reduce the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives using qualified long-term care partnership insurance policies.

(b) An individual who is a beneficiary of a Kansas long-term care partnership program policy shall be eligible for assistance under the state's medical assistance program using the asset disregard as provided under subsection (e).

(c) The ~~Kansas health policy authority~~*department of health and environment* shall pursue reciprocal agreements with other states to extend the asset disregard to Kansas residents who purchased long-term care partnership policies in other states that are compliant with title VI, section 6021 of the federal deficit reduction act of 2005, public law 109-171, and any applicable federal regulations or guidelines.

(d) As provided under subsection (e), certain assets of an individual who has received benefits from a qualified long-term care partnership policy shall not be considered when determining:

(1) The individual's medical assistance eligibility; and

(2) any subsequent recovery by the state for a payment for medical services or long-term care services made by the medical assistance program on behalf of the individual.

(e) Under the individual's long-term care insurance policy if the in-

dividual is a beneficiary of a qualified long-term care partnership program policy at the time the individual applies for benefits under the Kansas medical assistance program, the assets an individual may own and retain under Kansas medical assistance program and still qualify for benefits under the program shall be increased dollar-for-dollar for each dollar paid out after the effective date of the state plan amendment, or after the issue date of a policy exchanged, whichever is later.

(f) If the long-term care partnership program established by this act is discontinued, any individual who purchased a Kansas long-term care partnership program policy before the date the program was discontinued shall be eligible to receive asset disregard if allowed as provided by title VI, section 6021 of the federal deficit reduction act of 2005, public law 109-171.

(g) The ~~Kansas health policy authority~~*department of health and environment*, the department of social and rehabilitation services, the department on aging and the department of insurance shall post, on their respective websites, information on how to access the national clearinghouse established under the federal deficit reduction act of 2005, public law 109-171, when the national clearinghouse becomes available to consumers.

Sec. 17. K.S.A. 2011 Supp. 40-2136 is hereby amended to read as follows: 40-2136. Each issuer of qualified long-term care partnership program policies in this state shall: (a) Provide regular reports to both the secretary of the United States department of human services in accordance with federal law and regulations and to the ~~Kansas health policy authority~~*secretary of health and environment* and the commissioner of insurance as provided in section 6021 of the federal deficit reduction act of 2005, public law 109-171.

(b) Provide to consumers a notice explaining the benefits associated with a partnership policy and indicating that at the time issued, the policy is a qualified state long-term care insurance partnership policy at a time and in a manner to be determined by the commissioner of insurance.

(c) Submit a partnership certification form signed by an officer of the company with all policies submitted for certification as partnership policies.

(d) Obtain verification that producers receive training required by the commissioner of insurance before a producer is permitted to sell, solicit or negotiate the insurer's long-term care insurance products, maintain records of compliance, and make the verification available to the commissioner of insurance upon request.

(e) Maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the department of insurance to provide assurance to the ~~Kansas health policy authority~~*department of health and environment* that producers have re-

ceived the training required by the commissioner of insurance and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medical assistance in this state. These records shall be maintained and made available to the commissioner of insurance upon request.

(f) (1) Offer, on a one-time basis, in writing, to all existing policyholders that were issued long-term care coverage of the type certified by the insurer on or after February 8, 2006, the option to exchange their existing long-term care coverage for coverage that is intended to qualify under Kansas' long-term care partnership program. The mandatory offer of an exchange shall only apply to products issued by the insurer that are comparable to the type of policy form, such as group policies and individual policies and on the policy series that the company has certified as partnership qualified;

(2) the offer shall remain open for a minimum of 45 days from the date of mailing by the insurer;

(3) the offer shall be made on a nondiscriminatory basis without regard to the age or health status of the insured. However, the insurer may underwrite if the policy is amended to provide additional benefits or the exchange would require the issuance of a new policy. Any portion of the policy that was issued prior to the exchange date shall be priced based on the policyholder's age when the policy was originally issued. Any portion of the policy that is added as a result of the exchange may be priced based on the policyholder's age at the time of the exchange;

(4) if there is no change in coverage material to the risk, policies exchanged under this provision shall not be subject to any medical underwriting;

(5) notwithstanding paragraphs (1) and (3), an insurer is not required to offer an exchange to an individual who is eligible for benefits within an elimination period, who is, or who has been in claim status or who would not be eligible to apply for coverage due to issue age or plan design limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including plan design, underwriting, if applicable and payment of the required premium;

(6) policies issued pursuant to this section shall be considered exchanges and not replacements and are not subject to K.A.R. 40-4-37i; and

(7) a policy received in an exchange after the effective date of the long-term care partnership program act is treated as newly issued and is eligible for partnership policy status. For purposes of applying the medicaid rules relating to Kansas' long-term care partnership program, the addition of a rider, endorsement or change in schedule page for a policy may be treated as giving rise to an exchange.

Sec. 18. K.S.A. 2011 Supp. 40-2251 is hereby amended to read as

follows: 40-2251. (a) The commissioner of insurance shall develop or approve statistical plans which shall be used by each insurer in the recording and reporting of its premium, accident and sickness insurance loss and expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the commissioner and other interested parties in determining whether rates and rating systems utilized by insurance companies, mutual nonprofit hospital and medical service corporations, health maintenance organizations and other entities designated by the commissioner produce premiums and subscriber charges for accident and sickness insurance coverage on Kansas residents, employers and employees that are reasonable in relation to the benefits provided and to identify any accident and sickness insurance benefits or provisions that may be unduly influencing the cost. Such plans may also provide for the recording and reporting of expense experience items which are specifically applicable to the state. In promulgating such plans, the commissioner shall give due consideration to the rating systems, classification criteria and insurance and subscriber plans on file with the commissioner and, in order that such plans may be as uniform as is practicable among the several states, to the form of the plans and rating systems in other states.

(b) The ~~Kansas health policy authority~~ *department of health and environment*, as administrator of the health care database, pursuant to K.S.A. 65-6804, and amendments thereto, shall serve as the statistical agent for the purpose of gathering, receiving and compiling the data required by the statistical plan or plans developed or approved under this section. The commissioner of insurance shall make an assessment upon the reporting insurance companies, health maintenance organizations, group self-funded pools, and other reporting entities sufficient to cover the anticipated expenses to be incurred by the ~~Kansas health policy authority~~ *department of health and environment* in gathering, receiving and compiling such data. Such assessment shall be in the form of an annual fee established by the ~~Kansas health policy authority~~ *department of health and environment* and charged to each reporting entity in proportion to such entity's respective shares of total health insurance premiums, subscriber charges and member fees received during the preceding calendar year. Such assessments shall be paid to the ~~Kansas health policy authority~~ *department of health and environment* and the ~~Kansas health policy authority~~ *department of health and environment* shall remit such fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the insurance statistical plan fund. Compilations of aggregate data gathered under the statistical plan or plans required by this act shall be made available to insurers, trade associations and other interested parties.

(c) The ~~Kansas health policy authority~~ *department of health and en-*

*vironment*, in writing, shall report to the commissioner of insurance any insurance company, health maintenance organization, group self-funded pool, nonprofit hospital and medical service corporation and any other reporting entity which fails to report the information required in the form, manner or time prescribed by the ~~Kansas health policy authority~~*department of health and environment*. Upon receipt of such report, the commissioner of insurance shall impose an appropriate penalty in accordance with K.S.A. 40-2,125, and amendments thereto.

Sec. 19. K.S.A. 2011 Supp. 40-2252 is hereby amended to read as follows: 40-2252. The commissioner and the ~~executive director of the Kansas health policy authority~~*secretary of health and environment*, jointly, may adopt rules and regulations necessary to effect the purposes of K.S.A. 40-19c09 and 40-2251, and amendments thereto.

Sec. 20. K.S.A. 2011 Supp. 40-4702 is hereby amended to read as follows: 40-4702. (a) The governor of the state of Kansas shall appoint a committee which shall be known as the Kansas business health policy committee, whose purpose is to explore opportunities and encourage employer participation in health plans developed by the committee for low and modest wage employees of small employers.

(b) The Kansas business health policy committee, hereinafter referred to as the health committee, shall consist of:

(1) The secretary of the department of commerce or the secretary's designee;

(2) the secretary of the department of social and rehabilitation services or the secretary's designee;

(3) the commissioner of insurance or the commissioner's designee;

(4) one member appointed by the president of the senate;

(5) one member appointed by the speaker of the house of representatives;

(6) one member appointed by the minority leader of the senate;

(7) one member appointed by the minority leader of the house of representatives; and

(8) three members at large from the private sector appointed by the governor.

The secretary of each state agency represented on this committee shall provide such staff and other resources as the health committee may require.

(c) (1) The initial meeting of the health committee shall be convened within 60 days after the effective date of this act by the governor at a time and place designated by the governor.

(2) Meetings of the health committee subsequent to its initial meeting shall be held and conducted in accordance with policies and procedures established by the health committee.

(3) Commencing at the time of the initial meeting of the health com-

mittee, the powers, authorities, duties and responsibilities conferred and imposed upon the health committee by this act shall be operative and effective.

(d) The health committee shall develop and approve a request for proposals for a qualified entity to serve as the Kansas business health partnership, hereinafter referred to as health partnership, which shall provide a mechanism to combine federal and state subsidies with contributions from small employers and eligible employees to purchase health insurance in accordance with guidelines developed by the health committee.

(e) The health committee shall evaluate responses to the request for proposals and select the qualified entity to serve as the health partnership.

(f) The health committee shall:

(1) Develop, approve and revise subsidy eligibility criteria provided that:

(A) Low wage and modest wage employees of small employers shall be eligible for subsidies if:

(i) The small employer has not previously offered health insurance coverage within the two years next preceding the date upon which health insurance is offered; or

(ii) the small employer has previously offered health insurance coverage and a majority of such small employer's employees are low wage or modest wage employees as defined in K.S.A. 40-4701, and amendments thereto;

(B) any small employer's eligible employee with a child who is eligible for coverage under the state childrens' health insurance program established by K.S.A. 38-2001 *et seq.*, and amendments thereto, or in the state medical assistance program shall be eligible automatically for a subsidy and shall be included in the determination of eligibility for the small employer and its low and modest wage employees; and

(C) at least 70% of the small employer's eligible employees without group health insurance coverage from another source are insured through the partnership; and

(2) determine and arrange for eligibility determination for subsidies of low wage or modest wage employees; and

(3) develop subsidy schedules based upon eligible employee wage levels and family income; and

(4) be responsible for arranging for the provision of affordable health care coverage for eligible employees of small employers and evaluating and creating the opportunity to improve health care provided by plans in the small group health insurance program.

(g) The health committee shall oversee and monitor the ongoing operation of any subsidy program and the financial accountability of all subsidy funds. If, in the judgment of the health committee, the entity selected to serve as the health partnership fails to perform as intended, the health

committee may terminate its selection and designation of that entity as the health partnership and may issue a new request for proposal and select a different qualified entity to serve as the health partnership.

(h) The health committee is hereby authorized to accept funds from the federal government, or its agencies, or any other source whatsoever for research studies, investigation, planning and other purposes related to implementation of the objectives of this act. Any funds so received shall be deposited in the state treasury and shall be credited to a special revenue fund which is hereby created and shall be known as the health committee insurance fund and used in accordance with or direction of the contributing federal agencies. Expenditures from such fund may be made for any purpose in keeping with the responsibilities, functions and authority of the department. Warrants on such fund shall be drawn in the same manner as required of other state agencies upon vouchers approved by the ~~Kansas health policy authority~~ *secretary of health and environment*, or the ~~authority's~~ *secretary's* designee, upon receiving prior approval of the health committee.

(i) The health committee is authorized to develop policies for the administration of the subsidy program and for the use of additional federal or private funds to subsidize health insurance coverage for low and modest wage employees of predominantly low-wage small employers. The health committee shall be responsible for setting benefit levels and establishing performance measures for health plans providing health care coverage for this program that include quality, preventative health and other supplementary measures. The health committee shall limit access to the program subsidy to the projected annualized expenditure.

(j) The health committee is hereby authorized to organize, or cause to be organized, one or more advisory committees. No member of any advisory committee established under this subsection shall have previously received or currently receive any payment or other compensation from the health partnership. The membership of each advisory committee established under this subsection shall contain at least one representative who is a small employer and one representative who is an eligible employee as defined in K.S.A. 40-4701, and amendments thereto, and one representative of the insurance industry.

(k) The health committee shall report on an annual basis on the following subjects:

- (1) Quality assurance measures;
- (2) disease prevention activities;
- (3) disease management activities; and
- (4) other activities or programs the committee decides to include.

Sec. 21. K.S.A. 2011 Supp. 40-4706 is hereby amended to read as follows: 40-4706. The ~~Kansas health policy authority~~ *division of health care finance of the department of health and environment* shall investigate and

pursue all possible policy options to bring into this partnership title XIX and the title XXI eligible families of any eligible employees employed by a small employer. ~~On and after July 1, 2006, the Kansas health policy authority~~ *The division of health care finance of the department of health and environment* shall develop and seek federal approval of any appropriate variance or state plan amendment for the state children's health insurance program established by K.S.A. 38-2001 *et seq.*, and amendments thereto, and the state medical assistance program required to accomplish the purposes of this act. ~~On and after July 1, 2006, the Kansas health policy authority~~ *The division of health care finance of the department of health and environment* shall work with the health partnership to develop a single employee application that may be used by the health plan and the medicaid and state children's health insurance program to determine eligibility.

Sec. 22. K.S.A. 2011 Supp. 46-3501 is hereby amended to read as follows: 46-3501. (a) There is hereby created the joint committee on health policy oversight within the legislative branch of state government. The joint committee shall be composed of 12 members. Six members shall be members of the house of representatives and six members shall be members of the senate. Four of the members who are members of the house of representatives shall be appointed by the speaker of the house of representatives, four members who are senators shall be appointed by the president of the senate, two members who are members of the house of representatives shall be appointed by the minority leader of the house of representatives and two members who are senators shall be appointed by the minority leader of the senate.

(b) All members of the joint committee on health policy oversight shall serve for terms of two years ending on the first day of the regular session of the legislature commencing in the first odd-numbered year after the year of appointment, except that the first members shall be appointed on July 1, 2005, and shall serve for terms ending on the first day of the regular session of the legislature commencing in 2007. If a vacancy occurs in the office of any member of the joint committee on health policy oversight, a successor shall be appointed in the same manner as the original appointment for the remainder of the term.

(c) (1) The chairperson of the joint committee on health policy oversight shall be appointed for a term of one year which ends on the first day of the next occurring regular session of the legislature. The speaker of the house of representatives shall appoint the first chairperson on July 1, 2005, and shall appoint the chairperson for the term commencing on the first day of the regular session of the legislature commencing in 2006 for a one-year term to end on the first day of the regular session of the legislature commencing in the year 2007. The president of the senate shall appoint the next chairperson on the first day of the regular session

of the legislature commencing in the year 2007 for a one-year term which ends on the first day of the next occurring regular session of the legislature. Thereafter the appointment of the chairperson shall continue to alternate between the speaker of the house of representatives and the president of the senate with each subsequent chairperson being appointed for a one-year term ending on the first day of the regular session of the legislature in the next occurring regular session of the legislature after the year of appointment.

(2) The vice-chairperson of the joint committee on health policy oversight shall be appointed for a term of one year which ends on the first day of the next occurring regular session of the legislature. The president of the senate shall appoint the first vice-chairperson on July 1, 2005, and shall appoint the vice-chairperson for the term commencing on the first day of the regular session of the legislature commencing in 2006 for a one-year term to end on the first day of the regular session of the legislature commencing in the year 2007. The speaker of the house of representatives shall appoint the next vice-chairperson on the first day of the regular session of the legislature commencing in the year 2007 for a one-year term which ends on the first day of the next occurring regular session of the legislature. Thereafter the appointment of the vice-chairperson shall continue to alternate between the speaker of the house of representatives and the president of the senate with each subsequent vice-chairperson being appointed for a one-year term ending on the first day of the regular session of the legislature in the next occurring regular session of the legislature after the year of appointment.

(3) If a vacancy occurs in the office of the chairperson or vice-chairperson, a member of the joint committee on health policy oversight who is a member of the same house of the legislature as the member who vacated the office shall be appointed by the speaker of the house, if the vacating member was a member of the house of representatives, or by the president of the senate, if the vacating member was a member of the senate, to fill such vacancy.

(d) A quorum of the joint committee on health policy oversight shall be seven. All actions of the joint committee on health policy oversight shall be taken by a majority of all of the members of the joint committee.

(e) The joint committee on health policy oversight shall have the authority to meet at any time and at any place within the state on the call of the chairperson.

(f) The provisions of the acts contained in article 12 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, applicable to special committees shall apply to the joint committee on health policy oversight to the extent that the same do not conflict with the specific provisions of this section applicable to the joint committee.

(g) Members of the joint committee on health policy oversight shall receive compensation, travel expenses and subsistence expenses as pro-

vided in K.S.A. 75-3212, and amendments thereto, when attending meetings of the joint committee.

(h) The staff of the legislative research department, the office of revisor of statutes and the division of legislative administrative services shall provide such assistance as may be requested by the joint committee on health policy oversight and to the extent authorized by the legislative coordinating council.

(i) The joint committee on health policy oversight shall have the exclusive responsibility to monitor and study the operations and decisions of the ~~Kansas health policy authority~~ *division of health care finance of the department of health and environment*. In addition, the joint committee shall oversee the implementation and operation of the children's health insurance plans, including the assessment of the performance based contracting's measurable outcomes as set forth in subsection (b)(4) of K.S.A. 38-2001, and amendments thereto.

(j) In accordance with K.S.A. 46-1204, and amendments thereto, the legislative coordinating council may provide for such professional services as may be requested by the joint committee on health policy oversight.

(k) The joint committee on health policy oversight may introduce such legislation as it deems necessary in performing its functions.

(l) The provisions of this section shall expire on July 1, 2013.

Sec. 23. K.S.A. 2011 Supp. 65-435a is hereby amended to read as follows: 65-435a. The contents of the annual report under K.S.A. 65-429, and amendments thereto, and the contents of an inspection form for purposes of inspections under K.S.A. 65-433, and amendments thereto, shall be developed by the licensing agency in consultation with ~~the Kansas health policy authority~~ and the Kansas hospital association. The licensing agency may specify the contents of the annual report and the contents of the inspection form by rules and regulations. Nothing in this section shall require the licensing agency to adopt the annual report or the inspection form by rules and regulations.

Sec. 24. K.S.A. 2011 Supp. 65-1685 is hereby amended to read as follows: 65-1685. (a) The prescription monitoring program database, all information contained therein and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, shall be privileged and confidential, shall not be subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of entities charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern, shall not be a public record and shall not be subject to the Kansas open records act, K.S.A. 45-215 *et seq.*, and amendments thereto, except as provided in subsections (c) and (d).

(b) The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted and maintained is not disclosed to persons except as provided in subsections (c) and (d).

(c) The board is hereby authorized to provide data in the prescription monitoring program to the following persons:

(1) Persons authorized to prescribe or dispense scheduled substances and drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients;

(2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established by the board;

(3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern;

(4) local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing scheduled substances and drugs of concern subject to the requirements in K.S.A. 22-2502, and amendments thereto;

(5) designated representatives from the ~~Kansas health policy authority~~ *department of health and environment* regarding authorized medicaid program recipients;

(6) persons authorized by a grand jury subpoena, inquisition subpoena or court order in a criminal action;

(7) personnel of the prescription monitoring program advisory committee for the purpose of operation of the program; and

(8) personnel of the board for purposes of administration and enforcement of this act or the uniform controlled substances act, K.S.A 65-4101 *et seq.*, and amendments thereto.

(d) The board is hereby authorized to provide data in the prescription monitoring program to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual practitioners, dispensers, patients or persons who received prescriptions from dispensers.

Sec. 25. K.S.A. 2011 Supp. 65-6801 is hereby amended to read as follows: 65-6801. (a) The legislature recognizes the urgent need to provide health care consumers, third-party payors, providers and health care planners with information regarding the trends in use and cost of health care services in this state for improved decision-making. This is to be accomplished by compiling a uniform set of data and establishing mechanisms through which the data will be disseminated.

(b) It is the intent of the legislature to require that the information necessary for a review and comparison of utilization patterns, cost, quality

and quantity of health care services be supplied to the health care database by all providers of health care services and third-party payors to the extent required by *this section and K.S.A. 65-6805*, and amendments thereto ~~and this section and amendments thereto~~. The ~~Kansas health policy authority~~ *department of health and environment* shall specify by rule and regulation the types of information which shall be submitted and the method of submission.

(c) The information is to be compiled and made available in a form prescribed by the ~~Kansas health policy authority~~ *department of health and environment* to improve the decision-making processes regarding access, identified needs, patterns of medical care, price and use of health care services.

Sec. 26. K.S.A. 2011 Supp. 65-6803 is hereby amended to read as follows: 65-6803. (a) ~~On January 1, 2006, the health care data governing board is hereby abolished.~~

~~(b) The chairperson of the Kansas health policy authority~~ *secretary of health and environment* may appoint a task force or task forces of interested citizens and providers of health care for the purpose of studying technical issues relating to the collection of health care data. ~~At least one member of the Kansas health policy authority~~ *The secretary of health and environment or the secretary's designee* shall be a member of any task force appointed under this subsection.

~~(c)~~ *(b)* The ~~Kansas health policy authority~~ *department of health and environment* shall develop policy regarding the collection of health care data and procedures for ensuring the confidentiality and security of these data.

Sec. 27. K.S.A. 2011 Supp. 65-6804 is hereby amended to read as follows: 65-6804. (a) The ~~Kansas health policy authority~~ *secretary of health and environment* shall administer the health care database. In administering the health care database, the ~~authority~~ *secretary* shall receive health care data from those entities identified in K.S.A. 65-6805, and amendments thereto, and provide for the dissemination of such data.

(b) The ~~Kansas health policy authority~~ *secretary of health and environment* may contract with an organization experienced in health care data collection to collect the data from the health care facilities as described in subsection (h) of K.S.A. 65-425, and amendments thereto, build and maintain the database. The ~~Kansas health policy authority~~ *secretary of health and environment* may accept data submitted by associations or related organizations on behalf of health care providers by entering into binding agreements negotiated with such associations or related organizations to obtain data required pursuant to this section.

(c) The ~~Kansas health policy authority~~ *secretary of health and environment* shall adopt rules and regulations governing the acquisition, com-

pilation and dissemination of all data collected pursuant to this act. The rules and regulations shall provide at a minimum that:

(1) Measures have been taken to provide system security for all data and information acquired under this act;

(2) data will be collected in the most efficient and cost-effective manner for both the department and providers of data;

(3) procedures will be developed to assure the confidentiality of patient records;

(4) users may be charged for data preparation or information that is beyond the routine data disseminated and that the ~~authority~~ *secretary of health and environment* shall establish by the adoption of such rules and regulations a system of fees for such data preparation or dissemination; and

(5) the ~~Kansas health policy authority~~ *secretary of health and environment* will ensure that the health care database will be kept current, accurate and accessible as prescribed by rules and regulations.

(d) Data and other information collected pursuant to this act shall not be disclosed by the ~~Kansas health policy authority~~ *department of health and environment* or made public in any manner which would identify individuals. A violation of this subsection (d) is a class C misdemeanor.

(e) In addition to such criminal penalty under subsection (d), any individual whose identity is revealed in violation of subsection (d) may bring a civil action against the responsible person or persons for any damages to such individual caused by such violation.

Sec. 28. K.S.A. 2011 Supp. 65-6805 is hereby amended to read as follows: 65-6805. Each medical care facility as defined by subsection (h) of K.S.A. 65-425, and amendments thereto; health care provider as defined in K.S.A. 40-3401, and amendments thereto; providers of health care as defined in subsection (f) of K.S.A. 65-5001, and amendments thereto; health care personnel as defined in subsection (e) of K.S.A. 65-5001, and amendments thereto; home health agency as defined by subsection (b) of K.S.A. 65-5101, and amendments thereto; psychiatric hospitals licensed under K.S.A. 75-3307b, and amendments thereto; state institutions for the mentally retarded; community mental retardation facilities as defined under K.S.A. 65-4412, and amendments thereto; community mental health center as defined under K.S.A. 65-4432, and amendments thereto; adult care homes as defined by K.S.A. 39-923, and amendments thereto; laboratories described in K.S.A. 65-1,107, and amendments thereto; pharmacies; board of nursing; Kansas dental board; board of examiners in optometry; state board of pharmacy; state board of healing arts and third-party payors, including, but not limited to, licensed insurers, medical and hospital service corporations, health maintenance organizations, fiscal intermediaries for government-funded programs and self-funded employee health plans, shall file health care data with the

~~Kansas health policy authority~~*department of health and environment* as prescribed by the ~~authority~~*secretary of health and environment*. The provisions of this section shall not apply to any individual, facility or other entity under this section which uses spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination for the treatment or cure of disease.

Sec. 29. K.S.A. 2011 Supp. 65-6806 is hereby amended to read as follows: 65-6806. The ~~Kansas health policy authority~~*department of health and environment* shall make the data available to interested parties on the basis prescribed by the ~~authority~~*department* and as directed by rules and regulations of the ~~authority~~.

Sec. 30. K.S.A. 2011 Supp. 65-6807 is hereby amended to read as follows: 65-6807. The ~~Kansas health policy authority~~*department of health and environment* shall on or before February 1 each year make a report to the governor and the legislature as to health care data activity, including examples of policy analyses conducted and purposes for which the data was disseminated and utilized, and as to the progress made in compiling and making available the information specified under K.S.A. 65-6801, and amendments thereto.

Sec. 31. K.S.A. 2011 Supp. 65-6809 is hereby amended to read as follows: 65-6809. (a) There is hereby established in the state treasury the health care database fee fund. The ~~Kansas health policy authority~~*secretary of health and environment* shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys collected or received by the ~~authority~~*secretary* from the following sources:

- (1) Fees collected under K.S.A. 65-6804, and amendments thereto;
- (2) moneys received by the ~~authority~~*secretary* in the form of gifts, donations or grants;
- (3) interest attributable to investment of moneys in the fund; and
- (4) any other moneys provided by law.

Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the health care database fee fund.

(b) Moneys deposited in the health care database fee fund shall be expended to supplement maintenance costs of the database, provide technical assistance and training in the proper use of health care data and provide funding for dissemination of information from the database to the public.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the health care database fee fund interest earnings based on:

- (1) The average daily balance of moneys in the health care database fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the health care database fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~Kansas health policy authority~~ *secretary of health and environment* or the ~~authority's~~ *secretary's* designee for the purposes set forth in this section.

Sec. 32. K.S.A. 2011 Supp. 65-7405 is hereby amended to read as follows: 65-7405. (a) There is hereby established the primary care safety net clinic loan guarantee review committee within the department of health and environment. The committee shall consist of five members.

(b) The members of the primary care safety net clinic loan guarantee review committee shall be appointed by the secretary in accordance with the following: (1) Two members shall be representatives of the department of health and environment selected by the secretary;; (2) one member shall be appointed by the secretary who is nominated by the Kansas development finance authority;; (3) one member shall be appointed by the secretary who is nominated by the ~~Kansas health policy authority~~ *director of health care finance*; and (4) one member shall be appointed by the secretary who is nominated by the Kansas association for the medically underserved.

(c) The secretary may appoint persons as members of the primary care safety net clinic loan guarantee review committee who are officers or employees of the agencies or organizations they are nominated by or that they are appointed to represent. Not more than three members of the committee shall be affiliated with the same political party. Members shall serve at the pleasure of the secretary.

(d) The primary care safety net clinic loan guarantee review committee shall review all proposals for loan financing guarantees under this act and shall approve those proposals that the committee deems to represent reasonable risks and to have a sufficient likelihood of repayment. The committee shall advise the secretary on matters regarding the administration of this act when requested by the secretary and may provide such advice when deemed appropriate by the committee.

(e) The secretary or the secretary's designee shall serve as a nonvoting chairperson of the primary care safety net clinic loan guarantee review committee, and the committee shall annually elect a vice-chairperson from among its members. The committee shall meet upon call of the chairperson or upon call of any two of its members. Three voting members shall constitute a quorum for the transaction of business.

(f) Members of the primary care safety net clinic loan guarantee review committee attending meetings of the committee, or attending a subcommittee meeting thereof authorized by the committee, shall be paid

compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

Sec. 33. K.S.A. 2011 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ or contract with presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its presiding officers within 60 days in response to a requesting agency's request, the director shall designate in writing a full-time employee of an agency other than the requesting agency to serve as presiding officer for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of presiding officers employed by the office.

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding other than a proceeding as provided in subsection (h).

(e) The secretary of administration may adopt rules and regulations:

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

(2) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern presiding officers; and

(3) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.

(f) The director may implement the provisions of this section and rules and regulations adopted under its authority.

(g) The secretary of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using a presiding officer.

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for conducting adjudicative hearings

under the Kansas administrative procedures act in which the presiding officer is not the agency head or one or more members of the agency head:

(1) On and after July 1, 2005: Department of social and rehabilitation services, juvenile justice authority, department on aging, department of health and environment, Kansas public employees retirement system, Kansas water office, Kansas animal health department and Kansas insurance department.

(2) On and after July 1, 2006: Emergency medical services board, emergency medical services council, ~~Kansas health policy authority~~ and Kansas human rights commission.

(3) On and after July 1, 2007: Kansas lottery, Kansas racing and gaming commission, state treasurer, pooled money investment board, Kansas department of wildlife and parks and state court of tax appeals.

(4) On and after July 1, 2008: Department of human resources, state corporation commission, state conservation commission, agricultural labor relations board, department of administration, department of revenue, board of adult care home administrators, Kansas state grain inspection department, board of accountancy and Kansas wheat commission.

(5) On and after July 1, 2009, all other Kansas administrative procedure act hearings not mentioned in subsections (1), (2), (3) and (4).

(i) (1) Effective July 1, 2005, any presiding officer in agencies specified in subsection (h)(1) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(2) Effective July 1, 2006, any presiding officer in agencies specified in subsection (h)(2) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to

have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(3) Effective July 1, 2007, any presiding officer in agencies specified in subsection (h)(3) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(4) Effective July 1, 2008, any full-time presiding officer in agencies specified in subsection (h)(4) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(5) Effective July 1, 2009, any full-time presiding officer in agencies specified in subsection (h)(5) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed

to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment occurred.

Sec. 34. K.S.A. 2011 Supp. 75-5601 is hereby amended to read as follows: 75-5601. (a) There is hereby created a department of health and environment, the head of which shall be the secretary of health and environment, which office is hereby created. The governor shall appoint the secretary of health and environment, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, and the secretary shall serve at the pleasure of the governor. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed as secretary shall exercise any power, duty or function as secretary until confirmed by the senate. The department of health and environment shall consist of the division of health, *the division of health care finance* and the division of environment. The secretary of health and environment shall receive an annual salary fixed by the governor.

(b) The provisions of the Kansas governmental operations accountability law apply to the department of health and environment, and the department is subject to audit, review and evaluation under such law.

Sec. 35. K.S.A. 2011 Supp. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) (1) "Employee" means: (A) Any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider;

(B) any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor;

(C) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections;

(D) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor;

(E) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program;

(F) a person who contracts with the Kansas guardianship program to provide services as a court-appointed guardian or conservator;

(G) an employee of an indigent health care clinic;

(H) former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity;

(I) any member of a regional medical emergency response team, created under the provisions of K.S.A. 48-928, and amendments thereto, in connection with authorized training or upon activation for an emergency response; and

(J) medical students enrolled at the university of Kansas medical center who are in clinical training, on or after July 1, 2008, at the university of Kansas medical center or at another health care institution.

(2) "Employee" does not include: (A) An individual or entity for actions within the scope of K.S.A. 60-3614, and amendments thereto; or

(B) any independent contractor under contract with a governmental entity except those contractors specifically listed in paragraph (1) of this subsection.

(e) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a physician assistant licensed by the state board of healing arts, a mental health practitioner licensed by the behavioral sciences regulatory board, an ultrasound technologist currently registered in any area of sonography credentialed through the American registry of radiology technologists, the American registry for diagnostic medical sonography or cardiovascular credentialing international and working under the supervision of a person licensed to practice medicine and surgery, or a health care

provider as the term “health care provider” is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the ~~Kansas health policy authority~~ *department of health and environment*, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children’s immunization programs administered by the secretary;

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the ~~Kansas health policy authority~~ *department of health and environment* gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3); or

(4) the secretary of health and environment to provide dentistry services defined by K.S.A. 65-1422 *et seq.*, and amendments thereto, or dental hygienist services defined by K.S.A. 65-1456, and amendments thereto, that are targeted, but are not limited to medically indigent persons, and are provided on a gratuitous basis at a location sponsored by a not-for-profit organization that is not the dentist or dental hygienist office location. Except that such dentistry services and dental hygienist services shall not include “oral and maxillofacial surgery” as defined by ~~Kansas administrative regulation K.A.R. 71-2-2~~, or use sedation or general anesthesia that result in “deep sedation” or “general anesthesia” as defined by ~~Kansas administrative regulation 71-5-1~~ *K.A.R. 71-5-7*.

(f) “Medically indigent person” means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(g) “Indigent health care clinic” means an outpatient medical care

clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(h) “Local health department” shall have the meaning ascribed to such term under K.S.A. 65-241, and amendments thereto.

(i) “Fire control, fire rescue or emergency medical services equipment” means any vehicle, firefighting tool, protective clothing, breathing apparatus and any other supplies, tools or equipment used in firefighting or fire rescue or in the provision of emergency medical services.

Sec. 36. K.S.A. 2011 Supp. 75-7403 is hereby amended to read as follows: 75-7403. (a) The ~~Kansas health policy authority~~*secretary of health and environment* is hereby authorized to establish policies and to adopt rules and regulations for the implementation and administration of the powers, duties and functions prescribed for or transferred to the ~~authority~~*department* as provided by law.

(b) The ~~Kansas health policy authority~~*secretary of health and environment* may enter into contracts as may be necessary to perform the powers, duties and functions of ~~authority~~*department* and as provided by law. As provided by this act or as otherwise the ~~Kansas health policy authority~~*secretary of health and environment* may enter into contracts with other state agencies or with local governmental entities for the coordination of health services, including care and prevention programs and activities, and public health programs.

(c) The ~~Kansas health policy authority~~*secretary of health and environment* may appoint advisory committees as deemed necessary by the ~~authority~~*secretary*. The advisory committees shall consult with and advise the ~~Kansas health policy authority~~*secretary of health and environment* regarding the matters referred thereto by the ~~authority~~*department*. Members of any advisory committee created under this section attending meetings of such committee or attending a subcommittee meeting thereof authorized by such committee shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto, but shall receive no compensation for services as members of such advisory committee.

Sec. 37. K.S.A. 2011 Supp. 75-7404 is hereby amended to read as follows: 75-7404. The ~~Kansas health policy authority~~*department of health and environment* shall develop and maintain a coordinated health policy agenda that combines effective purchasing and administration of health care with health promotion oriented public health strategies. The powers, duties and functions of the ~~Kansas health policy authority~~*department of health and environment* are intended to be exercised to improve the health of the people of Kansas by increasing the quality, efficiency and effectiveness of health services and public health programs.

Sec. 38. K.S.A. 2011 Supp. 75-7405 is hereby amended to read as

follows: 75-7405. (a) ~~The Kansas health policy authority~~*department of health and environment* is responsible for the development of a statewide health policy agenda including health care and health promotion components. ~~The Kansas health policy authority~~*department of health and environment* shall report to the legislature at the beginning of the regular session of the legislature in 2007 and at the beginning of each regular legislative session thereafter. The report of the ~~Kansas health policy authority~~*department of health and environment* to the legislature shall include recommendations for implementation of the health policy agenda recommended by the ~~authority~~*department*. ~~The Kansas health policy authority~~*department of health and environment* shall develop or adopt health indicators and shall include baseline and trend data on the health costs and indicators in each annual report to the legislature. In accordance with the provisions of this act and the provisions of appropriation acts, the ~~Kansas health policy authority~~*department of health and environment* shall assume powers, duties and functions in accordance with the provisions of this act.

(b) ~~On January 1, 2006, the Kansas health policy authority~~*The department of health and environment* shall assume the functions of the health care data governing board and the functions of the department of social and rehabilitation services under the Kansas business health partnership act, as provided by this act.

~~(c) On or before March 1, 2006, the Kansas health policy authority shall submit a plan with recommendations for funding and any recommended legislation for the powers, duties and functions transferred to the authority on July 1, 2006, of the programs and activities specified in subsection (d).~~

~~(d)~~*(c)* ~~On July 1, 2006, the Kansas health policy authority~~*The department of health and environment* shall assume operational and purchasing responsibility for (1) the regular medical portion of the state medicaid program, (2) the MediKan program, (3) the state children's health insurance program as provided in K.S.A. 38-2001 *et seq.*, and amendments thereto, (4) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the medicaid infrastructure grants received for the working healthy portion of the ticket to work program, (5) the medicaid management information system (MMIS), (6) the restrictive drug formulary, the drug utilization review program, including oversight of the medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2011 Supp. 39-7,121a through 39-7,121e, and amendments thereto, (7) the state health care benefits program as provided in K.S.A. 75-6501 through 75-6523, and amendments thereto, and (8) the state workers compensation self-insurance fund and program as provided in K.S.A. 44-575 through 44-580, and amendments thereto.

~~(e)(d)~~ ~~At the beginning of the regular session of the legislature in 2007, the Kansas health policy authority~~*The department of health and environment* shall submit to the legislature recommendations and an implementation plan for the transfer of additional medicaid-funded programs to the ~~Kansas health policy authority~~*department of health and environment* which may include (1) mental health services, (2) home and community-based services (HCBS) waiver programs, (3) nursing facilities, (4) substance abuse prevention and treatment programs, and (5) the institutions, as defined in K.S.A. 76-12a01, and amendments thereto.

~~(f)(e)~~ ~~At the beginning of the regular session of the legislature in 2009, the Kansas health policy authority~~*The department of health and environment* shall submit to the legislature recommendations and an implementation plan for the ~~Kansas health policy authority~~*department of health and environment* to assume responsibility for health care purchasing functions within additional state agencies, which may include (1) the department on aging, (2) the department of education for local education agencies, (3) the juvenile justice authority and the juvenile correctional institutions and facilities thereunder, and (4) the department of corrections and the correctional institutions and facilities thereunder.

Sec. 39. K.S.A. 2011 Supp. 75-7408 is hereby amended to read as follows: 75-7408. (a) ~~On and after July 1, 2006, the Kansas health policy authority~~*The department of health and environment* shall coordinate health care planning, administration, and purchasing and analysis of health data for the state of Kansas with respect to the following health programs administered by the state of Kansas:

(1) Developing, implementing, and administering programs that provide medical assistance, health insurance programs, or waivers granted thereunder for persons who are needy, uninsured, or both, and that are financed by federal funds or state funds, or both, including the following:

(A) The Kansas program of medical assistance established in accordance with title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*, and amendments thereto;

(B) the health benefits program for children established under K.S.A. 38-2001 *et seq.*, and amendments thereto, and developed and submitted in accordance with federal guidelines established under title XXI of the federal social security act, section 4901 of public law 105-33, 42 U.S.C. § 1397aa *et seq.*, and amendments thereto;

(C) any program of medical assistance for needy persons financed by state funds only, to the extent appropriations are made for such a program;

(D) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the medicaid infrastructure grants received for the working healthy portion of the ticket to work program; and

- (E) the medicaid management information system (MMIS);
- (2) the restrictive drug formulary, the drug utilization review program, including oversight of the medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2011 Supp. 39-7,121a through 39-7,121e, and amendments thereto; and
- (3) administering any other health programs delegated to the ~~Kansas health policy authority~~ *department of health and environment* by the governor or by a contract with another state agency.
- (b) Except to the extent required by its single state agency role as designated in K.S.A. 2011 Supp. 75-7409, and amendments thereto, or as otherwise provided pursuant to this act the ~~Kansas health policy authority~~ *department of health and environment* shall not be responsible for health care planning, administration, purchasing and data with respect to the following:
- (1) The mental health reform act, K.S.A. 39-1601 *et seq.*, and amendments thereto;
- (2) the developmental disabilities reform act, K.S.A. 39-1801 *et seq.*, and amendments thereto;
- (3) the mental health program of the state of Kansas as prescribed under K.S.A. 75-3304a, and amendments thereto;
- (4) the addiction and prevention services prescribed under K.S.A. 65-4001 *et seq.*, and amendments thereto; or
- (5) any institution, as defined in K.S.A. 76-12a01, and amendments thereto.

Sec. 40. K.S.A. 2011 Supp. 75-7409 is hereby amended to read as follows: 75-7409. (a) ~~On and after July 1, 2006, the Kansas health policy authority~~ *The department of health and environment* shall be designated as the single state agency with responsibility for supervising and administering the state plan for medical assistance under the federal social security act, 42 U.S.C. § 1396 *et seq.*, and amendments thereto. The ~~Kansas health policy authority~~ *department of health and environment* shall develop state plans, as provided under the federal social security act, whereby the state cooperates with the federal government in its program of assisting the states financially in furnishing medical assistance and services to eligible individuals.

(b) The ~~Kansas health policy authority~~ *department of health and environment* shall undertake to cooperate with the federal government on any other federal program providing federal financial assistance and services for medical assistance not inconsistent with this act. The ~~Kansas health policy authority~~ *department of health and environment* is not required to develop a state plan for participation or cooperation in all federal social security act programs relating to medical assistance or other available federal programs that relate to medical assistance.

Sec. 41. K.S.A. 2011 Supp. 75-7410 is hereby amended to read as follows: 75-7410. ~~On and after July 1, 2006, the Kansas health policy authority~~*The department of health and environment* shall have the power, but is not required, to develop a state plan with regard to medical assistance and services in which the federal government does not participate, within the limits of appropriations therefor.

Sec. 42. K.S.A. 2011 Supp. 75-7411 is hereby amended to read as follows: 75-7411. (a) Subject to the limitations of subsection (b), the ~~Kansas health policy authority~~*department of health and environment* may enter into a contract with one or more state agencies or local governmental entities providing for the state agency or local governmental entity to perform services for the division of health policy and finance or delegating to the state agency or local governmental entity the administration of certain functions, services or programs under any of the programs for which the ~~Kansas health policy authority~~*department of health and environment* is responsible.

(b) With respect to any plan or program that is subject to or financed in part under the federal social security act, 42 U.S.C. § 1396 *et seq.*, and amendments thereto, the authority of the ~~Kansas health policy authority~~*department of health and environment* to exercise administrative discretion in the administration or supervision of the plan or program and to issue policies and to adopt rules and regulations on plan or program matters shall not be delegated by the ~~Kansas health policy authority~~*secretary of health and environment*, other than to officials and employees of the ~~authority~~*department of health and environment*. To the extent that the ~~Kansas health policy authority~~*secretary of health and environment* enters into a contract with a state agency or local governmental entity under this section, the other state agency or the local governmental entity shall not have the authority to change or disapprove any administrative decision of the ~~Kansas health policy authority~~*department of health and environment* or to otherwise substitute its judgment for that of the ~~Kansas health policy authority~~*department of health and environment* with respect to the application of policies issued or rules and regulations adopted by the ~~Kansas health policy authority~~*department of health and environment* for any plan or program that is subject to or financed in part under the federal social security act, 42 U.S.C. § 1396 *et seq.*, and amendments thereto.

Sec. 43. K.S.A. 2011 Supp. 75-7412 is hereby amended to read as follows: 75-7412. (a) ~~On and after July 1, 2006, the Kansas health policy authority~~*The department of health and environment* shall have the power and duty to establish general policies relating to the health programs under the ~~authority~~*department* as provided in K.S.A. 2011 Supp. 75-7408, and amendments thereto, and to adopt rules and regulations therefor.

(b) The ~~Kansas health policy authority~~*secretary of health and envi-*

ronment shall advise the governor and the legislature on all health programs, policies and plans for which the ~~Kansas health policy authority~~ *department of health and environment* is responsible under this act.

(c) The ~~Kansas health policy authority~~ *department of health and environment* shall establish an adequate system of financial records. The ~~Kansas health policy authority~~ *department of health and environment* shall make periodic reports to the governor and shall make any reports required by federal agencies.

(d) The ~~Kansas health policy authority~~ *department of health and environment* may assist other departments, agencies and institutions of the state and federal government and of other states under interstate agreements, when so requested, by performing services in conformity with the purposes of this act.

(e) All contracts of the ~~Kansas health policy authority~~ *department of health and environment* shall be made in the name of the "~~Kansas health policy authority~~ *department of health and environment*." In that name, the ~~Kansas health policy authority~~ *department of health and environment* may sue and be sued. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11th amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriation act of this state.

(f) After consulting with any agency that has responsibility under a contract with the ~~Kansas health policy authority~~ *department of health and environment* for administration of any of the programs of the ~~authority~~ *department*, the ~~Kansas health policy authority~~ *secretary of health and environment* shall prepare annually, at the time and in the form directed by the governor, a budget covering the estimated receipts and expenditures of the ~~Kansas health policy authority~~ *department of health and environment* for the coming fiscal year.

(g) The ~~Kansas health policy authority~~ *secretary of health and environment* shall have authority to make grants of funds for the promotion of health programs in the state of Kansas, subject to the provisions of appropriation acts.

(h) The ~~Kansas health policy authority~~ *secretary of health and environment* may receive grants, gifts, bequests, money, or aid of any character whatsoever, for purposes consistent with K.S.A. 2011 Supp. 75-7408 through 75-7413, and amendments thereto.

(i) The ~~Kansas health policy authority~~ *secretary of health and environment* may enter into agreements with other states or the agency designated as the single state agency under the federal social security act, 42 U.S.C. § 1396 *et seq.*, and amendments thereto, for another state setting out the manner for determining the state of residence in disputed cases and the bearing or sharing of costs associated with those cases.

(j) The ~~Kansas health policy authority~~ *secretary of health and envi-*

ronment shall establish such advisory groups as are necessary to assist the division of health policy and finance in carrying out its responsibilities under K.S.A. 2011 Supp. 75-7408 through 75-7413, and amendments thereto, including the following:

(1) A consumer advisory board consisting of representatives of consumers of health care services provided under title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*, and title XXI of the social security act, 42 U.S.C. § 1397aa *et seq.*, and amendments thereto, and representatives of these consumers' family members; and

(2) a policy coordination board consisting of representatives from those state agencies with which the ~~Kansas health policy authority~~ *secretary of health and environment* enters into a contract under K.S.A. 2011 Supp. 75-7411, and amendments thereto, and representatives from any other state agencies, as determined by the ~~Kansas health policy authority~~ *department of health and environment*.

(k) The ~~Kansas health policy authority~~ *department of health and environment* shall perform any other duties and services that are necessary to carry out the purposes of K.S.A. 2011 Supp. 75-7408 through 75-7413, and amendments thereto, and that are not inconsistent with state law.

Sec. 44. K.S.A. 2011 Supp. 75-7413 is hereby amended to read as follows: 75-7413. ~~On and after July 1, 2006,~~ Except as otherwise provided by this act, all of the following powers, duties and functions of the ~~division of health policy and finance within the department of administration and the director of health policy and finance~~ *Kansas health policy authority* are hereby transferred to and imposed upon the ~~Kansas health policy authority~~ *authority* established by K.S.A. 2011 Supp. 75-7401, and amendments thereto *department of health and environment*:

(a) All of the powers, duties and functions under chapter 39 of the Kansas Statutes Annotated, and amendments thereto, ~~that were transferred on July 1, 2005, to the division of health planning and finance and the director of health planning and finance and that~~ relate to development, implementation and administration of programs that provide medical assistance, health insurance programs or waivers granted thereunder for persons who are needy or uninsured, or both, and that are financed by federal funds or state funds, or both, including the following:

(1) The Kansas program of medical assistance established in accordance with title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*, and amendments thereto; and

(2) any program of medical assistance for needy persons financed by state funds only;

(b) all of the powers, duties and functions ~~that were transferred on July 1, 2005, to the division of health planning and finance and the director of health planning and finance~~ with respect to the health benefits program for children established under K.S.A. 38-2001 *et seq.*, and

amendments thereto, and developed and submitted in accordance with federal guidelines established under title XXI of the federal social security act, section 4901 of public law 105-33, 42 U.S.C. § 1397aa *et seq.*, and amendments thereto;

(c) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the medicaid infrastructure grants received for the working healthy portion of the ticket to work program;

(d) the medicaid management information system (MMIS);

(e) the restrictive drug formulary, the drug utilization review program, including oversight of the medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2011 Supp. 39-7,121a through 39-7,121e, and amendments thereto;

(f) all of the powers, duties and functions of the ~~division of health policy and finance associated~~ *Kansas health policy authority* with designation as the single state agency under title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*, and amendments thereto. ~~On and after July 1, 2006, the designation of the division of health and finance as the single state agency for medicaid purposes is hereby transferred to the Kansas health policy authority; and~~

~~(g) hearings conducted pursuant to the transfer of powers, duties and functions conveyed through this section shall be conducted in accordance with the Kansas administrative procedure act utilizing a presiding officer from the office of administrative hearings.~~

Sec. 45. K.S.A. 2011 Supp. 75-7423 is hereby amended to read as follows: 75-7423. The ~~Kansas health policy authority~~ *department of health and environment* in consultation with the joint committee on health policy oversight shall consider as part of the health reform in Kansas various medicaid reform options including, but not limited to: The experience of other states, long-term care, waste, fraud and abuse, health opportunity accounts, tax credits, vouchers and premium assistance, and wellness as provided through the federal deficit reduction act of 2005, *public law 109-171*. Such medicaid reforms should result in improved health outcomes for medicaid recipients, long-term cost controls and encourage primary and preventive care which will result in cost savings for the state.

Sec. 46. K.S.A. 2011 Supp. 75-7424 is hereby amended to read as follows: 75-7424. ~~(a) On or before November 1, 2007, the Kansas health policy authority shall develop and deliver to the governor, the joint committee on health policy oversight, the speaker of the house of representatives, the majority leader of the house of representatives, the minority leader of the house of representatives, the president of the senate, the majority leader of the senate and the minority leader of the senate, health care finance reform options for enactment by the legislature during the~~

~~2008 regular session, including an analysis of a Kansas health care insurance connector, a model for a voluntary health insurance connector, and draft legislation for the proposed health care finance reform options. In developing such options, the Kansas health policy authority shall solicit and consider information and recommendations from advisory committees established under subsection (c) of K.S.A. 75-7403, and amendments thereto, and shall advise and consult with the joint committee on health policy oversight regularly and on a continuing basis. The Kansas health policy authority shall develop and analyze other pertinent initiatives and policies designed to increase access to affordable health insurance and to otherwise promote health in developing the options.~~

~~(b)(a)~~ The ~~Kansas health policy authority~~*department of health and environment* shall analyze and develop health care finance reform options with the goals of (1) financing health care and health promotion in a manner that is equitable, seamless and sustainable for consumers, providers, purchasers and government, (2) promoting market-based solutions that encourage fiscal and individual responsibility, (3) protecting the health care safety net in the development of such options, (4) facilitate purchasing of health insurance, and facilitating access to private sector health insurance by small businesses and individuals.

~~(c)(b)~~ The ~~Kansas health policy authority~~*department of health and environment* shall identify and analyze policies that are designed to increase portability, to increase individual ownership of health care policies, to utilize pre-tax dollars for the purchase of health insurance, and to expand consumer responsibility for making health care decisions.

~~(d)(c)~~ The ~~Kansas health policy authority~~*department of health and environment* shall obtain economic and actuarial analyses by an entity or entities that are recognized as having specific experience in the subject matter of all health care finance reform options proposed under subsection (a) to determine (1) the economic impact of proposed reforms on consumers, providers, purchasers, businesses and government and (2) the number of uninsured Kansans who have the potential to receive coverage as a result of the options proposed under subsection (a).

~~(e)(d)~~ The ~~Kansas health policy authority~~*department of health and environment* shall investigate and identify possible public funding sources ~~for the options proposed under subsection (a)~~, including medicaid and other federal programs, specifically including possible waivers to specific federal program requirements.

~~(f)(e)~~ In collaboration with the United States department of health and human services, the ~~Kansas health policy authority~~*department of health and environment* shall investigate (1) the development and availability of federal affordable choices initiatives funding, (2) waiver and funding opportunities under the federal deficit reduction act of 2005, *public law 109-171*, and (3) waivers under the federal health insurance flexibility and accountability demonstration initiative to expand health

services to low income populations. ~~To the extent feasible, the Kansas health policy authority shall include such federal programs in the options proposed under subsection (a).~~

~~(g) In collaboration with the commissioner of insurance, the Kansas health policy authority shall analyze the potential for reinsurance and state subsidies for reinsurance as mechanisms to reduce premium volatility in the small group insurance market, to increase predictability in premium trends, to lower costs and to increase coverage as a component of the options proposed under subsection (a).~~

Sec. 47. K.S.A. 2011 Supp. 75-7425 is hereby amended to read as follows: 75-7425. (a) The Kansas department of insurance shall conduct a study on the impact of extending continuation benefits under COBRA for a period of 18 months pursuant to K.S.A. 40-19c06, and amendments thereto, and other applicable statutes and other policy changes to make health insurance more competitive, affordable and portable. The commissioner of insurance shall prepare a report on its findings and present such report to the ~~Kansas health policy authority~~ *secretary of health and environment* and the joint committee on health policy oversight.

(b) The legislative coordinating council shall appoint a legislative study committee during the 2007 interim period to study and review various options for tax credits and benefits for the purchase of long-term care insurance, health earned income tax credits, health insurance and health savings accounts.

Sec. 48. K.S.A. 2011 Supp. 75-7426 is hereby amended to read as follows: 75-7426. (a) All third parties, including health insurers, self-insured plans, group health plans (as defined in section 607(1) of the employee retirement income security act of 1974), service benefit plans, managed care organizations, pharmacy benefit managers or other parties that are, by statute, contract or agreement, legally responsible for payment of a claim for a health care item or service to pay for care and services available under the plan, shall not, in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, take into account that the individual is eligible for or is provided medical assistance under the Kansas state plan under title XIX of the social security act, commonly known as medicaid or medical assistance, administered by the ~~Kansas health policy authority~~ *department of health and environment*, or under any such plan of any other state.

(b) All third parties described in subsection (a), shall provide, with respect to individuals who are eligible for, or are provided, medical assistance under such state plan, upon the request of the ~~authority~~ *department*, information to determine during what period individuals or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address and identifying number

of the plan) in a manner prescribed by the United States secretary of health and human services.

(c) All third parties described in subsection (a) shall: (1) Accept the ~~authority's department's~~ right of recovery and the assignment to the ~~authority department~~ of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the state plan; (2) respond to any inquiry by the ~~authority department~~ or its designee regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of such health care item or service; and (3) agree not to deny a claim submitted by the ~~authority department~~ solely on the basis of the date of submission of the claim, the type or format of the claim form or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if: (A) The claim is submitted by the ~~authority department~~ within the three-year period beginning on the date on which the item or service was furnished; and (B) any action by the ~~authority department~~ to enforce its rights with respect to such claim is commenced within six years of the ~~authority's department's~~ submission of such claim.

(d) As used in this section, ~~“Kansas health policy authority” or “authority”~~ ~~“department”~~ means the ~~Kansas health policy authority established by K.S.A. 2011 Supp. 75-7401, and amendments thereto~~ ~~department of health and environment~~.

Sec. 49. K.S.A. 2011 Supp. 75-7427 is hereby amended to read as follows: 75-7427. (a) As used in this section:

(1) “Attorney general” means the attorney general, employees of the attorney general or authorized representatives of the attorney general.

(2) “Benefit” means the receipt of money, goods, items, facilities, accommodations or anything of pecuniary value.

(3) “Claim” means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic or written communication that is utilized to identify any goods, service, item, facility or accommodation as reimbursable to the state medicaid program, or its fiscal agents, the state mediKan program or the state children’s health insurance program or which states income or expense.

(4) “Client” means past or present beneficiaries or recipients of the state medicaid program, the state mediKan program or the state children’s health insurance program.

(5) “Contractor” means any contractor, supplier, vendor or other person who, through a contract or other arrangement, has received, is to receive or is receiving public funds or in-kind contributions from the contracting agency as part of the state medicaid program, the state mediKan program or the state children’s health insurance program, and shall include any sub-contractor.

(6) “Contractor files” means those records of contractors which relate

to the state medicaid program, the state mediKan program or the state children's health insurance program.

(7) "Fiscal agent" means any corporation, firm, individual, organization, partnership, professional association or other legal entity which, through a contractual relationship with the state of Kansas receives, processes and pays claims under the state medicaid program, the state mediKan program or the state children's health insurance program.

(8) "Health care provider" means a health care provider as defined under K.S.A. 65-4921, and amendments thereto, who has applied to participate in, who currently participates in, or who has previously participated in the state medicaid program, the state mediKan program or the state children's health insurance program.

(9) ~~"Kansas health policy authority" or "authority"~~ "Department" means the ~~Kansas health policy authority established under K.S.A. 2011 Supp. 75-7401, and amendments thereto~~ *department of health and environment*, or its successor agency.

(10) "Managed care program" means a program which provides coordination, direction and provision of health services to an identified group of individuals by providers, agencies or organizations.

(11) "Medicaid program" means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended, or any successor federal or state, or both, health insurance program or waiver granted thereunder.

(12) "Person" means any agency, association, corporation, firm, limited liability company, limited liability partnership, natural person, organization, partnership or other legal entity, the agents, employees, independent contractors, and subcontractors, thereof, and the legal successors thereto.

(13) "Provider" means a person who has applied to participate in, who currently participates in, who has previously participated in, who attempts or has attempted to participate in the state medicaid program, the state mediKan program or the state children's health insurance program, by providing or claiming to have provided goods, services, items, facilities or accommodations.

(14) "Recipient" means an individual, either real or fictitious, in whose behalf any person claimed or received any payment or payments from the state medicaid program, or its fiscal agent, the state mediKan program or the state children's health insurance program, whether or not any such individual was eligible for benefits under the state medicaid program, the state mediKan program or the state children's health insurance program.

(15) "Records" means all written documents and electronic or magnetic data, including, but not limited to, medical records, X-rays, professional, financial or business records relating to the treatment or care of any recipient; goods, services, items, facilities or accommodations pro-

vided to any such recipient; rates paid for such goods, services, items, facilities or accommodations; and goods, services, items, facilities or accommodations provided to nonmedicaid recipients to verify rates or amounts of goods, services, items, facilities or accommodations provided to medicaid recipients, as well as any records that the state medicaid program, or its fiscal agents, the state mediKan program or the state children's health insurance program require providers to maintain. "Records" shall not include any report or record in any format which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(16) "State children's health insurance program" means the state children's health insurance program as provided in K.S.A. 38-2001 *et seq.*, and amendments thereto.

(b) (1) There is hereby established within the ~~Kansas health policy authority~~ *department of health and environment* the office of inspector general. All budgeting, purchasing and related management functions of the office of inspector general shall be administered under the direction and supervision of the executive director of the ~~Kansas health policy authority~~ *department of health and environment*. The purpose of the office of inspector general is to establish a full-time program of audit, investigation and performance review to provide increased accountability, integrity and oversight of the state medicaid program, the state mediKan program and the state children's health insurance program within the jurisdiction of the ~~Kansas health policy authority~~ *department of health and environment* and to assist in improving agency and program operations and in deterring and identifying fraud, waste, abuse and illegal acts. The office of inspector general shall be independent and free from political influence and in performing the duties of the office under this section shall conduct investigations, audits, evaluations, inspections and other reviews in accordance with professional standards that relate to the fields of investigation and auditing in government.

(2) (A) The inspector general shall be appointed by the ~~Kansas health policy authority~~ *department of health and environment* with the advice and consent of the senate and subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided in K.S.A. 46-2601, and amendments thereto, no person appointed to the position of inspector general shall exercise any power, duty or function of the inspector general until confirmed by the senate. The inspector general shall be selected without regard to political affiliation and on the basis of integrity and capacity for effectively carrying out the duties of the office of inspector general. The inspector general shall possess demonstrated knowledge, skills, abilities and experience in conducting audits or investigations and shall be familiar with the programs subject to oversight by the office of inspector general.

(B) No former or current executive or manager of any program or agency subject to oversight by the office of inspector general may be appointed inspector general within two years of that individual's period of service with such program or agency. The inspector general shall hold at time of appointment, or shall obtain within one year after appointment, certification as a certified inspector general from a national organization that provides training to inspectors general.

(C) The term of the person first appointed to the position of inspector general shall expire on January 15, 2009. Thereafter, a person appointed to the position of inspector general shall serve for a term which shall expire on January 15 of each year in which the whole senate is sworn in for a new term.

(D) The inspector general shall be in the classified service and shall receive such compensation as is determined by law, except that such compensation may be increased but not diminished during the term of office of the inspector general. The inspector general may be removed from office prior to the expiration of the inspector general's term of office in accordance with the Kansas civil service act. The inspector general shall exercise independent judgment in carrying out the duties of the office of inspector general under subsection (b). Appropriations for the office of inspector general shall be made to the ~~Kansas health policy authority~~*department of health and environment* by separate line item appropriations for the office of inspector general. The inspector general shall report to the ~~Kansas health policy authority~~*secretary of health and environment*.

(E) The inspector general shall have general managerial control over the office of the inspector general and shall establish the organization structure of the office as the inspector general deems appropriate to carry out the responsibilities and functions of the office.

(3) Within the limits of appropriations therefor, the inspector general may hire such employees in the unclassified service as are necessary to administer the office of the inspector general. Such employees shall serve at the pleasure of the inspector general. Subject to appropriations, the inspector general may obtain the services of certified public accountants, qualified management consultants, professional auditors, or other professionals necessary to independently perform the functions of the office.

(c) (1) In accordance with the provisions of this section, the duties of the office of inspector general shall be to oversee, audit, investigate and make performance reviews of the state medicaid program, the state medikan program and the state children's health insurance program, which programs are within the jurisdiction of the ~~Kansas health policy authority~~*department of health and environment*.

(2) In order to carry out the duties of the office, the inspector general shall conduct independent and ongoing evaluation of the ~~Kansas health policy authority~~*department of health and environment* and of such programs administered by the ~~Kansas health policy authority~~*department of*

*health and environment*, which oversight includes, but is not limited to, the following:

(A) Investigation of fraud, waste, abuse and illegal acts by the ~~Kansas health policy authority~~*department of health and environment* and its agents, employees, vendors, contractors, consumers, clients and health care providers or other providers.

(B) Audits of the ~~Kansas health policy authority~~*department of health and environment*, its employees, contractors, vendors and health care providers related to ensuring that appropriate payments are made for services rendered and to the recovery of overpayments.

(C) Investigations of fraud, waste, abuse or illegal acts committed by clients of the ~~Kansas health policy authority~~*department of health and environment* or by consumers of services administered by the ~~Kansas health policy authority~~*department of health and environment*.

(D) Monitoring adherence to the terms of the contract between the ~~Kansas health policy authority~~*department of health and environment* and an organization with which the ~~authority~~*department* has entered into a contract to make claims payments.

(3) Upon finding credible evidence of fraud, waste, abuse or illegal acts, the inspector general shall report its findings to the ~~Kansas health policy authority~~*department of health and environment* and refer the findings to the attorney general.

(d) The inspector general shall have access to all pertinent information, confidential or otherwise, and to all personnel and facilities of the ~~Kansas health policy authority~~*department of health and environment*, their employees, vendors, contractors and health care providers and any federal, state or local governmental agency that are necessary to perform the duties of the office as directly related to such programs administered by the ~~authority~~*department*. Access to contractor or health care provider files shall be limited to those files necessary to verify the accuracy of the contractor's or health care provider's invoices or their compliance with the contract provisions or program requirements. No health care provider shall be compelled under the provisions of this section to provide individual medical records of patients who are not clients of the state medicaid program, the state mediKan program or the state children's health insurance program. State and local governmental agencies are authorized and directed to provide to the inspector general requested information, assistance or cooperation.

(e) Except as otherwise provided in this section, the inspector general and all employees and former employees of the office of inspector general shall be subject to the same duty of confidentiality imposed by law on any such person or agency with regard to any such information, and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality. The duty of confidentiality imposed on the inspector general and all employees and former employees of the

office of inspector general shall be subject to the provisions of subsection (f), and the inspector general may furnish all such information to the attorney general, Kansas bureau of investigation or office of the United States attorney in Kansas pursuant to subsection (f). Upon receipt thereof, the attorney general, Kansas bureau of investigation or office of the United States attorney in Kansas and all assistants and all other employees and former employees of such offices shall be subject to the same duty of confidentiality with the exceptions that any such information may be disclosed in criminal or other proceedings which may be instituted and prosecuted by the attorney general or the United States attorney in Kansas, and any such information furnished to the attorney general, the Kansas bureau of investigation or the United States attorney in Kansas under subsection (f) may be entered into evidence in any such proceedings.

(f) All investigations conducted by the inspector general shall be conducted in a manner that ensures the preservation of evidence for use in criminal prosecutions or agency administrative actions. If the inspector general determines that a possible criminal act relating to fraud in the provision or administration of such programs administered by the ~~Kansas health policy authority~~ *department of health and environment* has been committed, the inspector general shall immediately notify the office of the Kansas attorney general. If the inspector general determines that a possible criminal act has been committed within the jurisdiction of the office, the inspector general may request the special expertise of the Kansas bureau of investigation. The inspector general may present for prosecution the findings of any criminal investigation to the office of the attorney general or the office of the United States attorney in Kansas.

(g) To carry out the duties as described in this section, the inspector general and the inspector general's designees shall have the power to compel by subpoena the attendance and testimony of witnesses and the production of books, electronic records and papers as directly related to such programs administered by the ~~Kansas health policy authority~~ *department of health and environment*. Access to contractor files shall be limited to those files necessary to verify the accuracy of the contractor's invoices or its compliance with the contract provisions. No health care provider shall be compelled to provide individual medical records of patients who are not clients of the ~~authority~~ *department*.

(h) The inspector general shall report all convictions, terminations and suspensions taken against vendors, contractors and health care providers to the ~~Kansas health policy authority~~ *department of health and environment* and to any agency responsible for licensing or regulating those persons or entities. If the inspector general determines reasonable suspicion exists that an act relating to the violation of an agency licensure or regulatory standard has been committed by a vendor, contractor or health care provider who is licensed or regulated by an agency, the inspector general shall immediately notify such agency of the possible violation.

(i) The inspector general shall make annual reports, findings and recommendations regarding the office's investigations into reports of fraud, waste, abuse and illegal acts relating to any such programs administered by the ~~Kansas health policy authority~~*director of health care finance* to the ~~executive director of the Kansas health policy authority~~*secretary of health and environment*, the legislative post auditor, the committee on ways and means of the senate, the committee on appropriations of the house of representatives, the joint committee on health policy oversight and the governor. These reports shall include, but not be limited to, the following information:

- (1) Aggregate provider billing and payment information;
- (2) the number of audits of such programs administered by the ~~Kansas health policy authority~~*department of health and environment* and the dollar savings, if any, resulting from those audits;
- (3) health care provider sanctions, in the aggregate, including terminations and suspensions; and
- (4) a detailed summary of the investigations undertaken in the previous fiscal year, which summaries shall comply with all laws and rules and regulations regarding maintaining confidentiality in such programs administered by the ~~Kansas health policy authority~~*department of health and environment*.

(j) Based upon the inspector general's findings under subsection (c), the inspector general may make such recommendations to the ~~Kansas health policy authority~~*department of health and environment* or the legislature for changes in law, rules and regulations, policy or procedures as the inspector general deems appropriate to carry out the provisions of law or to improve the efficiency of such programs administered by the ~~Kansas health policy authority~~*department of health and environment*. The inspector general shall not be required to obtain permission or approval from any other official or ~~authority~~*department* prior to making any such recommendation.

(k) (1) The inspector general shall make provision to solicit and receive reports of fraud, waste, abuse and illegal acts in such programs administered by the ~~Kansas health policy authority~~*department of health and environment* from any person or persons who shall possess such information. The inspector general shall not disclose or make public the identity of any person or persons who provide such reports pursuant to this subsection unless such person or persons consent in writing to the disclosure of such person's identity. Disclosure of the identity of any person who makes a report pursuant to this subsection shall not be ordered as part of any administrative or judicial proceeding. Any information received by the inspector general from any person concerning fraud, waste, abuse or illegal acts in such programs administered by the ~~Kansas health policy authority~~*department of health and environment* shall be confidential and shall not be disclosed or made public, upon subpoena or other-

wise, except such information may be disclosed if (A) release of the information would not result in the identification of the person who provided the information, (B) the person or persons who provided the information to be disclosed consent in writing prior to its disclosure, (C) the disclosure is necessary to protect the public health, or (D) the information to be disclosed is required in an administrative proceeding or court proceeding and appropriate provision has been made to allow disclosure of the information without disclosing to the public the identity of the person or persons who reported such information to the inspector general.

(2) No person shall:

(A) Prohibit any agent, employee, contractor or subcontractor from reporting any information under subsection (k)(1); or

(B) require any such agent, employee, contractor or subcontractor to give notice to the person prior to making any such report.

(3) Subsection (k)(2) shall not be construed as:

(A) Prohibiting an employer from requiring that an employee inform the employer as to legislative or auditing agency requests for information or the substance of testimony made, or to be made, by the employee to legislators or the auditing agency, as the case may be, on behalf of the employer;

(B) permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative committee or by an auditing agency to appear at a meeting with officials of the auditing agency;

(C) authorizing an employee to represent the employee's personal opinions as the opinions of the employer; or

(D) prohibiting disciplinary action of an employee who discloses information which (A) the employee knows to be false or which the employee discloses with reckless disregard for its truth or falsity, (B) the employee knows to be exempt from required disclosure under the open records act, or (C) is confidential or privileged under statute or court rule.

(4) Any agent, employee, contractor or subcontractor who alleges that disciplinary action has been taken against such agent, employee, contractor or subcontractor in violation of this section may bring an action for any damages caused by such violation in district court within 90 days after the occurrence of the alleged violation.

(5) Any disciplinary action taken against an employee of a state agency or firm as such terms are defined under subsection (b) of K.S.A. 75-2973, and amendments thereto, for making a report under subsection (k)(1) shall be governed by the provisions of K.S.A. 75-2973, and amendments thereto.

(l) The scope, timing and completion of any audit or investigation

conducted by the inspector general shall be within the discretion of the inspector general. Any audit conducted by the inspector general's office shall adhere and comply with all provisions of generally accepted governmental auditing standards promulgated by the United States government accountability office.

(m) Nothing in this section shall limit investigations by any state department or agency that may otherwise be required by law or that may be necessary in carrying out the duties and functions of such agency.

(n) No contractor who has been convicted of fraud, waste, abuse or illegal acts or whose actions have caused the state of Kansas to pay fines to or reimburse the federal government more than \$1,000,000 in the medicaid program shall be eligible for any state medicaid contracts subsequent to such conviction unless the ~~Kansas health policy authority~~ *department of health and environment* finds that the contractor is the sole source for such contracts, is the least expensive source for the contract, has reimbursed the state of Kansas for all losses caused by the contractor, or the removal of the contractor would create a substantial loss of access for medicaid beneficiaries, in which case the ~~authority~~ *department* after a specific finding to this effect may waive the prohibition of this subsection. Nothing in this section shall be construed to conflict with federal law, or to require or permit the use of federal funds where prohibited.

(o) The ~~Kansas health policy authority~~ *department of health and environment*, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed, executive meeting under the open meetings act, K.S.A. 75-4317 through 75-4320a, and amendments thereto, to discuss with the inspector general any information, records or other matters that are involved in any investigation or audit under this section. All information and records of the inspector general that are obtained or received under any investigation or audit under this section shall be confidential, except as required or authorized pursuant to this section.

Sec. 50. K.S.A. 2011 Supp. 75-7429 is hereby amended to read as follows: 75-7429. (a) As used in this section, "medical home" means a health care delivery model in which a patient establishes an ongoing relationship with a physician or other personal care provider in a physician-directed team, to provide comprehensive, accessible and continuous evidence-based primary and preventive care, and to coordinate the patient's health care needs across the health care system in order to improve quality and health outcomes in a cost effective manner.

(b) The ~~Kansas health policy authority established under K.S.A. 2011 Supp. 75-7401, and amendments thereto,~~ *department of health and environment* shall incorporate the use of the medical home delivery system within:

(1) The Kansas program of medical assistance established in accord-

ance with title XIX of the federal social security act, 42 U.S.C. § 1396 *et seq.*, and amendments thereto;

(2) the health benefits program for children established under K.S.A. 38-2001 *et seq.*, and amendments thereto, and developed and submitted in accordance with federal guidelines established under title XXI of the federal social security act, section 4901 of public law 105-33, 42 U.S.C. § 1397aa *et seq.*, and amendments thereto; and

(3) the state mediKan program.

(c) The Kansas state employees health care commission established under K.S.A. 75-6502, and amendments thereto, shall incorporate the use of a medical home delivery system within the state health care benefits program as provided in K.S.A. 75-6501 through 75-6523, and amendments thereto. Except that compliance with a medical home delivery system shall not be required of program participants receiving treatment in accordance with a religious method of healing pursuant to the provisions of K.S.A. 2011 Supp. 75-6501, and amendments thereto.

~~(d) On or before February 1, 2009, the Kansas health policy authority in conjunction with the department of health and environment and state stakeholders shall develop systems and standards for the implementation and administration of a medical home in Kansas.~~

~~(e) The provisions of this section shall not take effect until July 1, 2009.~~

Sec. 51. K.S.A. 2011 Supp. 75-7430 is hereby amended to read as follows: 75-7430. The ~~Kansas health policy authority~~ *secretary of health and environment* shall, subject to appropriations, establish and implement the following:

(a) Dental coverage for pregnant medicaid beneficiaries the cost of which shall not exceed \$545,833;

(b) expansion of medicaid eligibility up to 200% of the federal poverty level and smoking cessation programs for pregnant women, the cost of which will be approximately \$460,000 from the state general fund;

(c) the statewide community health records program, the cost of which shall not exceed \$383,600.

~~(d) The provisions of this section shall not take effect until July 1, 2009.~~

Sec. 52. K.S.A. 2011 Supp. 75-7433 is hereby amended to read as follows: 75-7433. (a) The ~~Kansas health policy authority~~ *secretary of health and environment* is hereby authorized to make grants or no interest loans for the purpose of financing the initial costs associated with the forming and organizing of associations to assist members of the association to obtain access to quality and affordable health care plans. Such grants or loans may be used to pay for actuarial or feasibility studies.

(b) Such grants and loans shall be made upon such terms and conditions as the ~~Kansas health policy authority~~ *secretary of health and en-*

*vironment* may deem appropriate, except that: (1) Such loans shall be made interest free and with recourse, and (2) the association shall provide a match for such grant or loan. Such grants and loans shall be made from funds credited to the association assistance plan fund.

(c) There is hereby established in the state treasury the association assistance plan fund. The ~~Kansas health policy authority~~*secretary of health and environment* shall administer such fund and expenditures from the association assistance plan fund for the purpose of providing grants and no interest loans in accordance with this section. All expenditures from the association assistance plan fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~Kansas health policy authority~~*secretary of health and environment* or the designee of the ~~authority~~*secretary*.

(d) On July 1, 2007, the director of accounts and reports shall transfer \$500,000 from the state general fund to the association assistance plan fund.

(e) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the association assistance plan fund interest earnings based on:

(1) The average daily balance of moneys in the association assistance plan fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(f) For the purpose of this section:

(1) "Association" means a small business or an organization of persons having a common interest; and

(2) "small business" means any business that employs 50 or less employees.

(g) The ~~Kansas health policy authority~~*secretary of health and environment* may adopt rules and regulations to implement the provisions of this section.

(h) Any health care plans offered through any association funded in whole or in part with grants or loans pursuant to this section shall be underwritten by an insurance company or health maintenance organization that holds a valid Kansas certificate of authority as verified by the commissioner of insurance and any such association shall be subject to the provisions of K.S.A. 40-2209, 40-2209a through 40-2209p and 40-2222, and amendments thereto.

Sec. 53. K.S.A. 2011 Supp. 75-7435 is hereby amended to read as follows: 75-7435. (a) As used in this section, and amendments thereto, unless the context requires otherwise:

(1) Words and phrases have the meanings respectively ascribed thereto by K.S.A. 39-923, and amendments thereto.

(2) “Skilled nursing care facility” means a licensed nursing facility, nursing facility for mental health as defined in K.S.A. 39-923, and amendments thereto, or a hospital long-term care unit licensed by the ~~Kansas~~ department of health and environment, providing skilled nursing care, but shall not include the Kansas soldiers’ home or the Kansas veterans’ home.

(3) “Licensed bed” means those beds within a skilled nursing care facility which the facility is licensed to operate.

(4) ~~“Authority” means the Kansas health policy authority.~~

~~(5)~~ “Agent” means the Kansas department on aging.

~~(6)~~(5) “Continuing care retirement facility” means a facility holding a certificate of registration issued by the commissioner of insurance pursuant to K.S.A. 40-2235, and amendments thereto.

(b) (1) Except as otherwise provided in this section and in subsection (f), there is hereby imposed and the ~~authority~~*secretary of health and environment* shall assess an annual assessment per licensed bed, hereinafter called a quality care assessment, on each skilled nursing care facility. The assessment on all facilities in the aggregate shall be an amount fixed by rules and regulations of the ~~authority~~*secretary of health and environment*, shall not exceed \$1,950 annually per licensed bed, shall be imposed as an amount per licensed bed and shall be imposed uniformly on all skilled nursing care facilities except that the assessment rate for skilled nursing care facilities that are part of a continuing care retirement facility, small skilled nursing care facilities and high medicaid volume skilled nursing care facilities shall not exceed 1/6 of the actual amount assessed all other skilled nursing care facilities. No rules and regulations of the ~~authority~~*secretary of health and environment* shall grant any exception to or exemption from the quality care assessment. The assessment shall be paid quarterly, with one fourth of the annual amount due by the 30th day after the end of the month of each calendar quarter. The ~~authority~~*secretary of health and environment* is authorized to establish delayed payment schedules for skilled nursing care facilities which are unable to make quarterly payments when due under this section due to financial difficulties, as determined by the ~~authority~~*secretary of health and environment*. The assessment made for years subsequent to the third year from the date the provisions of this section are implemented shall not exceed 60% of the first assessment made under this section. As used in this subsection (b)(1), the terms “small skilled nursing care facilities” and “high medicaid volume skilled nursing care facilities” shall have the meanings ascribed thereto by the ~~authority~~*secretary of health and environment* by rules and regulations, except that the definition of small skilled nursing care facility shall not be lower than 40 beds.

(2) Beds licensed after July 1 each year shall pay a prorated amount of the applicable annual assessment so that the assessment applies only for the days such new beds are licensed. The proration shall be calculated

by multiplying the applicable assessment by the percentage of days the beds are licensed during the year. Any change which reduces the number of licensed beds in a facility shall not result in a refund being issued to the skilled nursing care facility.

(3) If an entity conducts, operates or maintains more than one licensed skilled nursing care facility, the entity shall pay the nursing facility assessment for each facility separately. No skilled nursing care facility shall create a separate line-item charge for the purpose of passing through the quality care assessment to residents. No skilled nursing care facility shall be guaranteed, expressly or otherwise, that any additional moneys paid to the facility under this section will equal or exceed the amount of its quality care assessment.

(4) The payment of the quality care assessment to the ~~authority~~*secretary of health and environment* shall be an allowable cost for medicaid reimbursement purposes. A rate adjustment pursuant to paragraph (5) of subsection (d) shall be made effective on the date of imposition of the assessment, to reimburse the portion of this cost imposed on medicaid days.

(5) The ~~authority~~*secretary of health and environment* shall seek a waiver from the United States department of health and human services to allow the state to impose varying levels of assessments on skilled nursing care facilities based on specified criteria. It is the intent of the legislature that the waiver sought by the ~~authority~~*secretary of health and environment* be structured to minimize the negative fiscal impact on certain classes of skilled nursing care facilities.

(c) Each skilled nursing care facility shall prepare and submit to the ~~authority~~*secretary of health and environment* any additional information required and requested by the ~~authority~~*secretary of health and environment* to implement or administer the provisions of this section. Each skilled nursing care facility shall prepare and submit quarterly to the secretary of aging the rate the facility charges to private pay residents, and the secretary shall cause this information to be posted on the web site of the department on aging.

(d) (1) There is hereby created in the state treasury the quality care fund, which shall be administered by the ~~authority~~*secretary of health and environment*. All moneys received for the assessments imposed pursuant to subsection (b), including any penalty assessments imposed thereon pursuant to subsection (e), shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the quality care fund. All expenditures from the quality care fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~authority~~*secretary of health and environment* or the ~~authority's~~*secretary's agent*.

(2) All moneys in the quality care fund shall be used to finance initiatives to maintain or improve the quantity and quality of skilled nursing care in skilled nursing care facilities in Kansas. No moneys credited to the quality care fund shall be transferred to or otherwise revert to the state general fund at any time. Notwithstanding the provisions of any other law to the contrary, if any moneys credited to the quality care fund are transferred or otherwise revert to the state general fund, 30 days following the transfer or reversion the quality care assessment shall terminate and the ~~authority~~*secretary of health and environment* shall discontinue the imposition, assessment and collection of the assessment. Upon termination of the assessment, all collected assessment revenues, including the moneys inappropriately transferred or reverting to the state general fund, less any amounts expended by the ~~authority~~*secretary of health and environment*, shall be returned on a *pro rata* basis to skilled nursing care facilities that paid the assessment.

(3) Any moneys received by the state of Kansas from the federal government as a result of federal financial participation in the state medicaid program that are derived from the quality care assessment shall be deposited in the quality care fund and used to finance actions to maintain or increase healthcare in skilled nursing care facilities.

(4) Moneys in the fund shall be used exclusively for the following purposes:

(A) To pay administrative expenses incurred by the ~~authority~~*secretary of health and environment* or the agent in performing the activities authorized by this section, except that such expenses shall not exceed a total of 1% of the aggregate assessment funds collected pursuant to subsection (b) for the prior fiscal year;

(B) to increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper payment limits, as may be negotiated;

(C) to reimburse the medicaid share of the quality care assessment as a pass-through medicaid allowable cost;

(D) to restore the medicaid rate reductions implemented January 1, 2010;

(E) to restore funding for fiscal year 2010, including rebasing and inflation to be applied to rates in fiscal year 2011;

(F) the remaining amount, if any, shall be expended first to increase the direct health care costs center limitation up to 150% of the case mix adjusted median, and then, if there are remaining amounts, for other quality care enhancement of skilled nursing care facilities as approved by the quality care improvement panel but shall not be used directly or indirectly to replace existing state expenditures for payments to skilled nursing care facilities for providing services pursuant to the state medicaid program.

(5) Any moneys received by a skilled nursing care facility from the

quality care fund shall not be expended by any skilled nursing care facility to provide for bonuses or profit-sharing for any officer, employee or parent corporation but may be used to pay to employees who are providing direct care to a resident of such facility.

(6) Adjustment payments may be paid quarterly or within the daily medicaid rate to reimburse covered medicaid expenditures in the aggregate within the upper payment limits.

(7) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the quality care fund interest earnings based on:

(A) The average daily balance of moneys in the quality care fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) If a skilled nursing care facility fails to pay the full amount of the quality care assessment imposed pursuant to subsection (b), when due and payable, including any extensions of time granted under that subsection, the ~~authority~~*secretary of health and environment* shall assess a penalty in the amount of the lesser of \$500 per day or 2% of the quality care assessment owed for each day the assessment is delinquent. The ~~authority~~*secretary of health and environment* is authorized to establish delayed payment schedules for skilled nursing care facilities that are unable to make installment payments when due under this section because of financial difficulties, as determined by the ~~authority~~*secretary of health and environment*.

(f) (1) The ~~authority~~*secretary of health and environment* shall assess and collect quality care assessments imposed pursuant to subsection (b), including any penalty assessments imposed thereon pursuant to subsection (e), from skilled nursing care facilities on and after July 1, 2010, except that no assessments or penalties shall be assessed under subsections (a) through (h) until:

(A) An amendment to the state plan for medicaid, which increases the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program and which is proposed for approval for purposes of subsections (a) through (h) is approved by the federal government in which case the initial assessment is due no earlier than 60 days after state plan approval; and

(B) the skilled nursing care facilities have been compensated retroactively within 60 days after state plan approval at the increased rate for services provided pursuant to the federal medicaid program for the period commencing on and after July 1, 2010.

(2) The ~~authority~~*secretary of health and environment* shall implement and administer the provisions of subsections (a) through (h) in a manner consistent with applicable federal medicaid laws and regulations. The ~~authority~~*secretary of health and environment* shall seek any necessary

approvals by the federal government that are required for the implementation of subsections (a) through (h).

(3) The provisions of subsections (a) through (h) shall be null and void and shall have no force and effect if one of the following occur:

(A) The medicaid plan amendment, which increases the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program and which is proposed for approval for purposes of subsections (a) through (h) is not approved by the federal centers for medicare and medicaid services;

(B) the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program are reduced below the rates calculated on December 31, 2009, increased by revenues in the quality care fund and matched by federal financial participation and rebasing as provided for in K.S.A. 2011 Supp. 75-5958, and amendments thereto;

(C) any funds are utilized to supplant funding for skilled nursing care facilities as required by subsection (g);

(D) any funds are diverted from those purposes set forth in subsection (d)(4); or

(E) upon the governor signing, or allowing to become law without signature, legislation which by proviso or otherwise directs any funds from those purposes set forth in subsection (d)(4) or which would propose to suspend the operation of this section.

(g) On and after July 1, 2010, reimbursement rates for skilled nursing care facilities shall be restored to those in effect during December 2009. No funds generated by the assessments or federal funds generated therefrom shall be utilized for such restoration, but such funds may be used to restore the rate reduction in effect from January 1, 2010, to June 30, 2010.

(h) Rates of reimbursement shall not be limited by private pay charges.

(i) If the provisions of subsections (a) through (h) are repealed, expire or become null and void and have no further force and effect, all moneys in the quality care fund which were paid under the provisions of subsections (a) through (h) shall be returned to the skilled nursing care facilities which paid such moneys on the basis on which such payments were assessed and paid pursuant to subsections (a) through (h).

(j) The ~~authority~~ *department of health and environment* may adopt rules and regulations necessary to implement the provisions of this section.

(k) For purposes of administering and selecting the reimbursements of moneys in the quality care assessment fund, the quality care improvement panel is hereby established. The panel shall consist of the following members: Two persons appointed by Kansas homes and services for the aging; two persons appointed by the Kansas health care association; one

person appointed by Kansas advocates for better care; one person appointed by the Kansas hospital association; one person appointed by the governor who is a member of the Kansas adult care executives association; one person appointed by the governor who is a skilled nursing care facility resident or the family member of such a resident; one person appointed by the Kansas foundation for medical care; one person appointed by the governor from the department on aging; and one person appointed by the governor from the ~~Kansas health policy authority~~ *department of health and environment*. The person appointed by the governor from the department on aging and the person appointed by the governor from the ~~Kansas health policy authority~~ *department of health and environment* shall be nonvoting members of the panel. The panel shall meet as soon as possible subsequent to the effective date of this act and shall elect a chairperson from among the members appointed by the trade organizations specified in this subsection. The members of the quality care improvement panel shall serve without compensation or expenses. The quality care improvement panel shall report annually on or before January 10 to the joint committee on health policy oversight and the legislature concerning the activities of the panel during the preceding calendar year and any recommendations which the panel may have concerning the administration of and expenditures from the quality care assessment fund.

(1) The ~~authority~~ *department of health and environment* shall certify to the director of the budget of the department of administration the date upon which the provisions of this section are implemented. The provisions of this section shall expire four years subsequent to the implementation of this section.

Sec. 54. K.S.A. 2011 Supp. 75-7436 is hereby amended to read as follows: 75-7436. (a) As used in this section, unless the context requires otherwise:

(1) ~~“Authority” means the Kansas health policy authority.~~

~~(2)~~—“Developmental disability” is as defined in K.S.A. 39-1803, and amendments thereto, under the Kansas developmental disabilities reform act.

~~(3)~~(2) “Entity” means individual, corporation, partnership, limited liability company, joint venture or other legal entity.

~~(4)~~(3) “Gross revenues” means the revenues received by waiver providers for furnishing services to individuals with developmental disabilities who qualify for the waiver program with eligibility criteria and scope of services not less than those in effect as of January 1, 2011; the revenues received by waiver providers from or on behalf of individuals with developmental disabilities who qualify for the waiver program but for whom the services defined under the waiver program are not reimbursed through such waiver; and, the revenues received by waiver providers from or on behalf of individuals with developmental disabilities who do not

qualify for the waiver program but for whom receive the same services offered under such waiver. Gross revenues does not include revenues received for services to individuals with developmental disabilities funded exclusively by state or local governments, or any revenues received for furnishing services to individuals who are not developmentally disabled, or charitable donations.

~~(5)~~(4) “Quality based community-~~fee~~ *assessment* fund” means a segregated account within the state treasury for which moneys are collected in accordance with the provisions of this act from developmental disability home and community-based waiver service providers.

~~(6)~~(5) “Waiver program” means a developmental disability home and community-based services waiver program authorized under the social security act, 42 U.S.C. § 1915, for persons with a developmental disability.

~~(7)~~(6) “Waiver provider” means an entity that participates in the Kansas developmental disability home and community-based waiver program and that provides services to a person with a developmental disability, regardless of whether such person qualifies under the waiver program.

~~(8)~~(7) “Waiver provider assessment” means an assessment imposed on all waiver providers at the maximum rate allowable by federal law on the gross revenues applicable to services provided to persons with developmental disabilities.

(b) (1) Except as otherwise provided in this section, the ~~authority~~*secretary of health and environment* shall impose an annual assessment, hereinafter called a waiver provider assessment, on each waiver provider at the maximum rate allowable by federal law, on the gross revenues the waiver provider received from providing services to individuals with developmental disabilities during the fiscal year beginning with the effective date of the assessment. The waiver provider assessment shall be imposed as follows:

(A) Withheld on a claim-by-claim basis from each waiver provider’s uniform percentage increased HCBS MR/DD medicaid waiver payment rates beginning with the effective date of this section; and,

(B) paid on a quarterly basis by waiver providers based on the preceding fiscal revenues received by waiver providers from or on behalf of individuals with developmental disabilities who qualify for the waiver program but for whom the services defined under the waiver program are not reimbursed through such waiver; and, the revenues received by waiver providers from or on behalf of individuals with developmental disabilities who do not qualify for the waiver program but for whom receive the same services offered under such waiver.

(2) The waiver provider assessment will become effective beginning with the first full month after:

(A) The federal centers for medicare and medicaid services (CMS) authorizes developmental disability home and community-based services

as a permissible class of health care services on which states may impose a health care-related assessment without penalty; and

(B) the CMS has approved any and all amendments necessary to authorize the uniform percentage rate increases to the medicaid payment rates under Kansas developmental disability home and community-based waiver program.

(3) The duration of the waiver provider assessment shall be all or a portion of the first state fiscal year in which the waiver provider assessment is effective and the subsequent four full state fiscal years.

(4) The moneys collected under the provisions of this section shall be used solely as the nonfederal share of uniform percentage increases to the medicaid payment rates for developmental disability home and community-based services waiver providers.

(5) The waiver provider assessment will be offset on a per claim basis against each waiver provider's home and community-based services MR/DD medicaid waiver payments in an amount equal to the maximum rate allowable by federal law beginning with the effective date of this section. For gross revenues received by waiver providers from or on behalf of individuals with developmental disabilities who qualify for the waiver program but for whom the services defined under the waiver program are not reimbursed through such waiver, and the revenues received by waiver providers from or on behalf of individuals with developmental disabilities who do not qualify for the waiver program but for whom receive the same services offered under such waiver, the maximum rate allowable by federal law will be applied to the annual revenues received for such services for the waiver providers' preceding fiscal year.

(6) The ~~authority~~ *secretary of health and environment* shall collect any and all assessment pursuant to the provisions of this section. The ~~authority~~ *secretary of health and environment* shall adopt administrative rules and regulations necessary to implement and enforce the provisions of this section within 30 days of the CMS authorization. No rules and regulations of the ~~authority~~ *secretary of health and environment* shall grant any exception to or exemption from the waiver provider assessment.

(7) If a waiver provider fails to pay the full amount of the waiver provider assessment imposed pursuant to this subsection when due and payable, including any extensions of time granted, the ~~authority~~ *secretary of health and environment* shall impose a penalty in the amount of the lesser of \$500 per day or 2% of the assessment owed for the current fiscal year.

(c) (1) There is hereby created in the state treasury the quality based community assessment fund, which shall be administered by the ~~authority~~ *secretary of health and environment*. All moneys received or withheld for the assessment imposed pursuant to subsection (b) shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer

shall deposit the entire amount in the state treasury to the credit of the quality based community assessment fund. All expenditures from the quality based community assessment fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~authority~~*secretary of health and environment* or the ~~authority's~~*secretary's* designee.

(2) The quality based community assessment fund shall be a no limit fund and shall consist of:

(A) The assessments collected by the ~~authority~~*secretary of health and environment* under this section;

(B) any interest and penalties levied with the administration of this section; and,

(C) any other funds received as donations for the quality based community assessment fund and appropriations from other sources.

All moneys in the quality based community assessment fund shall be used solely as the nonfederal share of uniform percentage increases to the medicaid payment rates for waiver providers in order to maintain the quality of services provided to individuals qualifying under Kansas developmental disability waiver program. The fund will reimburse administrative expenses incurred by the ~~authority~~*department of health and environment* or its agent in performing the activities authorized by this section, except that such expenses shall not exceed a total of .5% of the aggregate assessment fees collected during the first fiscal year in which the assessment becomes effective for purposes of start-up costs. The fund shall reimburse the ~~authority~~*department of health and environment* or its agent in the amount of \$100,000 each year thereafter to administer the assessment program.

(3) No moneys credited to the fund shall be transferred to or otherwise revert to the state general fund at any time. Notwithstanding the provisions of any other law to the contrary, if any moneys credited to the quality based community assessment fund are transferred or otherwise revert to the state general fund, 30 days following the transfer or reversion, the waiver provider assessment shall terminate and the ~~authority~~*secretary of health and environment* shall discontinue the imposition, assessment and collection of the assessment. Upon termination of the assessment, any collected assessment revenues, including any moneys transferred or otherwise reverting to the state general fund which resulted in the termination of the assessment, less any administrative expenses incurred by the ~~authority~~*department of health and environment* under paragraph (2), shall be returned on a *pro rata* basis to waiver providers who paid the assessment.

(4) On or before the 10th day of each month, beginning with the first full month following the effective date of the waiver provider assessment, the director of accounts and reports shall transfer from the state general

fund to the quality based community assessment fund, interest earnings based on:

(A) The average daily balance of moneys in the fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) Any moneys received by the state of Kansas from the federal government as a result of federal financial participation in the state's developmental disability waiver program that are derived from the waiver provider assessment shall be used to maintain the quality of services provided by the waiver program.

(e) No moneys collected under the provisions of this section shall be used directly or indirectly to replace or supplant existing state expenditures for payments to waiver providers for services furnished to individuals with developmental disabilities.

(f) (1) The waiver provider assessment and associated uniform percentage increases for all waiver provider medicaid payment rates shall become effective on the first day of the first full month after which the CMS has adopted rules that recognize the waiver provider assessment as a permissible class of health care services on which states may impose such an assessment:

(A) Upon the approval from the CMS of any and all amendments to the medicaid state plan, medicaid developmental disability waiver program, or both, necessary to increase the rates of payments made to the waiver providers for providing services pursuant to the waiver program; and,

(B) the waiver providers have been compensated at the uniform percentage increased medicaid payment rates for services provided pursuant to the developmental disability waiver program for the period commencing on and after the authorization of the waiver provider assessment by the CMS.

(2) The ~~authority~~ *secretary of health and environment* shall implement and administer the provisions of subsections (a) through (e) in a manner consistent with applicable federal laws and regulations. The ~~authority~~ *secretary of health and environment* shall seek any necessary approvals of the federal government that are required for the implementation of subsections (a) through (e).

(3) The provisions of subsections (a) through (e) shall be null and void and shall have no force and effect if either of the following occurs:

(A) The medicaid state plan amendment or an amendment to the medicaid waiver program, or both, as applicable, that would otherwise authorize the uniform percentage increases to the medicaid rates of payment made to waiver providers for providing services pursuant to the developmental disability waiver programs and which is proposed for ap-

proval for purposes of subsections (a) through (e) is not approved by the CMS;

(B) the medicaid payment rates made to waiver providers for providing services pursuant to the developmental disability waiver program are reduced below the rates calculated on the day immediately preceding the effective date of this section, increased by revenues in the quality based community assessment fund and matched by federal financial participation. Nothing in this provision should be construed to preclude additional increases to the medicaid payment rates to waiver providers funded through state general fund appropriation;

(C) the medicaid eligibility criteria applicable to individuals qualifying under the Kansas developmental disability waiver program are reduced below the criteria in effect on the day immediately preceding the effective date of this section; or

(D) the medicaid services available to individuals qualifying under the Kansas developmental disability waiver program are reduced below the services available on the day immediately preceding the effective date of this section.

(g) If the provisions of subsections (a) through (e) are repealed, expire or become null and void and have no further force and effect, all moneys in the quality based community assessment fund which were paid under the provisions of subsections (a) through (e) shall be returned to the waiver provider which paid such moneys on the basis on which such payments were assessed and paid pursuant to subsections (a) through (e).

(h) The provisions of this section shall expire five years subsequent to the implementation of this section.

Sec. 55. K.S.A. 2011 Supp. 77-421 is hereby amended to read as follows: 77-421. (a) (1) Except as provided by subsection (a)(2), subsection (a)(3) or subsection (a)(4), prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations established by K.S.A. 77-436, and amendments thereto. The notice shall be provided to the secretary of state and to the chairperson, vice chairperson, ranking minority member of the joint committee and legislative research department and shall be published in the Kansas register. A complete copy of all proposed rules and regulations and the complete economic impact statement required by K.S.A. 77-416, and amendments thereto, shall accompany the notice sent to the secretary of state. The notice shall contain:

(A) A summary of the substance of the proposed rules and regulations;

(B) a summary of the economic impact statement indicating the estimated economic impact on governmental agencies or units, persons subject to the proposed rules and regulations and the general public;

(C) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed rules and regulations;

(D) the address where a complete copy of the proposed rules and regulations, the complete economic impact statement, the environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto, may be obtained;

(E) the time and place of the public hearing to be held; the manner in which interested parties may present their views; and

(F) a specific statement that the period of 60 days' notice constitutes a public comment period for the purpose of receiving written public comments on the proposed rules and regulations and the address where such comments may be submitted to the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and regulations.

(2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of the department of wildlife and parks shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(3) Prior to adopting any rule and regulation which establishes any permanent prior authorization on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state medicaid plan, and after such rule and regulation has been approved by the secretary of administration and the attorney general, the ~~Kansas health policy authority~~ *secretary of health and environment* shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(4) Prior to adopting any rule and regulation pursuant to subsection (c), the state agency shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of notice constitutes a public comment period on such rules and regulations.

(b) (1) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. At the time it adopts or amends a rule and regulation, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including:

(A) The agency's reasons for not accepting substantial arguments made in testimony and comments; and

(B) the reasons for any substantial change between the text of the proposed adopted or amended rule and regulation contained in the published notice of the proposed adoption or amendment of the rule and regulation and the text of the rule and regulation as finally adopted.

(2) Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of following the requirements or statutory procedure set out in such other law, may give notice and hold hearings on proposed rules and regulations in the manner prescribed by this section.

(3) Notwithstanding the other provisions of this section, the Kansas parole board and the secretary of corrections, may give notice or an opportunity to be heard to any inmate in the custody of the secretary of corrections with regard to the adoption of any rule and regulation, but the secretary shall not be required to give such notice or opportunity.

(c) (1) The agency shall initiate new rulemaking proceedings under this act, if a state agency proposes to adopt a final rule and regulation that:

(A) Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

(B) is not a logical outgrowth of the rule and regulation as originally proposed.

(2) In accordance with subsection (a), the period for public comment required by K.S.A. 77-421, and amendments thereto, may be shortened to not less than 30 days.

(3) For the purposes of this provision, a rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed if a person affected by the final rule and regulation was not put on notice that such person's interests were affected in the rulemaking.

(d) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a proposed rule and regulation, the agency shall cause written minutes or other records, including a record maintained on sound recording tape or on any electronically accessed media or any combination of written or electronically accessed media records of the hearing to be made. If the proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for not less than three years after its effective date, such minutes or other records, together with any recording, transcript or other record made of the hearing and a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.

(e) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

Sec. 56. K.S.A. 2011 Supp. 65-6208 is hereby amended to read as follows: 65-6208. (a) Subject to the provisions of K.S.A. 2011 Supp. 65-6209, and amendments thereto, an annual assessment on inpatient services is imposed on each hospital provider in an amount equal to 1.83% of each hospital's net inpatient operating revenue for the hospital's fiscal year ~~2001~~ 2010. In the event that a hospital does not have a complete twelve-month ~~2001~~ 2010 fiscal year, the assessment under this section shall be \$200,000 until such date that such hospital has completed the hospital's first twelve-month fiscal year. Upon completing such first twelve-month fiscal year, such hospital's assessment under this section shall be the amount equal to 1.83% of such hospital's net operating revenue for such first completed twelve-month fiscal year.

(b) Nothing in this act shall be construed to authorize any home rule unit or other unit of local government to license for revenue or impose a tax or assessment upon hospital providers or a tax or assessment measured by the income or earnings of a hospital provider.

Sec. 57. K.S.A. 22-4612 and K.S.A. 2011 Supp. 2-224a, 38-2001, 38-2006, 39-760, 39-7,116, 39-7,118, 39-7,119, 39-7,120, 39-7,121, 39-7,121a, 39-7,121d, 39-7,121e, 39-7,159, 39-968, 40-2134, 40-2136, 40-2251, 40-2252, 40-4702, 40-4706, 46-3501, 65-435a, 65-1685, 65-6208, 65-6801, 65-6803, 65-6804, 65-6805, 65-6806, 65-6807, 65-6809, 65-7405, 75-37,121, 75-5601, 75-6102, 75-7401, 75-7402, 75-7403, 75-7404, 75-7405, 75-7408, 75-7409, 75-7410, 75-7411, 75-7412, 75-7413, 75-7414, 75-7415, 75-7416, 75-7417, 75-7418, 75-7419, 75-7420, 75-7421, 75-7422, 75-7423, 75-7424, 75-7425, 75-7426, 75-7427, 75-7428, 75-

7429, 75-7430, 75-7433, 75-7435, 75-7436 and 77-421 are hereby repealed.

Sec. 58. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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### CHAPTER 103

#### HOUSE BILL No. 2706

AN ACT concerning appraisal of real property prior to state purchase or disposition; relating to open records; amending K.S.A. 75-3043a and K.S.A. 2011 Supp. 45-221 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2011 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2011 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private

persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

- (A) Is in the public interest;
- (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;
- (C) would not reveal the identity of any confidential source or undercover agent;
- (D) would not reveal confidential investigative techniques or procedures not known to the general public;
- (E) would not endanger the life or physical safety of any person; and
- (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition or disposal of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which re-

cords pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 *et seq.*, and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 *et seq.*, and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third-party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214). Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safe-house or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto.

This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for *ad valorem* taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically

prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 2. K.S.A. 75-3043a is hereby amended to read as follows: 75-3043a. Except as otherwise specifically provided by statute or *rule and regulation*, prior to the state of Kansas or any agency thereof purchasing or disposing of any real property, by deed, mortgage, gift or other means of conveyance, transfer or exchange, such property shall be appraised by ~~three (3) one~~ disinterested ~~appraisers~~ *appraiser*, to be appointed by the judicial administrator, to determine the market-value appraisal of such property; but nothing in this section shall be construed as establishing or limiting the consideration for the acquisition or disposition of any such property. *If the value of the real property is over \$200,000 as determined by the county assessment value of such property, the judicial administrator may appoint three disinterested appraisers to determine the market-value appraisal of such real property.* Any appraiser selected pursuant to this section shall receive reasonable fees or compensation from legislative appropriations made available therefor.

Sec. 3. K.S.A. 75-3043a and K.S.A. 2011 Supp. 45-221 are hereby repealed.

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

Approved April 12, 2012.

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## CHAPTER 104

### HOUSE BILL No. 2563\*

AN ACT concerning official state festivals; designating the official state wheat festival; official state watermelon festival.

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

Section 1. The annual Kansas wheat festival held in the city of Wellington, located in Sumner county, Kansas is hereby designated the official Kansas wheat festival.

Sec. 2. The annual watermelon festival held in the city of Clyde, located in Cloud county, Kansas is hereby designated the official Kansas watermelon festival.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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CHAPTER 105  
HOUSE BILL No. 2517

AN ACT concerning water; relating to the water right transition assistance program; amending K.S.A. 2011 Supp. 2-1930 and 2-1931 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 2-1930 is hereby amended to read as follows: 2-1930. (a) *As used in this section:*

(1) *“Division” means the Kansas department of agriculture division of conservation;*

(2) *“historic consumptive water use” means an amount of use of a water right as calculated pursuant to subsection (k); and*

(3) *“program” means the water right transition assistance program.*

(b) There is hereby established the water right transition assistance ~~pilot project program~~. The program shall be administered by the ~~state conservation commission~~ *Kansas department of agriculture division of conservation*. The Kansas department of agriculture; division of water resources and recognized local governing agencies, including groundwater management districts, shall cooperate in program implementation. The program shall be administered for the purpose of reducing *historic consumptive water* use in the target or high priority areas of the state by issuing water right transition grants *based on competitive bids* for privately held water rights.

~~(b)~~(c) (1) The ~~state conservation commission~~ *division* may receive and expend funds from the federal or state government, or private source for the purpose of carrying out the provisions of this section. The ~~state conservation commission and the participating groundwater management districts~~ *division* shall carry over unexpended funds from one fiscal year to the next.

(2) ~~Federal and state funds shall not exceed \$1,500,000 per year~~ *The maximum amount paid by the division shall not exceed a base rate per acre-foot of historic consumptive water use made available under the water right to be dismissed or permanently reduced. The state conservation commission shall establish an annual base rate after considering recommendations from the chief engineer and the groundwater management districts regarding market conditions.*

~~(3) State conservation commission expenditures for permanent par-~~

tial water right retirements shall not exceed 30% of the total amount of funds for the water right transition assistance pilot project program.

~~(c)(d)~~ The state conservation commission ~~division~~ may enter into water right transition assistance pilot project program contracts with landowners that will result in the permanent retirement-reduction of part or all of ~~landowner~~ a landowner's historic consumptive water use ~~water rights~~ by action of the chief engineer as provided for in subsection (f) ~~of this section~~.

~~(d)(e)~~ All applications for permanent irrigation water right retirements shall be considered for funding. *Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the local groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program.*

~~(e)(f)~~ Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program. ~~When prioritizing among water right applications for acceptance under the water right transition assistance pilot project, Applications for permanent water right retirement shall be prioritized for payment based on the following criteria:~~

- (1) *The applicant's bid price;*
- (2) *the timing and extent of the impact of the application on aquifer restoration or stream recovery;*
- (3) *the impact on local water management strategies designated by the board of each groundwater management district or by the chief engineer for each target area; and*
- (4) *where rights with similar hydrologic impacts are considered, priority should be given to the senior right as determined under the Kansas water appropriation act.*

~~(f)(g)~~ Water rights enrolled in the water right transition assistance pilot project program for permanent retirement shall require the written consent of all landowners and authorized agents to voluntarily request *permanent reduction or permanent* dismissal and forfeiture of priority of the enrolled water right. Upon enrollment of the water right into the water right transition assistance pilot project program, the chief engineer of the Kansas department of agriculture division of water resources shall concurrently *permanently reduce or permanently* dismiss and terminate the water right in accordance with the terms of the contract.

~~(g)(h)~~ (1) The state conservation commission ~~division~~ shall make water right transition grants available only in areas that have been designated as:

- (A) ~~Target or high priority~~ areas by the groundwater management

districts and the chief engineer of the Kansas department of agriculture division of water resources; or ~~priority~~

(B) ~~target~~ areas outside the groundwater management districts as designated by the chief engineer of the Kansas department of agriculture division of water resources.

(2) ~~Two of the target or high priority areas shall be the prairie dog creek area located in hydrologic unit code 10250015 and the rattlesnake creek subbasin located in hydrologic unit code 11030009. Each target area shall be in a groundwater aquifer, aquifer sub-unit, surface water basin, subbasin or stream reach that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five years or less and small-use exemptions for 15 acre-feet or less, if the use, permit or exemption does not conflict with this program.~~

(3) ~~The designation of each target area shall include the identification of a historic consumptive water use retirement goal. When such goal is reached, the target area will be delisted.~~

(4) ~~The designation of each target area shall include the identification of sub-regions which are to be prioritized for retirements among competing bids.~~

~~(h)(i)~~ (i) Contracts accepted under the water right transition assistance program shall result in a net reduction in *historic consumptive water use* equivalent to the amount of *historic consumptive use of the water right or rights enrolled in the program based on the average historic consumptive water use in the target area*. Except as provided for in subsections (i) and (j)(l) and (m), once a water right transition assistance ~~pilot project~~ program grant has been provided, the land authorized to be irrigated by the water right or water rights associated with that grant shall not be irrigated permanently. Water right transition assistance ~~pilot project~~ program contracts shall be subject to such terms, conditions and limitations as may be necessary to ensure that such reduction in *historic consumptive water use* occurs and can be adequately monitored and enforced.

(j) ~~“Historic consumptive water use” means~~ *Only vested or certified water rights which are in good standing shall be eligible for water right retirement grants. the average amount of water consumed by crops as a result of the lawful beneficial use of water for irrigation during four of the six preceding calendar years, with the highest and lowest years removed from the analysis. For purposes of this program, historic consumptive water use will be determined by multiplying the average reported water use for the four selected years by a factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drip irrigation systems, but not to exceed the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12.*

(k) (1) *The historic consumptive water use of a water right shall be determined by either:*

(A) *Calculating the average amount of water consumed by crops as a result of the lawful beneficial use of water during the 10 preceding calendar years of actual irrigation and multiplying the average reported water use for the 10 selected years by a factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drip irrigation systems, but not to exceed the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12; or*

(B) *calculating the available pumping capacity of a water right by multiplying a flow rate test for each point of diversion applied to be retired under the water right by a theoretical pumping duration of 100 days multiplied by an efficiency factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drip irrigation systems, but not to exceed the authorized quantity of the water right or the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12. Flow rate tests must have been conducted not less than one year prior to the application date and certified as acceptable by the local groundwater management district or the chief engineer; or*

(2) The applicant may also submit an engineering study that determines the average historic consumptive water use as an alternative method if it is demonstrated to be more accurate for the water right or water rights involved.

~~(i)(l)~~ Enrollment of an entire water right or a portion of a water right where land associated with the quantity is being permanently reduced from the water right, in the ~~water right transition assistance pilot project~~ program shall not subsequently prohibit irrigation of the land that, prior to enrollment, was authorized by the water right or water rights if irrigation can be lawfully allowed by another water right or permit pursuant to the rules and regulations and consideration of any future changes to other water rights that may be proposed to be transferred to such land.

~~(j)(m)~~ If more than one water right overlaps the place of use authorized by the water right proposed to be enrolled in the ~~water right transition assistance pilot project~~ program, then all overlapping water rights shall be enrolled in the ~~water right transition assistance pilot project~~ program or the landowners shall take the necessary lawful steps to eliminate the overlap with the water right to be enrolled. The burden shall be on the landowner to provide sufficient information to substantiate that the proposed use of water by the resulting exercise of all water rights involved will result in the net reduction amount of historic consumptive water use by the water right or water rights to be enrolled. The ~~state conservation commission~~ ~~division~~ may require such documentation to be provided by someone with special knowledge or experience related to water rights and such operations.

~~(k)(n)~~ The ~~state conservation commission~~ ~~division~~ shall adopt rules

and regulations as necessary for the administration of this section. When adopting such rules and regulations the ~~state conservation commission division~~ shall consider cropping, system design, metered water use and all other pertinent information that will permit a verifiable reduction in ~~annual water~~ *historic* consumptive *water* use and permit alternative crop or other use of the land so that the landowner's economic opportunities are taken into account.

~~(l) The state conservation commission shall report annually to the senate standing committee on natural resources and the house standing committee on environment on the economic impact studies being conducted on the reduction of water consumption and the financial impact on the communities within the program areas. Such studies shall include comparative data for areas and communities outside the program areas.~~

~~(m) The water right transition assistance pilot project program shall expire five years from the effective date of the fiscal year for which state moneys are appropriated thereof and approval of program rules and regulations.~~

~~(n) Water right transition assistance grants for water rights to remain unused for the contract period shall constitute due and sufficient cause for nonuse pursuant to K.S.A. 82a-718 and amendments thereto pursuant to the determination of the chief engineer for the duration of the water right transition assistance pilot project program contract.~~

~~(o) The state conservation commission division shall hold at least two meetings a meeting in each water right transition assistance pilot project program area target area designated after July 1, 2012, prior to entering into any water right transition assistance pilot project program contract for the permanent retirement of part or all of landowner historic consumptive use water rights in such target area. Such meetings shall inform the public of the possible economic and hydrologic impacts of the program. The state conservation commission division shall provide notice of such meetings through publication in local newspapers of record and in the Kansas register.~~

~~(p) The provisions of this section shall expire on July 1, 2022.~~

Sec. 2. K.S.A. 2011 Supp. 2-1931 is hereby amended to read as follows: 2-1931. (a) Any person who commits any of the following may incur a civil penalty as provided by this section:

(1) Any violation of the Kansas water right transition assistance ~~pilot project~~ program act or any rule and regulation adopted thereunder; and

(2) any violation of term, condition or limitation defined and or imposed within the contractual agreement between the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* and the water right owner.

(b) Any participant who violates any section of a water right transition

assistance ~~pilot project~~ program contract shall be subject to either one or both of the following:

(1) A civil penalty of not less than \$100 nor more than \$1,000 per violation. Each day shall constitute a separate violation for purposes of this section; and

(2) repayment of the grant amount in its entirety plus a penalty at ~~six percent~~ 6% of the full grant amount.

(c) Any penalties or reimbursements received under this act shall be reappropriated for use in the water right transition assistance ~~pilot project~~ program.

(d) *The provisions of this section shall expire on July 1, 2022.*

Sec. 3. K.S.A. 2011 Supp. 2-1930 and 2-1931 are hereby repealed.

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

Approved April 12, 2012.

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## CHAPTER 106

### HOUSE BILL No. 2516

AN ACT concerning water; relating to the Kansas water banking act; amending K.S.A. 2011 Supp. 82a-765, 82a-766 and 82a-767 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 82a-765 is hereby amended to read as follows: 82a-765. (a) Before a water bank is authorized to operate in the state, the bank's charter must be approved by the chief engineer. Prior to approval, the body wishing to charter the bank shall submit to the chief engineer the proposed bank charter and any other information required by rules and regulations of the chief engineer to determine whether the bank shall be chartered to operate in the state.

(b) The chief engineer shall approve the charter of a water bank only if the chief engineer determines that:

(1) The charter ensures that the operations and policies of the bank will be consistent with the provisions of this act, the state water plan and all applicable statutes, rules and regulations, findings and orders of the chief engineer, groundwater management district policies and water assurance district operations plans;

(2) there is sufficient participation by water right holders and water users to make the operations of the bank practical and feasible;

(3) the governing body of the bank has at least five members and is reasonably representative of public and private interests in water within the bank boundary;

(4) the bank would not lease or accept for placement in a safe deposit account water from the same hydrologic unit as another chartered bank or accept for deposit a water right that authorizes diversion of water from the same hydrologic unit as another chartered water bank;

(5) the charter ensures that, for each calendar year, the aggregate amount of all bank deposits~~—~~, determined by multiplying the amount of each water right deposited by the length of time of the deposit and then adding together the resulting amounts for all deposits~~—~~, will equal or exceed the sum of the aggregate amount of water leased by the bank~~—~~, determined by multiplying the amount of each lease by the length of time of the lease and then adding together the resulting amounts for all leases~~—~~, plus the aggregate conservation element of all leases~~—~~, determined by multiplying the conservation element of each lease by the length of the lease and then adding together the resulting amounts for all leases~~—~~;

(6) the charter ensures that the operations of the bank will not result in impairment of existing water rights or an increase in depletion of severely depleted groundwater aquifers or stream courses;

(7) the charter ensures that the operations of the bank will result in a savings of 10% or more in the total amount of groundwater consumed for a representative past period pursuant to water rights deposited in the bank, excluding groundwater located in an intensive groundwater use control area where corrective control provisions have reduced the allocation of groundwater to less than the quantity previously authorized by water rights in the area;

(8) the charter provides a procedure for resolution of complaints by bank participants and others impacted by the bank policies, practices and operations;

(9) the charter ensures that the determination of the portion of a water right that is bankable shall be subject to the following:

(A) The determination shall be primarily based on a representative period of average water consumption for the hydrologic unit from which water is authorized to be diverted under the water right; and

(B) the method of determination shall not penalize past implementation of water conservation practices;

(10) the charter ensures that the total amount of groundwater leased each year from each hydrologic unit does not exceed 90% of the historic average annual amount collectively diverted pursuant to all deposited water rights or portions of water rights from such unit for a representative past period; and

(11) the charter provides a procedure for the dissolution of the bank, specifically stating how the remaining deposits and safe deposit accounts will be distributed.

(c) ~~Prior to July 1, 2002, not more than one water bank shall be chartered to operate in the state. Such water bank shall be a groundwater bank. On or after July 1, 2002, one additional water bank may be char-~~

~~tered to operate in the state. Such water bank shall be a surface water bank or a surface water and groundwater bank.~~

~~(d)~~—A water bank shall be chartered for ~~a~~ *an initial* period of not more than seven years, at which time the bank shall be subject to review in accordance with K.S.A. 2011 Supp. 82a-767, and amendments thereto, to determine whether the ~~bank's charter shall be extended~~ *initial charter shall lapse or the bank shall be chartered*.

~~(e)~~~~(d)~~ Any amendment to the charter of a water bank must be approved by the chief engineer prior to adoption of the amendment.

Sec. 2. K.S.A. 2011 Supp. 82a-766 is hereby amended to read as follows: 82a-766. (a) On or before ~~February 10~~ *April 15* of each year, each water bank shall submit to the chief engineer a report containing the following:

(1) With regard to water rights or portions of water rights on deposit in the bank during the last year: (A) The total quantity of water authorized to be diverted annually pursuant to each such water right or portion of a water right; (B) the total quantity of water used, by purpose of use, and acres irrigated for the portion authorized to be used for irrigation, during the last year as a result of leases of such water rights or portions of water rights; and (C) the total quantity of water used, by purpose of use, and acres irrigated for the portion authorized for irrigation pursuant to such water rights or portions of water rights during the two years preceding the last year; and

(2) with regard to water in each safe deposit account in the bank: (A) An accounting of the total quantity of water placed in such accounts during the past year and a balance at year end; (B) the total quantity of water used during the past year, and acres irrigated if an irrigation water right, from the account; (C) the total quantity of water authorized to be diverted annually, the quantity actually used and the acres irrigated, if an irrigation water right, during the past year pursuant to the water rights or linked water rights related to such account; and (D) the total quantity of water used and acres irrigated pursuant to such water rights during the two years preceding the last year.

~~(b) The chief engineer may require owners of water rights deposited in a water bank, owners of water rights that have placed water in safety deposit accounts in a water bank and persons leasing water from a water bank to file annual water use reports at a date earlier than that provided by K.S.A. 82a-732, and amendments thereto.~~

~~(c)~~—The report required by this section shall be in the form prescribed by the chief engineer.

Sec. 3. K.S.A. 2011 Supp. 82a-767 is hereby amended to read as follows: 82a-767. (a) Not later than five years after the establishment of a water bank *or pursuant to subsection (e)*, the director of the Kansas water

office shall convene a team to evaluate the operation of the bank. The team shall consist of:

(1) The director of the Kansas water office, or the director's designee, who shall serve as chairperson of the team;

(2) the director of the Kansas geological survey, or the director's designee;

(3) two members who represent water right holders and water users who have used the bank's services, which members shall be selected by the governing body of the bank;

(4) members selected by the chief engineer as follows: (A) Two members engaged in teaching or research at institutions of postsecondary education in subjects involving water resources, including but not limited to water resources engineering and hydrology; (B) a member who is an economist with knowledge and experience in water resources; (C) one member having knowledge and experience in water law; and (D) two members having knowledge and experience in water policy issues and residing outside the bank boundary, who shall represent the public interest;

(5) one representative of each groundwater management district located in whole or in part within the bank boundary selected by the board of directors of such district; and

(6) one representative of each water assurance district located in whole or in part within the bank boundary selected by the board of directors of such district.

(b) The staff of the Kansas water office shall provide staff assistance to the evaluation team.

(c) Not more than one year after a team is convened pursuant to this section, the team shall submit a report of its evaluation and recommendations to the governor, the Kansas water office, the Kansas water authority, the secretary of agriculture, the chief engineer and the senate standing committee on natural resources and the house standing committee on environment, or the successors to such committees regarding:

(1) The operations and policies of the bank and whether they are consistent with the provisions of this act, the state water plan and all applicable statutes, rules and regulations, findings and orders of the chief engineer, groundwater management district policies and water assurance district operations plans;

(2) whether the operations of the bank are achieving the goals and objectives of water banking as set out in the state water plan and whether changes could be made to further those goals and objectives;

(3) *the bank's impact on the entire area of all hydrologic units, any parts of which are encompassed in the bank's boundary;*

(4) *any other matters the team determines relevant to the future of water banking in the state;*

~~(3)(5) whether the charter of the bank should be extended lapse, or the bank should become chartered; and~~

~~(4)(6) the terms under which the bank's charter should be allowed to lapse, if the team recommends that the charter not be extended;~~

~~(5) the bank's impact on the entire area of all hydrologic units any parts of which are encompassed in the bank's boundary; and~~

~~(6) any other matters that the team determines relevant to the future of water banking in the state.~~

(d) Unless otherwise provided by law, the chief engineer, in accordance with the recommendations of the team, may extend the charter of the bank ~~for an additional period not to exceed seven years~~ or may allow the bank charter to lapse under the terms recommended by the team.

(e) *If a bank is chartered, such charter shall be subject to review not less than every five years by a team convened as prescribed in subsection (a). The review team shall submit a report on the matters listed in subsections (c)(1) through (c)(4).*

Sec. 4. K.S.A. 2011 Supp. 82a-765, 82a-766 and 82a-767 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2012.

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## CHAPTER 107

SENATE BILL No. 134  
(Amended by Chapter 166)

AN ACT concerning prescription of drugs; relating to controlled substances, electronic prescription and the prescription monitoring program; amending K.S.A. 65-4123 and K.S.A. 2011 Supp. 65-1626, 65-1637, 65-1683, 65-1685, 65-1693, 65-4101, 65-4111 and 65-4113 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

- (1) A practitioner or pursuant to the lawful direction of a practitioner;
- (2) the patient or research subject at the direction and in the presence of the practitioner; or
- (3) a pharmacist as authorized in K.S.A. 65-1635a, and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not

include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) “Application service provider” means an entity that sells electronic prescription or pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server.

(d) “Authorized distributor of record” means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the internal revenue code, complies with any one of the following: (1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and (2) the wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

~~(d)~~(e) “Board” means the state board of pharmacy created by K.S.A. 74-1603, and amendments thereto.

~~(e)~~(f) “Brand exchange” means the dispensing of a different drug product of the same dosage form and strength and of the same generic name as the brand name drug product prescribed.

~~(f)~~(g) “Brand name” means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

~~(g)~~(h) “Chain pharmacy warehouse” means a permanent physical location for drugs or devices, or both, that acts as a central warehouse and performs intracompany sales or transfers of prescription drugs or devices to chain pharmacies that have the same ownership or control. Chain pharmacy warehouses must be registered as wholesale distributors.

~~(h)~~(i) “Co-licensee” means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug and the national drug code on the drug product label shall be used to determine the identity of the drug manufacturer.

(j) “DEA” means the U.S. department of justice, drug enforcement administration.

~~(i)~~(k) “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

~~(j)~~(l) “Direct supervision” means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient degree to assure that all such

activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

~~(k)~~(m) “Dispense” means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

~~(l)~~(n) “Dispenser” means a practitioner or pharmacist who dispenses prescription medication.

~~(m)~~(o) “Distribute” means to deliver, other than by administering or dispensing, any drug.

~~(n)~~(p) “Distributor” means a person who distributes a drug.

~~(o)~~(q) “Drop shipment” means the sale, by a manufacturer, that manufacturer’s co-licensee, that manufacturer’s third party logistics provider, or that manufacturer’s exclusive distributor, of the manufacturer’s prescription drug, to a wholesale distributor whereby the wholesale distributor takes title but not possession of such prescription drug and the wholesale distributor invoices the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug, and the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug receives delivery of the prescription drug directly from the manufacturer, that manufacturer’s co-licensee, that manufacturer’s third party logistics provider, or that manufacturer’s exclusive distributor, of such prescription drug. Drop shipment shall be part of the “normal distribution channel.”

~~(p)~~(r) “Drug” means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term “drug” shall not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated, prior to its repeal.

~~(q)~~(s) “Durable medical equipment” means technologically sophisticated medical devices that may be used in a residence, including the following: (1) Oxygen and oxygen delivery system; (2) ventilators; (3) respiratory disease management devices; (4) continuous positive airway pressure (CPAP) devices; (5) electronic and computerized wheelchairs and seating systems; (6) apnea monitors; (7) transcutaneous electrical nerve stimulator (TENS) units; (8) low air loss cutaneous pressure management devices; (9) sequential compression devices; (10) feeding pumps; (11)

home phototherapy devices; (12) infusion delivery devices; (13) distribution of medical gases to end users for human consumption; (14) hospital beds; (15) nebulizers; or (16) other similar equipment determined by the board in rules and regulations adopted by the board.

(t) *“Electronic prescription” means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.*

(u) *“Electronic prescription application” means software that is used to create electronic prescriptions and that is intended to be installed on the prescriber’s computers and servers where access and records are controlled by the prescriber.*

(v) *“Electronic signature” means a confidential personalized digital key, code, number or other method for secure electronic data transmissions which identifies a particular person as the source of the message, authenticates the signatory of the message and indicates the person’s approval of the information contained in the transmission.*

(w) *“Electronic transmission” means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber’s electronic prescription application to a pharmacy’s computer, where the data file is imported into the pharmacy prescription application.*

(x) *“Electronically prepared prescription” means a prescription that is generated using an electronic prescription application.*

~~(y)~~(y) *“Exclusive distributor” means any entity that: (1) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution or other services on behalf of a manufacturer and who takes title to that manufacturer’s prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer’s prescription drug; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must be an authorized distributor of record.*

~~(s) “Electronic transmission” means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.~~

~~(t)(z)~~(z) *“Facsimile transmission” or “fax transmission” means the transmission of a digital image of a prescription from the prescriber or the prescriber’s agent to the pharmacy. “Facsimile transmission” includes but is not limited to transmission of a written prescription between the prescriber’s fax machine and the pharmacy’s fax machine; transmission of an electronically prepared prescription from the prescriber’s electronic prescription application to the pharmacy’s fax machine, computer or printer; or transmission of an electronically prepared prescription from the prescriber’s fax machine to the pharmacy’s fax machine, computer or printer.*

(aa) *“Generic name” means the established chemical name or official name of a drug or drug product.*

~~(tt)~~(bb) (1) “Institutional drug room” means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

- (A) Inmates of a jail or correctional institution or facility;
- (B) residents of a juvenile detention facility, as defined by the revised Kansas code for care of children and the revised Kansas juvenile justice code;
- (C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

- (D) employees of a business or other employer; or
- (E) persons receiving inpatient hospice services.

(2) “Institutional drug room” does not include:

- (A) Any registered pharmacy;
- (B) any office of a practitioner; or
- (C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

~~(vv)~~(cc) “*Intermediary*” means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.

(dd) “Intracompany transaction” means any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership or control of a corporate entity, or any transaction or transfer between co-licensees of a co-licensed product.

~~(ww)~~(ee) “Medical care facility” shall have the meaning provided in K.S.A. 65-425, and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b, and amendments thereto, except community mental health centers and facilities for the mentally retarded.

~~(xx)~~(ff) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual’s own use or the preparation, compounding, packaging or labeling of a drug by:

(1) A practitioner or a practitioner’s authorized agent incident to such practitioner’s administering or dispensing of a drug in the course of the practitioner’s professional practice;

(2) a practitioner, by a practitioner’s authorized agent or under a prac-

itioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or

(3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

~~(y)~~(gg) "Manufacturer" means a person licensed or approved by the FDA to engage in the manufacture of drugs and devices.

~~(z)~~(hh) "*Mid-level practitioner*" means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

(ii) "Normal distribution channel" means a chain of custody for a prescription-only drug that goes from a manufacturer of the prescription-only drug, from that manufacturer to that manufacturer's co-licensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, directly or by drop shipment, to:

(1) A pharmacy to a patient or to other designated persons authorized by law to dispense or administer such drug to a patient;

(2) a wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(3) a wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(4) a chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

~~(aa)~~(jj) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

~~(bb)~~(kk) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

~~(cc)~~(ll) "Pharmacist-in-charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist-in-charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations.

Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(mm) *“Pharmacist intern” means: (1) A student currently enrolled in an accredited pharmacy program; (2) a graduate of an accredited pharmacy program serving an internship; or (3) a graduate of a pharmacy program located outside of the United States which is not accredited and who has successfully passed equivalency examinations approved by the board.*

~~(dd)~~(nn) *“Pharmacy,” “drugstore” or “apothecary” means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words “pharmacist,” “pharmaceutical chemist,” “pharmacy,” “apothecary,” “drugstore,” “druggist,” “drugs,” “drug sundries” or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign “Rx” may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.*

~~(cc)~~ *“Pharmacy student” means an individual, registered with the board of pharmacy, enrolled in a accredited school of pharmacy.*

(oo) *“Pharmacy prescription application” means software that is used to process prescription information, is installed on a pharmacy’s computers or servers, and is controlled by the pharmacy.*

~~(ff)~~(pp) *“Pharmacy technician” means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.*

~~(gg)~~(qq) *“Practitioner” means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.*

~~(hh)~~(rr) *“Preceptor” means a licensed pharmacist who possesses at least two years’ experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.*

~~(ii)~~ *“Prescription” means, according to the context, either a prescription order or a prescription medication.*

(ss) *“Prescriber” means a practitioner or a mid-level practitioner.*

~~(jj)~~(tt) *“Prescription” or “prescription order” means: (1) An order to*

*be filled by a pharmacist for prescription medication issued and signed by a prescriber in the authorized course of such prescriber's professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such prescriber, regardless of whether the communication is oral, electronic, facsimile or in printed form.*

(uu) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

~~(kk)~~(vv) "Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 U.S.C. § 353, ~~as amended~~), to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

~~(ll)~~ "Prescription order" means: ~~(1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.~~

~~(mm)~~(ww) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

~~(nn)~~(xx) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

~~(oo)~~(yy) "Readily retrievable" means *that records kept by automatic data processing applications or other electronic or mechanized record-keeping systems can be separated out from all other records within a reasonable time not to exceed 48 hours of a request from the board or other authorized agent or that hard-copy records are kept on which certain items are asterisked, redlined or in some other manner visually identifiable apart from other items appearing on the records.*

(zz) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or dis-

tributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

~~(pp)~~(aaa) “Secretary” means the executive secretary of the board.

~~(qq)~~(bbb) “Third party logistics provider” means an entity that: (1) Provides or coordinates warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug’s sale or disposition; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must also be an authorized distributor of record.

~~(rr)~~(ccc) “Unprofessional conduct” means:

- (1) Fraud in securing a registration or permit;
- (2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;
- (3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;
- (4) intentionally falsifying or altering records or prescriptions;
- (5) unlawful possession of drugs and unlawful diversion of drugs to others;
- (6) willful betrayal of confidential information under K.S.A. 65-1654, and amendments thereto;
- (7) conduct likely to deceive, defraud or harm the public;
- (8) making a false or misleading statement regarding the licensee’s professional practice or the efficacy or value of a drug;
- (9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee’s professional practice; or
- (10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

~~(ss)~~ “Mid-level practitioner” means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

~~(tt)~~(ddd) “Vaccination protocol” means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(~~eee~~) “Valid prescription order” means a prescription that is issued for a legitimate medical purpose by an individual prescriber licensed by law to administer and prescribe drugs and acting in the usual course of such prescriber’s professional practice. A prescription issued solely on the basis of an internet-based questionnaire or consultation without an appropriate prescriber-patient relationship is not a valid prescription order.

(~~ttt~~)(~~fff~~) “Veterinary medical teaching hospital pharmacy” means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a nonhuman.

(~~vvv~~)(~~ggg~~) “Wholesale distributor” means any person engaged in wholesale distribution of prescription drugs or devices in or into the state, including, but not limited to, manufacturers, repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, including manufacturers’ and distributors’ warehouses, co-licensees, exclusive distributors, third party logistics providers, chain pharmacy warehouses that conduct wholesale distributions, and wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distributions. Wholesale distributor shall not include persons engaged in the sale of durable medical equipment to consumers or patients.

(~~www~~)(~~hhh~~) “Wholesale distribution” means the distribution of prescription drugs or devices by wholesale distributors to persons other than consumers or patients, and includes the transfer of prescription drugs by a pharmacy to another pharmacy if the total number of units of transferred drugs during a twelve-month period does not exceed 5% of the total number of all units dispensed by the pharmacy during the immediately preceding twelve-month period. Wholesale distribution does not include:

(1) The sale, purchase or trade of a prescription drug or device, an offer to sell, purchase or trade a prescription drug or device or the dispensing of a prescription drug or device pursuant to a prescription;

(2) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device for emergency medical reasons;

(3) intracompany transactions, as defined in this section, unless in violation of own use provisions;

(4) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device among hospitals, chain pharmacy warehouses, pharmacies or other health care entities that are under common control;

(5) the sale, purchase or trade of a prescription drug or device or the offer to sell, purchase or trade a prescription drug or device by a charitable organization described in 503(c)(3) of the internal revenue code of

1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(6) the purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a prescription drug or device for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations;

(7) the transfer of prescription drugs or devices between pharmacies pursuant to a centralized prescription processing agreement;

(8) the sale, purchase or trade of blood and blood components intended for transfusion;

(9) the return of recalled, expired, damaged or otherwise non-salable prescription drugs, when conducted by a hospital, health care entity, pharmacy, chain pharmacy warehouse or charitable institution in accordance with the board's rules and regulations;

(10) the sale, transfer, merger or consolidation of all or part of the business of a retail pharmacy or pharmacies from or with another retail pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets, in accordance with the board's rules and regulations;

(11) the distribution of drug samples by manufacturers' and authorized distributors' representatives;

(12) the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use; or

(13) the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer, originating wholesale distributor or to a third party returns processor in accordance with the board's rules and regulations.

Sec. 2. K.S.A. 2011 Supp. 65-1637 is hereby amended to read as follows: 65-1637. (a) In every store, shop or other place defined in this act as a "pharmacy" there shall be a pharmacist-in-charge and, except as otherwise provided by law, the compounding and dispensing of prescriptions shall be limited to pharmacists only. ~~Except as otherwise provided by the pharmacy act of this state, when a pharmacist is not in attendance at a pharmacy, the premises shall be enclosed and secured. Prescription orders may be written, oral, telephonic or by electronic transmission unless prohibited by law. Blank forms for written prescription orders may have two signature lines. If there are two lines, one signature line shall state: "Dispense as written" and the other signature line shall state: "Brand exchange permissible." Prescriptions shall only be filled or refilled in accordance with the following requirements:~~

~~(a) All prescriptions shall be filled in strict conformity with any directions of the prescriber, except that a pharmacist who receives a pre-~~

scription order for a brand name drug product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser unless:

(1) ~~The prescriber, in the case of a prescription signed by the prescriber and written on a blank form containing two signature lines, signs the signature line following the statement "dispense as written," or~~

(2) ~~the prescriber, in the case of a prescription signed by the prescriber, writes in the prescriber's own handwriting "dispense as written" on the prescription, or~~

(3) ~~the prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates the prescription is to be dispensed as communicated, or~~

(4) ~~the federal food and drug administration has determined that a drug product of the same generic name is not bioequivalent to the prescribed brand name prescription medication.~~

(b) ~~Prescription orders shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be dispensed by the pharmacist. This record, if telephoned by other than the physician shall bear the name of the person so telephoning. Nothing in this paragraph shall be construed as altering or affecting in any way laws of this state or any federal act requiring a written prescription order.~~

(c) (1) ~~Except as provided in paragraph (2), no prescription shall be refilled unless authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist.~~

(2) ~~A pharmacist may refill a prescription order issued on or after the effective date of this act for any prescription drug except a drug listed on schedule II of the uniform controlled substances act or a narcotic drug listed on any schedule of the uniform controlled substances act without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety and welfare. Such prescription refill shall only be in an amount judged by the pharmacist to be sufficient to maintain the patient until the prescriber can be contacted, but in no event shall a refill under this paragraph be more than a seven day supply or one package of the drug. However, if the prescriber states on a prescription that there shall be no emergency refilling of that prescription, then the pharmacist shall not dispense any emergency medication pursuant to that prescription. A pharmacist who refills a prescription order under this subsection (c)(2) shall contact the prescriber of the prescription order on the next business day subsequent to the refill or as soon thereafter as possible. No pharmacist shall be required to refill any prescription order under this subsection (c)(2). A prescriber shall not be subject to liability for any damages re-~~

sulting from the refilling of a prescription order by a pharmacist under this subsection (c)(2) unless such damages are occasioned by the gross negligence or willful or wanton acts or omissions by the prescriber.

~~(d) If any prescription order contains a provision that the prescription may be refilled a specific number of times within or during any particular period, such prescription shall not be refilled except in strict conformity with such requirements.~~

~~(e) If a prescription order contains a statement that during any particular time the prescription may be refilled at will, there shall be no limitation as to the number of times that such prescription may be refilled except that it may not be refilled after the expiration of the time specified or one year after the prescription was originally issued, whichever occurs first.~~

~~(f) Any pharmacist who exercises brand exchange and dispenses a less expensive drug product shall not charge the purchaser more than the regular and customary retail price for the dispensed drug.~~

~~Nothing contained in this section shall be construed as preventing a pharmacist from refusing to fill or refill any prescription if in the pharmacist's professional judgment and discretion such pharmacist is of the opinion that it should not be filled or refilled~~

*(b) Except as otherwise provided by the pharmacy act of this state, when a pharmacist is not in attendance at a pharmacy, the premises shall be enclosed and secured.*

New Sec. 3. (a) The pharmacist shall exercise professional judgment regarding the accuracy, validity and authenticity of any prescription order consistent with federal and state laws and rules and regulations. A pharmacist shall not dispense a prescription drug if the pharmacist, in the exercise of professional judgment, determines that the prescription is not a valid prescription order.

(b) The prescriber may authorize an agent to transmit to the pharmacy a prescription order orally, by facsimile transmission or by electronic transmission provided that the first and last names of the transmitting agent are included in the order.

(c) (1) A new written or electronically prepared and transmitted prescription order shall be manually or electronically signed by the prescriber. If transmitted by the prescriber's agent, the first and last names of the transmitting agent shall be included in the order.

(2) If the prescription is for a controlled substance and is written or printed from an electronic prescription application, the prescription shall be manually signed by the prescriber prior to delivery of the prescription to the patient or prior to facsimile transmission of the prescription to the pharmacy.

(3) An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the prescription has been printed prior to

electronic transmission. An electronically prepared and transmitted prescription which is printed following electronic transmission shall be clearly labeled as a copy, not valid for dispensing.

(4) In consultation with industry, the state board of pharmacy shall conduct a study on the issues of electronic transmission of prior authorizations and step therapy protocols. The report on the results of such study shall be completed and submitted to the legislature no later than January 15, 2013.

(5) The board is hereby authorized to conduct pilot projects related to any new technology implementation when deemed necessary and practicable, except that no state moneys shall be expended for such purpose.

(d) An authorization to refill a prescription order or to renew or continue an existing drug therapy may be transmitted to a pharmacist through oral communication, in writing, by facsimile transmission or by electronic transmission initiated by or directed by the prescriber.

(1) If the transmission is completed by the prescriber's agent, and the first and last names of the transmitting agent are included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the refill order or renewal order differs in any manner from the original order, such as a change of the drug strength, dosage form or directions for use, the prescriber shall sign the order as provided by paragraph (1).

(e) Regardless of the means of transmission to a pharmacy, only a pharmacist or a pharmacist intern shall be authorized to receive a new prescription order from a prescriber or transmitting agent. A pharmacist, a pharmacist intern or a registered pharmacy technician may receive a refill or renewal order from a prescriber or transmitting agent if such registered pharmacy technician's supervising pharmacist has authorized that function.

(f) A refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription order.

(1) A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued.

(2) A prescription for a schedule III, IV or V controlled substance may authorize no more than five refills within six months following the date on which the prescription is issued.

(g) Prescriptions shall only be filled or refilled in accordance with the following requirements:

(1) All prescriptions shall be filled in strict conformity with any directions of the prescriber, except that a pharmacist who receives a prescription order for a brand name drug product may exercise brand

exchange with a view toward achieving a lesser cost to the purchaser unless:

(A) The prescriber, in the case of a prescription manually or electronically signed by the prescriber and prepared on a form containing two signature lines, signs the signature line following the statement “dispense as written”;

(B) the prescriber, in the case of a written prescription signed by the prescriber, writes in the prescriber’s own handwriting “dispense as written” on the prescription;

(C) the prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates the prescription is to be dispensed as communicated; or

(D) the federal food and drug administration has determined that a drug product of the same generic name is not bioequivalent to the prescribed brand name prescription medication.

(h) If a prescription order contains a statement that during any particular time the prescription may be refilled at will, there shall be no limitation as to the number of times that such prescription may be refilled except that it may not be refilled after the expiration of the time specified or one year after the prescription was originally issued, whichever occurs first.

(i) Prescription orders shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be dispensed by the pharmacist. This record, if telephoned by other than the prescriber, shall bear the name of the person so telephoning. Nothing in this section shall be construed as altering or affecting in any way laws of this state or any federal act requiring a written prescription order.

(j) (1) Except as provided in paragraph (2), no prescription shall be refilled unless authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist.

(2) A pharmacist may refill a prescription order issued on or after the effective date of this act for any prescription drug except a drug listed on schedule II of the uniform controlled substances act or a narcotic drug listed on any schedule of the uniform controlled substances act without the prescriber’s authorization when all reasonable efforts to contact the prescriber have failed and when, in the pharmacist’s professional judgment, continuation of the medication is necessary for the patient’s health, safety and welfare. Such prescription refill shall only be in an amount judged by the pharmacist to be sufficient to maintain the patient until the prescriber can be contacted, but in no event shall a refill under this paragraph be more than a seven day supply or one package of the drug. However, if the prescriber states on a prescription that there shall be no emergency refilling of that prescription, then the pharmacist shall not

dispense any emergency medication pursuant to that prescription. A pharmacist who refills a prescription order under this subsection (j)(2) shall contact the prescriber of the prescription order on the next business day subsequent to the refill or as soon thereafter as possible. No pharmacist shall be required to refill any prescription order under this subsection (j)(2). A prescriber shall not be subject to liability for any damages resulting from the refilling of a prescription order by a pharmacist under this subsection (j)(2) unless such damages are occasioned by the gross negligence or willful or wanton acts or omissions by the prescriber.

(k) If any prescription order contains a provision that the prescription may be refilled a specific number of times within or during any particular period, such prescription shall not be refilled except in strict conformity with such requirements.

(l) Any pharmacist who exercises brand exchange and dispenses a less expensive drug product shall not charge the purchaser more than the regular and customary retail price for the dispensed drug.

(m) Nothing contained in this section shall be construed as preventing a pharmacist from refusing to fill or refill any prescription if in the pharmacist's professional judgment and discretion such pharmacist is of the opinion that it should not be filled or refilled.

Sec. 4. K.S.A. 2011 Supp. 65-1683 is hereby amended to read as follows: 65-1683. (a) The board shall establish and maintain a prescription monitoring program for the monitoring of scheduled substances and drugs of concern dispensed in this state or dispensed to an address in this state.

(b) Each dispenser shall submit to the board by electronic means information required by the board regarding each prescription dispensed for a substance included under subsection (a). The board shall promulgate rules and regulations specifying the nationally recognized telecommunications format to be used for submission of information that each dispenser shall submit to the board. Such information may include, but not be limited to:

- (1) The dispenser identification number;
- (2) the date the prescription is filled;
- (3) the prescription number;
- (4) whether the prescription is new or is a refill;
- (5) the national drug code for the drug dispensed;
- (6) the quantity dispensed;
- (7) the number of days supply of the drug;
- (8) the patient identification number;
- (9) the patient's name;
- (10) the patient's address;
- (11) the patient's date of birth;
- (12) the prescriber identification number;

- (13) the date the prescription was issued by the prescriber; and
- (14) the source of payment for the prescription.

(c) The board shall promulgate rules and regulations specifying the transmission methods and frequency of the dispenser submissions required under subsection (b).

(d) The board may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided that all information required by rules and regulations is submitted in this alternative format.

(e) *The board is hereby authorized to apply for and to accept grants and may accept any donation, gift or bequest made to the board for furthering any phase of the prescription monitoring program.*

(f) *The board shall remit all moneys received by it under subsection (e) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the non-federal gifts and grants fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.*

Sec. 5. K.S.A. 2011 Supp. 65-1685 is hereby amended to read as follows: 65-1685. (a) The prescription monitoring program database, all information contained therein and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, shall be privileged and confidential, shall not be subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of entities charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern, shall not be a public record and shall not be subject to the Kansas open records act, K.S.A. 45-215 *et seq.*, and amendments thereto, except as provided in subsections (c) and (d).

(b) The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted and maintained is not disclosed to persons except as provided in subsections (c) and (d).

(c) The board is hereby authorized to provide data in the prescription monitoring program to the following persons:

(1) Persons authorized to prescribe or dispense scheduled substances and drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients;

(2) an individual who requests the individual's own prescription mon-

itoring information in accordance with procedures established by the board;

(3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern;

(4) local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing scheduled substances and drugs of concern subject to the requirements in K.S.A. 22-2502, and amendments thereto;

(5) designated representatives from the ~~Kansas health policy authority~~ *department of health and environment* regarding authorized medicaid program recipients;

(6) persons authorized by a grand jury subpoena, inquisition subpoena or court order in a criminal action;

(7) personnel of the prescription monitoring program advisory committee for the purpose of operation of the program; ~~and~~

(8) personnel of the board for purposes of administration and enforcement of this act or the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto;

(9) *persons authorized to prescribe or dispense scheduled substances and drugs of concern, when an individual is obtaining prescriptions in a manner that appears to be misuse, abuse or diversion of scheduled substances or drugs of concern; and*

(10) *medical examiners, coroners or other persons authorized under law to investigate or determine causes of death.*

(d) *The prescription monitoring program advisory committee established pursuant to K.S.A. 65-1689, and amendments thereto, is authorized to review and analyze the data for purposes of identifying patterns and activity of concern.*

(1) *If a review of information appears to indicate a person may be obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances and drugs of concern, the advisory committee is authorized to notify the prescribers and dispensers who prescribed or dispensed the prescriptions. If the review identifies patterns or other evidence sufficient to create a reasonable suspicion of criminal activity, the advisory committee is authorized to notify the appropriate law enforcement agency.*

(2) *If a review of information appears to indicate that a violation of state or federal law relating to prescribing controlled substances and drugs of concern may have occurred, or that a prescriber or dispenser has knowingly prescribed, dispensed or obtained controlled substances and drugs of concern in a manner that is inconsistent with recognized standards of care for the profession, the advisory committee shall determine whether a report to the professional licensing, certification or regulatory agencies*

*charged with administrative oversight of those persons engaged in prescribing or dispensing of controlled substances and drugs of concern or to the appropriate law enforcement agency is warranted.*

(A) *For purposes of such determination the advisory committee may, in consultation with the appropriate regulatory agencies and professional organizations, establish criteria regarding appropriate standards and utilize volunteer peer review committees of professionals with expertise in the particular practice to create such standards and review individual cases.*

(B) *The peer review committee or committees appointed herein shall have authority to request and receive information in the prescription monitoring program database from the director of the prescription monitoring program.*

(C) *If the determination is made that a referral to a regulatory or law enforcement agency is not warranted but educational or professional advising might be appropriate, the advisory committee may refer the prescribers or dispensers to other such resources.*

(e) The board is hereby authorized to provide data in the prescription monitoring program to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual practitioners, dispensers, patients or persons who received prescriptions from dispensers.

Sec. 6. K.S.A. 2011 Supp. 65-1693 is hereby amended to read as follows: 65-1693. (a) A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this act or knowingly submits incorrect prescription monitoring information shall be guilty of a severity level 10, nonperson felony.

(b) A person authorized to have prescription monitoring information pursuant to this act who knowingly discloses such information in violation of this act shall be guilty of a severity level 10, nonperson felony.

(c) A person authorized to have prescription monitoring information pursuant to this act who knowingly uses such information in a manner or for a purpose in violation of this act shall be guilty of a severity level 10, nonperson felony.

(d) *A person who knowingly, and without authorization, obtains or attempts to obtain prescription monitoring information shall be guilty of a severity level 10, nonperson felony.*

(e) It shall not be a violation of this act for a practitioner or dispenser to disclose or use information obtained pursuant to this act when such information is disclosed or used solely in the course of such practitioner's or dispenser's care of the patient who is the subject of the information.

Sec. 7. K.S.A. 2011 Supp. 65-4101 is hereby amended to read as follows: 65-4101. As used in this act: (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject

by: (1) A practitioner or pursuant to the lawful direction of a practitioner; or (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Application service provider" means an entity that sells electronic prescription or pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server.

~~(d)~~ "Board" means the state board of pharmacy.

~~(e)~~ "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

~~(f)~~ "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(g) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which such individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application;

or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug and cosmetic act, 21 U.S.C. § 355, to the extent conduct with respect to the substance is permitted by the exemption.

~~(h)~~ "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or

device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

~~(g)~~(i) *“Cultivate” means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.*

(j) *“DEA” mean the U.S. department of justice, drug enforcement administration.*

(k) *“Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.*

~~(h)~~(l) *“Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery, or pursuant to the prescription of a mid-level practitioner.*

~~(i)~~(m) *“Dispenser” means a practitioner or pharmacist who dispenses.*

~~(j)~~(n) *“Distribute” means to deliver other than by administering or dispensing a controlled substance.*

~~(k)~~(o) *“Distributor” means a person who distributes.*

~~(l)~~(p) *“Drug” means:*

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances, ~~other than food~~, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts or accessories.

~~(m)~~(q) *“Immediate precursor” means a substance which the board has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.*

~~(n)~~(r) *“Electronic prescription” means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.*

(s) *“Electronic prescription application” means software that is used to create electronic prescriptions and that is intended to be installed on the prescriber’s computers and servers where access and records are controlled by the prescriber.*

(t) *“Electronic signature” means a confidential personalized digital*

key, code, number or other method for secure electronic data transmissions which identifies a particular person as the source of the message, authenticates the signatory of the message and indicates the person's approval of the information contained in the transmission.

(u) "Electronic transmission" means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber's electronic prescription application to a pharmacy's computer, where the data file is imported into the pharmacy prescription application.

(v) "Electronically prepared prescription" means a prescription that is generated using an electronic prescription application.

(w) "Facsimile transmission" or "fax transmission" means the transmission of a digital image of a prescription from the prescriber or the prescriber's agent to the pharmacy. "Facsimile transmission" includes, but is not limited to, transmission of a written prescription between the prescriber's fax machine and the pharmacy's fax machine; transmission of an electronically prepared prescription from the prescriber's electronic prescription application to the pharmacy's fax machine, computer or printer; or transmission of an electronically prepared prescription from the prescriber's fax machine to the pharmacy's fax machine, computer or printer.

(x) "Intermediary" means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

~~(aa)~~ (aa) "Marijuana" means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include

the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

~~(p)~~(bb) “Medical care facility” shall have the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto.

(cc) “Mid-level practitioner” means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed under the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

(dd) “Narcotic drug” means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

~~(q)~~(ee) “Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

~~(r)~~(ff) “Opium poppy” means the plant of the species *Papaver somniferum* L. except its seeds.

~~(s)~~(gg) “Person” means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

~~(t)~~(hh) “Pharmacist” means any natural person licensed under K.S.A. 65-1625 et seq., to practice pharmacy.

(ii) “Pharmacist intern” means: (1) A student currently enrolled in an accredited pharmacy program; (2) a graduate of an accredited pharmacy program serving such person’s internship; or (3) a graduate of a pharmacy program located outside of the United States which is not accredited and who had successfully passed equivalency examinations approved by the board.

(jj) “Pharmacy prescription application” means software that is used to process prescription information, is installed on a pharmacy’s computers and servers, and is controlled by the pharmacy.

(kk) “Poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.

~~(u) “Pharmacist” means an individual currently licensed by the board to practice the profession of pharmacy in this state.~~

~~(v)~~(ll) “Practitioner” means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

~~(w)~~(mm) “Prescriber” means a practitioner or a mid-level practitioner.

(nn) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

~~(x)~~(oo) “Readily retrievable” means that records kept by automatic data processing applications or other electronic or mechanized record-keeping systems can be separated out from all other records within a reasonable time not to exceed 48 hours of a request from the board or other authorized agent or that hard-copy records are kept on which certain items are asterisked, redlined or in some other manner visually identifiable apart from other items appearing on the records.

(pp) “Ultimate user” means a person who lawfully possesses a controlled substance for such person’s own use or for the use of a member of such person’s household or for administering to an animal owned by such person or by a member of such person’s household.

~~(y) “Isomer” means all enantiomers and diastereomers.~~

~~(z) “Medical care facility” shall have the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto.~~

~~(aa) “Cultivate” means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.~~

~~(bb) (1) “Controlled substance analog” means a substance that is intended for human consumption, and:~~

~~(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;~~

~~(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or~~

~~(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.~~

~~(2) "Controlled substance analog" does not include:~~

~~(A) A controlled substance;~~

~~(B) a substance for which there is an approved new drug application;~~

~~or~~

~~(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. § 355) to the extent conduct with respect to the substance is permitted by the exemption.~~

~~(cc) "Mid-level practitioner" means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed under the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.~~

Sec. 8. K.S.A. 2011 Supp. 65-4111 is hereby amended to read as follows: 65-4111. (a) The controlled substances listed in this section are included in schedule IV and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any material, compound, mixture or preparation which contains any quantity of the following substances including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation and having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alprazolam .....	2882
(2) Barbitol .....	2145
(3) Bromazepam .....	2748
(4) Camazepam .....	2749
(5) Carisoprodol .....	8192
<del>(5)(6)</del> Chloral betaine .....	2460

<del>(6)</del> (7)	Chloral hydrate.....	2465
<del>(7)</del> (8)	Chlordiazepoxide .....	2744
<del>(8)</del> (9)	Clobazam.....	2751
<del>(9)</del> (10)	Clonazepam.....	2737
<del>(10)</del> (11)	Clorazepate .....	2768
<del>(11)</del> (12)	Clotiazepam.....	2752
<del>(12)</del> (13)	Cloxazolam .....	2753
<del>(13)</del> (14)	Delorazepam .....	2754
<del>(14)</del> (15)	Diazepam .....	2765
<del>(15)</del> (16)	Dichloralphenazone .....	2467
<del>(16)</del> (17)	Estazolam.....	2756
<del>(17)</del> (18)	Ethchlorvynol.....	2540
<del>(18)</del> (19)	Ethinamate .....	2545
<del>(19)</del> (20)	Ethyl loflazepate.....	2758
<del>(20)</del> (21)	Fludiazepam .....	2759
<del>(21)</del> (22)	Flunitrazepam.....	2763
<del>(22)</del> (23)	Flurazepam .....	2767
<del>(23)</del> (24)	Fospropofol .....	2138
<del>(24)</del> (25)	Halazepam .....	2762
<del>(25)</del> (26)	Haloxazolam .....	2771
<del>(26)</del> (27)	Ketazolam .....	2772
<del>(27)</del> (28)	Loprazolam.....	2773
<del>(28)</del> (29)	Lorazepam .....	2885
<del>(29)</del> (30)	Lormetazepam .....	2774
<del>(30)</del> (31)	Mebutamate .....	2800
<del>(31)</del> (32)	Medazepam .....	2836
<del>(32)</del> (33)	Meprobamate .....	2820
<del>(33)</del> (34)	Methohexital.....	2264
<del>(34)</del> (35)	Methylphenobarbital (mephobarbital).....	2250
<del>(35)</del> (36)	Midazolam.....	2884
<del>(36)</del> (37)	Nimetazepam.....	2837
<del>(37)</del> (38)	Nitrazepam.....	2834
<del>(38)</del> (39)	Nordiazepam .....	2838
<del>(39)</del> (40)	Oxazepam.....	2835
<del>(40)</del> (41)	Oxazolam .....	2839
<del>(41)</del> (42)	Paraldehyde.....	2585
<del>(42)</del> (43)	Petrichloral .....	2591
<del>(43)</del> (44)	Phenobarbital.....	2285
<del>(44)</del> (45)	Pinazepam .....	2883
<del>(45)</del> (46)	Prazepam .....	2764
<del>(46)</del> (47)	Quazepam .....	2881
<del>(47)</del> (48)	Temazepam .....	2925
<del>(48)</del> (49)	Tetrazepam.....	2886
<del>(49)</del> (50)	Triazolam .....	2887
<del>(50)</del> (51)	Zolpidem.....	2783

<del>(51)</del> (52)	Zaleplon .....	2781
<del>(52)</del> (53)	Zopiclone .....	2784

(c) Any material, compound, mixture, or preparation which contains any quantity of fenfluramine (1670), including its salts, isomers (whether optical, position or geometric) and salts of such isomers, whenever the existence of such salts, isomers and salts of isomers is possible. The provisions of this subsection (c) shall expire on the date fenfluramine and its salts and isomers are removed from schedule IV of the federal controlled substances act (21 U.S.C. § 812; 21 code of federal regulations 1308.14).

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1)	Cathine ((+)-norpseudoephedrine) .....	1230
(2)	Diethylpropion .....	1610
(3)	Fencamfamin .....	1760
(4)	Fenproporex .....	1575
(5)	Mazindol .....	1605
(6)	Mefenorex .....	1580
(7)	Pemoline (including organometallic complexes and chelates thereof) .....	1530
(8)	Phentermine .....	1640

The provisions of this subsection (d)(8) shall expire on the date phentermine and its salts and isomers are removed from schedule IV of the federal controlled substances act (21 U.S.C. § 812; 21 code of federal regulations 1308.14).

(9)	Pipradrol.....	1750
(10)	SPA((-)-1-dimethylamino-1, 2-diphenylethane) ...	1635
(11)	Sibutramine.....	1675
(12)	Mondafinil .....	1680

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following, including salts thereof:

(1)	Pentazocine .....	9709
(2)	Butorphanol (including its optical isomers) .....	9720

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit ..... 9167
- (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propion-oxybutane)..... 9278

(g) Butyl nitrite and its salts, isomers, esters, ethers or their salts.

(h) The board may except by rule and regulation any compound, mixture or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this act if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Sec. 9. K.S.A. 2011 Supp. 65-4113 is hereby amended to read as follows: 65-4113. (a) The controlled substances or drugs, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section are included in schedule V.

(b) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- (6) Not more than .5 milligram of difenoxin (9168) and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Propylhexedrine (except when part of a compound used for nasal decongestion which is authorized to be sold lawfully over the counter without a prescription under the federal food, drug and cosmetic act, so long as it is used only for such purpose) .... 8161
- (2) Pyrovalerone ..... 1485
- (d) Any compound, mixture or preparation containing any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers.
- (e) Any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.
- (f) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:
  - (1) *Ezogabine N-[2-amino-4(4-fluorobenzylamino)-phenyl]-carbamate ethyl ester* ..... 2779
  - (1)(2) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide] ..... 2746
  - (2)(3) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid] ..... 2782

Sec. 10. K.S.A. 65-4123 is hereby amended to read as follows: 65-4123. (a) Except as otherwise provided in K.S.A. 65-4117, and amendments thereto, or in this subsection (a), no schedule I controlled substance may be dispensed. The board by rules and regulations may designate in accordance with the provisions of this subsection (a) a schedule I controlled substance as a schedule I designated prescription substance. ~~A schedule I controlled substance designated as a schedule I designated prescription substance may be dispensed only upon the written prescription of a practitioner. Prior to designating a schedule I controlled substance as a schedule I designated prescription substance, the board shall find: (1) That the schedule I controlled substance has an accepted medical use in treatment in the United States; (2) that the public health will benefit by the designation of the substance as a schedule I designated prescription substance; and (3) that the substance may be sold lawfully under federal law pursuant to a prescription. No prescription for a schedule I designated prescription substance may be refilled.~~

(b) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written *or electronic* prescription of a ~~practitioner or a mid-level practitioner-prescriber~~. In emergency situations, as defined by rules and regulations of the board, schedule II drugs may be dispensed upon oral prescription of a ~~practitioner or a mid-level practitioner pre-~~

scriber reduced promptly to writing or transmitted electronically and filed by the pharmacy. No prescription for a schedule II substance may be refilled.

(c) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III, ~~or~~ IV or V which is a prescription drug shall not be dispensed without ~~a written or oral prescription of a practitioner or a mid-level practitioner~~ either a paper prescription manually signed by a prescriber, a facsimile of a manually signed paper prescription transmitted by the prescriber or the prescriber's agent to the pharmacy, an electronic prescription that has been digitally signed by a prescriber with a digital certificate, or an oral prescription made by an individual prescriber and promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times.

(d) A controlled substance shall not be distributed or dispensed ~~other than for a medical purpose. Prescriptions shall be retained in conformity with the requirements of K.S.A. 65-4121 and amendments thereto~~ except by a valid prescription order as defined in K.S.A. 65-1626, and amendments thereto. Electronic prescriptions shall be retained electronically for five years from the date of their creation or receipt. The records must be readily retrievable from all other records and easily rendered into a format a person can read. Paper, oral and facsimile prescriptions shall be maintained as a hard copy for five years at the registered location.

New Sec. 11. A controlled substance listed in schedules II through V, excluding schedule V nonnarcotic depressants that have an effect on the central nervous system, shall not be distributed on a gratuitous basis by a manufacturer or distributor to a practitioner, mid-level practitioner, pharmacist or any other person.

Sec. 12. K.S.A. 65-4123 and K.S.A. 2011 Supp. 65-1626, 65-1637, 65-1683, 65-1685, 65-1693, 65-4101, 65-4111 and 65-4113 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 4, 2012.

Published in the *Kansas Register* May 17, 2012.

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## CHAPTER 108

## HOUSE BILL No. 2777

AN ACT concerning state institutions; relating to special education and related services provided by the state school for the blind and the state school for the deaf; amending K.S.A. 76-1006 and 76-1102 and K.S.A. 2011 Supp. 72-978 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 72-978 is hereby amended to read as follows: 72-978. (a) Each year, the state board of education shall determine the amount of state aid for the provision of special education and related services each school district shall receive for the ensuing school year. The amount of such state aid shall be computed by the state board as provided in this section. The state board shall:

(1) Determine the total amount of general fund and local option budgets of all school districts;

(2) subtract from the amount determined in paragraph (1) the total amount attributable to assignment of transportation weighting, program weighting, special education weighting and at-risk pupil weighting to enrollment of all school districts;

(3) divide the remainder obtained in paragraph (2) by the total number of full-time equivalent pupils enrolled in all school districts on September 20;

(4) determine the total full-time equivalent enrollment of exceptional children receiving special education and related services provided by all school districts;

(5) multiply the amount of the quotient obtained in paragraph (3) by the full-time equivalent enrollment determined in paragraph (4);

(6) determine the amount of federal funds received by all school districts for the provision of special education and related services;

(7) determine the amount of revenue received by all school districts rendered under contracts with the state institutions for the provisions of special education and related services by the state institution;

(8) add the amounts determined under paragraphs (6) and (7) to the amount of the product obtained under paragraph (5);

(9) determine the total amount of expenditures of all school districts for the provision of special education and related services;

(10) subtract the amount of the sum obtained under paragraph (8) from the amount determined under paragraph (9); and

(11) multiply the remainder obtained under paragraph (10) by 92%.

The computed amount is the amount of state aid for the provision of special education and related services aid a school district is entitled to receive for the ensuing school year.

(b) Each school district shall be entitled to receive:

(1) Reimbursement for actual travel allowances paid to special teachers at not to exceed the rate specified under K.S.A. 75-3203, and amend-

ments thereto, for each mile actually traveled during the school year in connection with duties in providing special education or related services for exceptional children; such reimbursement shall be computed by the state board by ascertaining the actual travel allowances paid to special teachers by the school district for the school year and shall be in an amount equal to 80% of such actual travel allowances;

(2) reimbursement in an amount equal to 80% of the actual travel expenses incurred for providing transportation for exceptional children to special education or related services; such reimbursement shall not be paid if such child has been counted in determining the transportation weighting of the district under the provisions of the school district finance and quality performance act;

(3) reimbursement in an amount equal to 80% of the actual expenses incurred for the maintenance of an exceptional child at some place other than the residence of such child for the purpose of providing special education or related services; such reimbursement shall not exceed \$600 per exceptional child per school year; and

(4) (A) subject to the provisions of subsection (f) and except for those school districts entitled to receive reimbursement under subsection (c) or (d), after subtracting the amounts of reimbursement under paragraphs (1), (2) and (3) of ~~this~~ subsection (a) from the total amount appropriated for special education and related services under this act, an amount which bears the same proportion to the remaining amount appropriated as the number of full-time equivalent special teachers who are qualified to provide special education or related services to exceptional children and are employed by the school district for approved special education or related services bears to the total number of such qualified full-time equivalent special teachers employed by all school districts for approved special education or related services.

(B) Each special teacher who is qualified to assist in the provision of special education or related services to exceptional children shall be counted as  $\frac{2}{3}$  full-time equivalent special teacher who is qualified to provide special education or related services to exceptional children.

(C) *For purposes of this paragraph (4), a special teacher, qualified to assist in the provision of special education and related services to exceptional children, who assists in providing special education and related services to exceptional children at either the state school for the blind or the state school for the deaf and whose services are paid for by a school district pursuant to K.S.A. 76-1006 or 76-1102, and amendments thereto, shall be considered a special teacher of such school district.*

(c) Each school district which has paid amounts for the provision of special education and related services under an interlocal agreement shall be entitled to receive reimbursement under subsection (b)(4). The amount of such reimbursement for the district shall be the amount which bears the same relation to the aggregate amount available for reimburse-

ment for the provision of special education and related services under the interlocal agreement, as the amount paid by such district in the current school year for provision of such special education and related services bears to the aggregate of all amounts paid by all school districts in the current school year who have entered into such interlocal agreement for provision of such special education and related services.

(d) Each contracting school district which has paid amounts for the provision of special education and related services as a member of a cooperative shall be entitled to receive reimbursement under subsection (b)(4). The amount of such reimbursement for the district shall be the amount which bears the same relation to the aggregate amount available for reimbursement for the provision of special education and related services by the cooperative, as the amount paid by such district in the current school year for provision of such special education and related services bears to the aggregate of all amounts paid by all contracting school districts in the current school year by such cooperative for provision of such special education and related services.

(e) No time spent by a special teacher in connection with duties performed under a contract entered into by the Kansas juvenile correctional complex, the Atchison juvenile correctional facility, the Larned juvenile correctional facility, or the Topeka juvenile correctional facility and a school district for the provision of special education services by such state institution shall be counted in making computations under this section.

(f) (1) In school year 2012-2013 and in each school year thereafter, the state board of education shall determine the minimum and maximum amount of state aid that a school district may receive under paragraph (4) of subsection (b) for the current school year as follows:

(A) Determine the total amount of moneys appropriated as state aid for the provision of special education and related services to all school districts for the current school year;

(B) subtract the amount of moneys paid to all school districts under paragraphs (1), (2) and (3) of subsection (b) of this section, K.S.A. 72-983 and K.S.A. 2011 Supp. 72-998, and amendments thereto, for the current school year;

(C) divide the remainder obtained under *subparagraph* (B) by the total full-time equivalent enrollment of all school districts in the current school year;

(2) (A) multiply the quotient obtained under *subparagraph* (1)(C) by the full-time equivalent enrollment of the school district in the current school year;

(B) multiply the product obtained under ~~(2)~~*subparagraph* (A) by .75. The product is the minimum amount of state aid the district may receive under paragraph (4) of subsection (b) for the current school year;

(C) multiply the quotient obtained under ~~(2)~~*subparagraph* (A) by

1.50. The product is the maximum amount of state aid the district may receive under paragraph (4) of subsection (b) for the current school year.

(3) If the amount determined under paragraph (4) of subsection (b) is less than the product obtained under *subparagraph* (2)(B), the district shall receive state aid in an amount equal to the product obtained under *subparagraph* (2)(B), plus any amount determined under paragraph (5) of this subsection.

(4) If the amount determined under paragraph (4) of subsection (b), plus any amount determined under paragraph (5) of this subsection, is greater than the product obtained under *subparagraph* (2)(C), the district shall receive state aid in an amount equal to the product obtained under *subparagraph* (2)(C). The balance of state aid remaining after determining the amount of state aid payable to districts under this paragraph shall be reallocated to districts as provided by paragraph (5) of this subsection.

(5) The balance of state aid remaining after determining the amount of state aid payable to districts under paragraph (4) of this subsection shall be reallocated to districts which have not received state aid in an amount equal to the product obtained under *subparagraph* (2)(B). Such state aid shall be reallocated to such districts in the same manner as the original allocation. If the balance is insufficient to pay each such district the minimum amount specified in this subsection, the state board shall prorate the balance among such districts.

(6) The provisions of this subsection (f) shall expire on June 30, 2014.

Sec. 2. K.S.A. 76-1006 is hereby amended to read as follows: 76-1006.

(a) The state board of education shall fix tuition, fees and charges for maintenance to be collected from each student attending the Kansas state school for the deaf who is not a resident of the state.

(b) *Except as provided in subsection (c)*, students who are residents of the state shall not be charged tuition, fees or for maintenance, but may be charged student activity fees. If student activity fees are charged, such fees shall be approved by the state board of education and the funds collected shall be set apart and used for the purpose of supporting student activities.

(c) *The state board of education may charge a home school district for the provision of special education and related services provided by a special teacher, who is qualified to assist in the provision of special education and related services, when such special teacher is required to be provided by the state school for the deaf pursuant to a student's individualized education program.*

(d) *For purposes of this section:*

(1) *The terms "individualized education program" and "special teacher" shall have the same meanings as defined in K.S.A. 72-962, and amendments thereto.*

(2) *"Home school district" means the school district in which the stu-*

*dent resides and would otherwise be enrolled if the student did not attend the state school for the deaf.*

Sec. 3. K.S.A. 76-1102 is hereby amended to read as follows: 76-1102.

(a) The state board of education shall fix tuition, fees and charges for maintenance to be collected from each student attending the Kansas state school for the blind who is not a resident of the state.

(b) *Except as provided in subsection (c), students who are residents of the state shall not be charged tuition, fees or for maintenance but may be charged student activity fees. If student activity fees are charged, such fees shall be approved by the state board of education and the funds collected shall be set apart and used for the purpose of supporting student activities.*

(c) *The state board of education may charge a home school district for the provision of special education and related services provided by a special teacher, who is qualified to assist in the provision of special education and related services, when such special teacher is required to be provided by the state school for the blind pursuant to a student's individualized education program.*

(d) *For purposes of this section:*

(1) *The terms "individualized education program" and "special teacher" shall have the same meanings as defined in K.S.A. 72-962, and amendments thereto.*

(2) *"Home school district" means the school district in which the student resides and would otherwise be enrolled if the student did not attend the state school for the blind.*

Sec. 4. K.S.A. 76-1006 and 76-1102 and K.S.A. 2011 Supp. 72-978 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 8, 2012.

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CHAPTER 109  
HOUSE BILL No. 2631

AN ACT concerning dental care; amending K.S.A. 2011 Supp. 65-1424, 65-1456 and 75-6102 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 65-1424 is hereby amended to read as follows: 65-1424. (a) As used in this act:

(1) "Proprietor" means any person who employs dentists or dental hygienists in the operation of a dental office.

(2) “Dental franchisor” means any person or entity, pursuant to a written agreement, who provides a licensed dentist any dental practice management consulting services, which may include marketing or advertising services, signage or branding consulting, or places in possession of a licensed dentist such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation. A person or entity is not a dental franchisor if the agreement with the dentist:

(A) Permits the person or entity to interfere with the professional judgment of the dentist; or

(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law.

(3) “Unlicensed proprietor” means any person or entity not authorized to own or operate a dental practice that enters into an agreement with a dentist or dental hygienist related to the practice of dentistry or dental hygiene which:

(A) Permits the person or entity to interfere with the professional judgment of the dentist; or

(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law.

A licensee of dentistry who enters into any arrangement with an unlicensed proprietor may have such license limited, suspended or revoked by the board.

(b) The estate or agent for a deceased or substantially disabled dentist may employ dentists, for a period of not more than ~~one year~~ *18 months following the date of death or substantial disability of the dentist*, to provide service to patients until the practice can be sold or closed. *Upon application showing good cause, including, but not limited to, evidence of a good faith effort to sell or close the dental practice, the Kansas dental board may extend the time in six-month increments for a period of not more than one additional year for which the practice can be sold or closed. The Kansas dental board may adopt rules and regulations as necessary to carry out the provisions of this section.*

Sec. 2. On and after July 1, 2012, K.S.A. 2011 Supp. 65-1456 is hereby amended to read as follows: 65-1456. (a) The board may suspend or revoke the license of any dentist who shall permit any dental hygienist operating under such dentist’s supervision to perform any operation other than that permitted under the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, ~~or acts amendatory thereof and amendments thereto~~, and may suspend or revoke the license of any hygienist found guilty of performing any operation other than those permitted under article 14 of chapter 65 of the Kansas Statutes Annotated, ~~or acts~~

~~amendatory thereof~~ *and amendments thereto*. No license of any dentist or dental hygienist shall be suspended or revoked in any administrative proceedings without first complying with the notice and hearing requirements of the Kansas administrative procedure act.

(b) The practice of dental hygiene shall include those educational, preventive, and therapeutic procedures which result in the removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the *gingival sulci*. Included among those educational, preventive and therapeutic procedures are the instruction of the patient as to daily personal care, protecting the teeth from dental caries, the scaling and polishing of the crown surfaces and the planing of the root surfaces, in addition to the curettage of those soft tissues lining the free *gingiva* to the depth of the *gingival sulcus* and such additional educational, preventive and therapeutic procedures as the board may establish by rules and regulations.

(c) Subject to such prohibitions, limitations and conditions as the board may prescribe by rules and regulations, any licensed dental hygienist may practice dental hygiene and may also perform such dental service as may be performed by a dental assistant under the provisions of K.S.A. 65-1423, and amendments thereto.

(d) Except as otherwise provided in this section, the practice of dental hygiene shall be performed under the direct or general supervision of a licensed dentist at the office of such licensed dentist. The board shall designate by rules and regulations the procedures which may be performed by a dental hygienist under direct supervision and the procedures which may be performed under general supervision of a licensed dentist. As used in this section: (1) "Direct supervision" means that the dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure and before dismissal of the patient evaluates the performance; and (2) "general supervision" means a Kansas licensed dentist may delegate verbally or by written authorization the performance of a service, task or procedure to a licensed dental hygienist under the supervision and responsibility of the dentist, if the dental hygienist is licensed to perform the function, and the supervising dentist examines the patient at the time the dental hygiene procedure is performed, or during the 12 calendar months preceding the performance of the procedure, except that the licensed hygienist shall not be permitted to diagnose a dental disease or ailment, prescribe any treatment or a regimen thereof, prescribe, order or dispense medication or perform any procedure which is irreversible or which involves the intentional cutting of the soft or hard tissue by any means. A dentist is not required to be on the premises at the time a hygienist performs a function delegated under part (2) of this subsection.

(e) The practice of dental hygiene may be performed at an adult care home, hospital long-term care unit, state institution, local health depart-

ment or indigent health care clinic on a resident of a facility, client or patient thereof so long as:

(1) A licensed dentist has delegated the performance of the service, task or procedure;

(2) the dental hygienist is under the supervision and responsibility of the dentist;

(3) either the supervising dentist is personally present or the services, tasks and procedures are limited to the cleaning of teeth, education and preventive care; *and*

(4) the supervising dentist examines the patient at the time the dental hygiene procedure is performed or has examined the patient during the 12 calendar months preceding performance of the procedure; ~~and.~~

(f) The practice of dental hygiene may be performed with consent of the parent or legal guardian, on children participating in residential and nonresidential centers for therapeutic services, on all children in families which are receiving family preservation services, on all children in the custody of the secretary of social and rehabilitation services or the commissioner of juvenile justice authority and in an out-of-home placement residing in foster care homes, on children being served by runaway youth programs and homeless shelters; and on children birth to five and children in public and nonpublic schools kindergarten through grade 12 regardless of the time of year and children participating in youth organizations, so long as such children ~~birth to five, in public or nonpublic schools or participating in youth organizations also meet the requirements of medicaid, healthwave, or free or reduced lunch programs or Indian health services who are dentally underserved are targeted;~~ at any state correctional institution, local health department or indigent health care clinic, as defined in K.S.A. 65-1466, and amendments thereto, and at any federally qualified health center, federally qualified health center look-alike or a community health center that receives funding from section 330 of the health center consolidation act, on a person, inmate, client or patient thereof and on other persons as may be defined by the board; so long as:

(1) The dental hygienist has received an "extended care permit I" from the Kansas dental board specifying that the dental hygienist has performed 1,200 hours of dental hygiene care within the past three years or has been an instructor at an accredited dental hygiene program for two academic years within the past three years;

(2) the dental hygienist shows proof of professional liability insurance;

(3) the dental hygienist is sponsored by a dentist licensed in the state of Kansas, including a signed agreement stating that the dentist shall monitor the dental hygienist's activities, except such dentist shall not monitor more than five dental hygienists with an extended care permit;

(4) the tasks and procedures are limited to: (A) removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the *gingival sulci*; (B) the application

of topical anesthetic if the dental hygienist has completed the required course of instruction approved by the dental board; (C) the application of fluoride; (D) dental hygiene instruction; (E) assessment of the patient's apparent need for further evaluation by a dentist to diagnose the presence of dental caries and other abnormalities; and (F) other duties as may be delegated verbally or in writing by the sponsoring dentists consistent with this act;

(5) the dental hygienist advises the patient and legal guardian that the services are preventive in nature and do not constitute a comprehensive dental diagnosis and care;

(6) the dental hygienist provides a copy of the findings and the report of treatment to the sponsoring dentist and any other dental or medical supervisor at a participating organization found in this subsection; and

(7) any payment to the dental hygienist for dental hygiene services is received from the sponsoring dentist or the participating organization found in this subsection.

(g) The practice of dental hygiene may be performed on persons with developmental disabilities and on persons who are 65 years and older who live in a residential center, an adult care home, subsidized housing, hospital long-term care unit, state institution or are served in a community senior service center, elderly nutrition program or at the home of a homebound person who qualifies for the federal home and community based service (HCBS) waiver on a resident of a facility, client or patient thereof so long as:

(1) The dental hygienist has received an "extended care permit II" from the Kansas dental board specifying that the dental hygienist has: (A) performed ~~1,800~~-1,600 hours of dental hygiene care or has been an instructor at an accredited dental hygiene program for two academic years within the past three years; and (B) completed six hours of training on the care of special needs patients or other training as may be accepted by the board;

(2) the dental hygienist shows proof of professional liability insurance;

(3) the dental hygienist is sponsored by a dentist licensed in the state of Kansas, including a signed agreement stating that the dentist shall monitor the dental hygienist's activities, except such dentist shall not monitor more than five dental hygienists with an extended care permit II;

(4) the tasks and procedures are limited to: (A) Removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the *gingival sulci*; (B) the application of topical anesthetic if the dental hygienist has completed the required course of instruction approved by the dental board; (C) the application of fluoride; (D) dental hygiene instruction; (E) assessment of the patient's apparent need for further evaluation by a dentist to diagnose the presence of dental caries and other abnormalities; and (F) other duties as may be

delegated verbally or in writing by the sponsoring dentist consistent with this act;

(5) the dental hygienist advises the patient and legal guardian that the services are preventive in nature and do not constitute comprehensive dental diagnosis and care;

(6) the dental hygienist provides a copy of the findings and the report of treatment to the sponsoring dentist and any other dental or medical supervisor at a participating organization found in this subsection;

(7) any payment to the dental hygienist for dental hygiene services is received from the sponsoring dentist or the participating organization found in this subsection; and

(8) the dental hygienist completes a minimum of ~~six~~ *three* hours of education in the area of special needs care within the board's continuing dental education requirements for relicensure.

*(h) The expanded practice of dental hygiene may be performed with consent of the parent or legal guardian, on children participating in residential and nonresidential centers for therapeutic services, on all children in families which are receiving family preservation services, on all children in the custody of the secretary of social and rehabilitation services or the commissioner of juvenile justice authority and in an out-of-home placement residing in foster care homes, on children being served by runaway youth programs and homeless shelters; and on children birth to five and children in public and nonpublic schools kindergarten through grade 12 regardless of the time of year and children participating in youth organizations, so long as such children who are dentally underserved are targeted; at any state correctional institution, local health department or indigent health care clinic, as defined in K.S.A. 65-1466, and amendments thereto, and at any federally qualified health center, federally qualified health center look-alike or a community health center that receives funding from section 330 of the health center consolidation act, on a person, inmate, client or patient; on persons with developmental disabilities and on persons who are 65 years and older who live in a residential center, an adult care home, subsidized housing, hospital long-term care unit, state institution or are served in a community senior service center, elderly nutrition program or at the home of a homebound person who qualifies for the federal home and community based service (HCBS) waiver on a resident of a facility, client or patient thereof so long as:*

*(1) The dental hygienist has received an "extended care permit III" from the Kansas dental board specifying that the dental hygienist has: (A) Performed 2,000 hours of dental hygiene care or has been an instructor at an accredited dental hygiene program for three academic years within the past four years; and (B) completed a course of study of 18 seat hours approved by the board which includes, but is not limited to, emergency dental care techniques, the preparation and placement of temporary res-*

*torations, the adjustment of dental prostheses and appropriate pharmacology;*

*(2) the dental hygienist shows proof of professional liability insurance;*

*(3) the dental hygienist is sponsored by a dentist licensed in the state of Kansas, including a signed agreement stating that the dentist shall monitor the dental hygienist's activities, except such dentist shall not monitor more than five dental hygienists with an extended care permit III;*

*(4) the tasks and procedures are limited to: (A) Removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the gingival sulci; (B) the application of topical anesthetic if the dental hygienist has completed the required course of instruction approved by the dental board; (C) the application of fluoride; (D) dental hygiene instruction; (E) assessment of the patient's apparent need for further evaluation by a dentist to diagnose the presence of dental caries and other abnormalities; (F) identification and removal of decay using hand instrumentation and placing a temporary filling, including glass ionomer and other palliative materials; (G) adjustment of dentures, placing soft reline in dentures, checking partial dentures for sore spots and placing permanent identification labeling in dentures; (H) smoothing of a sharp tooth with a slow speed dental handpiece; (I) use of local anesthetic, including topical, infiltration and block anesthesia, when appropriate to assist with procedures where medical services are available in a nursing home, health clinic or any other settings if the dental hygienist has completed a course on local anesthesia and nitrous oxide as required in this act; (J) extraction of deciduous teeth that are partially exfoliated with class 4 mobility; and (K) other duties as may be delegated verbally or in writing by the sponsoring dentist consistent with this act;*

*(5) the dental hygienist advises the patient and legal guardian that the services are palliative or preventive in nature and do not constitute comprehensive dental diagnosis and care;*

*(6) the dental hygienist provides a copy of the findings and the report of treatment to the sponsoring dentist and any other dental or medical supervisor at a participating organization found in this subsection;*

*(7) the dental hygienist notifies the patient or the patient's parent or legal guardian of such patient's need for treatment by a dentist, when the dental hygienist finds an apparent need for evaluation to diagnose the presence of dental caries and other abnormalities;*

*(8) any payment to the dental hygienist for dental hygiene services is received from the sponsoring dentist or the participating organization found in this subsection; and*

*(9) the dental hygienist completes a minimum of three hours of education related to the expanded scope of dental hygiene practice in subsection (h)(4) of this act within the board's continuing dental education requirements for relicensure.*

~~(h)(i)~~ In addition to the duties specifically mentioned in subsection (b) of K.S.A. 65-1456, and amendments thereto, any duly licensed dental hygienist may:

(1) Give fluoride treatments as a prophylactic measure, as defined by the United States public health service and as recommended for use in dentistry;

(2) remove overhanging restoration margins and periodontal surgery materials by hand scaling instruments; and

(3) administer local block and infiltration anaesthesia and nitrous oxide. (A) The administration of local anaesthesia shall be performed under the direct supervision of a licensed dentist except that topically applied local anaesthesia, as defined by the board, may be administered under the general supervision of a licensed dentist. (B) Each dental hygienist who administers local anaesthesia regardless of the type shall have completed courses of instruction in local anaesthesia and nitrous oxide which have been approved by the board.

~~(i)(j)~~ (1) The courses of instruction required in subsection ~~(h)(3)(B)~~ (i)(3)(B) shall provide a minimum of 12 hours of instruction at a teaching institution accredited by the American dental association.

(2) The courses of instruction shall include courses which provide both didactic and clinical instruction in: (A) Theory of pain control; (B) anatomy; (C) medical history; (D) pharmacology; and (E) emergencies and complications.

(3) Certification in cardiac pulmonary resuscitation shall be required in all cases.

~~(j)(k)~~ The board is authorized to issue to a qualified dental hygienist an extended care permit I or extended care permit II, or *extended care permit III* as provided in subsections (f) ~~and~~ (g) and (h) of this section.

~~(k)(l)~~ Nothing in this section shall be construed to prevent a dental hygienist from providing dental hygiene instruction or visual oral health care screenings or fluoride applications in a school or community based setting regardless of the age of the patient.

(m) As used in this section, “*dentally underserved*” means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

New Sec. 3. On and after July 1, 2012, the state board of regents shall endeavor to add additional seats at the university of Missouri-Kansas City school of dentistry or other locations with the requirement that such students provide services in underserved areas of Kansas for a minimum of four years after graduation.

New Sec. 4. (a) There is established a special volunteer dental license for dentists who are retired from active practice and wish to donate their

expertise for the dental care and treatment of indigent and underserved persons of the state. The special volunteer dental license shall be:

- (1) Issued by the Kansas dental board to eligible dentists;
  - (2) issued without the payment of an application fee, license fee or renewal fee;
  - (3) issued or renewed without any continuing education requirements;
  - (4) issued for a fiscal year or part thereof; and
  - (5) renewable annually upon approval of the board.
- (b) A dentist shall meet the following requirements to be eligible for a special volunteer dental license:

- (1) Completion of a special volunteer dental license application, including documentation of the dentist's dental school graduation and practice history;
- (2) documentation that the dentist has been previously issued a full and unrestricted license to practice dentistry in Kansas or in another state of the United States and that the dentist has never been the subject of any disciplinary action in any jurisdiction;
- (3) acknowledgment and documentation that the dentist's practice under the special volunteer dental license will be exclusively and totally devoted to providing dental care to underserved and indigent persons in Kansas; and
- (4) acknowledgment and documentation that the dentist will not receive or have the expectation to receive any payment or compensation, either direct or indirect, for any dental services rendered under the special volunteer dental license.

(c) The provisions of this section shall become effective on and after July 1, 2012.

Sec. 5. On and after July 1, 2012, K.S.A. 2011 Supp. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

- (a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.
- (b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.
- (c) "Governmental entity" means state or municipality.
- (d) (1) "Employee" means: (A) Any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental

entity in any official capacity, whether with or without compensation and a charitable health care provider;

(B) any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor;

(C) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections;

(D) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor;

(E) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program;

(F) a person who contracts with the Kansas guardianship program to provide services as a court-appointed guardian or conservator;

(G) an employee of an indigent health care clinic;

(H) former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity;

(I) any member of a regional medical emergency response team, created under the provisions of K.S.A. 48-928, and amendments thereto, in connection with authorized training or upon activation for an emergency response; and

(J) medical students enrolled at the university of Kansas medical center who are in clinical training, on or after July 1, 2008, at the university of Kansas medical center or at another health care institution.

(2) "Employee" does not include: (A) An individual or entity for actions within the scope of K.S.A. 60-3614, and amendments thereto; or

(B) any independent contractor under contract with a governmental entity except those contractors specifically listed in paragraph (1) of this subsection.

(e) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing

arts, a physician assistant licensed by the state board of healing arts, a mental health practitioner licensed by the behavioral sciences regulatory board, an ultrasound technologist currently registered in any area of sonography credentialed through the American registry of radiology technologists, the American registry for diagnostic medical sonography or cardiovascular credentialing international and working under the supervision of a person licensed to practice medicine and surgery, or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the Kansas health policy authority, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary;

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the Kansas health policy authority gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3); or

(4) the secretary of health and environment to provide dentistry services defined by K.S.A. 65-1422 *et seq.*, and amendments thereto, or dental hygienist services defined by K.S.A. 65-1456, and amendments thereto, that are targeted, but are not limited to medically indigent persons, and are provided on a gratuitous basis: (A) At a location sponsored by a not-for-profit organization that is not the dentist or dental hygienist office location; or (B) at the office location of a dentist or dental hygienist provided the care be delivered as part of a program organized by a not-for-profit organization and approved by the secretary of health and environment; or (C) as part of a charitable program organized by the dentist that has been approved by the secretary of health and environment upon a showing that the dentist seeks to treat medically indigent patients on a

*gratuitous basis*, except that such dentistry services and dental hygienist services shall not include “oral and maxillofacial surgery” as defined by ~~Kansas administrative regulation 71-2-2~~ *rules and regulations adopted by the Kansas dental board*, or use sedation or general anesthesia that result in “deep sedation” or “general anesthesia” as defined by ~~Kansas administrative regulation 71-5-1~~ *rules and regulations adopted by the Kansas dental board*.

(f) “Medically indigent person” means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(g) “Indigent health care clinic” means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(h) “Local health department” shall have the meaning ascribed to such term under K.S.A. 65-241, and amendments thereto.

(i) “Fire control, fire rescue or emergency medical services equipment” means any vehicle, firefighting tool, protective clothing, breathing apparatus and any other supplies, tools or equipment used in firefighting or fire rescue or in the provision of emergency medical services.

Sec. 6. K.S.A. 2011 Supp. 65-1424 is hereby repealed.

Sec. 7. On and after July 1, 2012, K.S.A. 2011 Supp. 65-1456 and 75-6102 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 8, 2012.

Published in the *Kansas Register* May 17, 2012.

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## CHAPTER 110

### HOUSE BILL No. 2655

AN ACT concerning the uniform trust code; relating to modification or termination of non-charitable irrevocable trusts; certification of trusts; amending K.S.A. 58a-1013 and K.S.A. 2011 Supp. 58a-411 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 58a-411 is hereby amended to read as follows: 58a-411. (a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all qualified beneficiaries, even if the modification or termination is inconsistent with a material

purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an attorney in fact under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed. This subsection does not apply to irrevocable trusts created before, or to revocable trusts that became irrevocable before, January 1, 2003.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the qualified beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the qualified beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is *not* presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the qualified beneficiaries.

(e) If not all of the qualified beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) If all of the qualified beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a qualified beneficiary who does not consent will be adequately protected.

Sec. 2. K.S.A. 58a-1013 is hereby amended to read as follows: 58a-1013. (a) Instead of furnishing a copy of the trust instrument to a person other than a qualified beneficiary, the trustee may furnish to the person an acknowledged certification of trust containing the following information:

(1) That the trust exists and the date the trust instrument was executed;

(2) the identity of the settlor;

(3) the identity and address of the currently acting trustee;

(4) the powers of the trustee;

(5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; *and*

~~(7) the trust's taxpayer identification number, and~~

~~(8)(7) the manner of taking title to trust property.~~

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Sec. 3. K.S.A. 58a-1013 and K.S.A. 2011 Supp. 58a-411 are hereby repealed.

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

Approved May 10, 2012.

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## CHAPTER 111

Senate Substitute for HOUSE BILL No. 2454

AN ACT concerning the arts; creating the creative arts industries commission within the department of commerce; transferring the powers, functions and duties from the Kansas arts commission and the Kansas film services commission to the Kansas creative arts industries commission; abolishing the Kansas arts commission and the Kansas film services commission; creating the arts industries commission checkoff; amending K.S.A. 46-1801, 74-7901 and 75-2249 and K.S.A. 2011 Supp. 8-1,161, 75-2269 and 75-5072 and repealing the existing sections; also repealing K.S.A. 74-5202, 74-5203, 74-5204, 74-5205 and 74-5206 and K.S.A. 2011 Supp. 74-9201 and 74-9202.

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

New Section 1. (a) For the taxable years commencing after December 31, 2012, each Kansas state individual income tax return form shall contain a designation as follows:

Kansas Creative Arts Industries Commission Checkoff Fund. Check if you wish to donate, in addition to your tax liability, or designate from your refund, \_\_\_\_\_\$1, \_\_\_\_\_\$5, \_\_\_\_\_\$10 or \$\_\_\_\_\_.

(b) The director of taxation of the department of revenue shall determine annually the total amount designated for contribution to the Kansas creative arts industries commission checkoff fund pursuant to subsection (a) and shall report such amount to the state treasurer who shall credit the entire amount thereof to the Kansas creative arts industries commission checkoff fund which fund is hereby established in the state treasury. All moneys deposited in such fund shall be used solely for the purpose of funding the Kansas creative arts industries commission. In the case where donations are made pursuant to subsection (a), the director shall remit the entire amount thereof to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of such fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the Kansas creative arts industries commission.

New Sec. 2. (a) There is hereby created within the department of commerce the Kansas creative arts industries commission to measure, promote, support and expand the creative industries to drive the Kansas economy, grow jobs and enhance the quality of life for all Kansans.

(b) (1) The commission shall consist of 11 members, serving for terms of three years. Members may be reappointed to a term of three years. Members may not serve more than two terms and are not eligible for reappointment following the end of such member's second term of office. There shall always be at least one member from each congressional district. The members of the commission shall include: Two members ap-

pointed by the president of the senate; one member appointed by the minority leader of the senate; two members appointed by the speaker of the house of representatives; one member appointed by the minority leader of the house of representatives; and five members appointed by the governor. All members appointed by the governor shall be appointed for terms of three years, except that, in the initial appointment, three of the members shall be appointed for two-year terms and two shall be appointed for three-year terms. The governor shall designate the term for which each of the members first appointed shall serve. The commission shall convene annually by the 20th day of the legislative session and elect a chairperson and a vice-chairperson from among its members.

(2) The members of the commission shall be broadly representative of the major fields of the arts and related creative industries and shall be appointed from among private citizens who are widely known for having competence and experience in connection with the arts and related creative industries or business leaders with an interest in promoting the arts and the creative industries, as well as having knowledge of community and state interests. In making these appointments, the appointing authorities shall seek and consider those recommended for membership by persons or organizations involved in civic, educational, business, labor, professional, cultural, ethnic or performing and creative arts fields.

(c) The commission shall meet on the call of the chair, but not less than four times during each calendar year. Six members of the commission shall constitute a quorum. Meetings may take place in various locations across Kansas. Members of the commission attending meetings of such division, or attending a subcommittee meeting thereof, authorized by such division, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. Employment by the state, or any instrumentality or subdivision of the state, shall not prevent any person from accepting appointment to and serving on the advisory board.

New Sec. 3. (a) There is hereby created in the state treasury the creative industries fund. Moneys from the following sources shall be credited to the fund:

(1) Moneys appropriated to the fund by the legislature; and  
(2) any gifts, grants or donations from private or public sources that the commission is hereby authorized to accept. No moneys from gifts, grants and donations shall be spent for any purpose other than arts programs that the commission has authorized.

(b) All payments and disbursements from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director or by a person or persons designated by the director.

New Sec. 4. (a) The commission shall be the official agency of the

state for the development and coordination of the arts within the state and employment development in the creative arts industries. The commission shall promote, support, coordinate, foster, develop and measure the outcomes of the arts, their practice and their impact on employment development within this state and shall have the power to:

(1) Appoint such advisory committees as it deems advisable and necessary to effectuate the provisions of this act;

(2) accept, on behalf of the state of Kansas, and expend any federal funds granted by act of congress or by executive order for all or any purpose of the commission, except that the commission may expend such funds only upon appropriation by the legislature if the federal funds require matching state contributions or capital outlay or create a commitment for future state spending;

(3) accept any gifts, grants, donations or bequests for all or any of the purposes of the commission, including funds from the sale of real or personal property;

(4) propose methods and processes to encourage private and public initiatives that recognize and enhance the role that the arts play in creative industries;

(5) prepare, promulgate or publish advertising and promotional books, pamphlets and materials consistent with the purposes of this act, and prepare and publish reports or surveys containing information relating to the arts and the activities of the commission or other agencies, public or private, as may be requested by the governor or the legislature;

(6) advise and consult with national foundations and other local, state and federal departments and agencies on methods by which to coordinate and assist existing resources and facilities to foster artistic and cultural endeavors toward the use of the arts, both nationally and internationally, in the best interest of Kansas;

(7) enter into agreement with other states, or with the United States or any agency or instrumentality thereof, having duties or functions similar to the commission, or with private associations or corporations, or with private or public colleges or universities, or with any public or private school, or with individual persons for any purpose consistent with the objectives and purposes of this act;

(8) undertake any and all other acts or things as may be deemed necessary and convenient by the commission to foster and promote the development of the arts in this state;

(9) promote employment development within the creative industries; and

(10) adopt rules and regulations as may be necessary to effectuate the provisions of this act.

(b) The duties of the commission shall include:

(1) To stimulate and encourage throughout the state the study and

development of the arts, as well as public interest and participation therein;

(2) to take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of the state of Kansas and to expand the state's cultural resources;

(3) to encourage and assist freedom of artistic expression essential for the well-being of the arts;

(4) to assist the communities and organizations within the state in originating and creating their own cultural and artistic programs;

(5) to make such surveys as may be deemed advisable of public and private institutions engaged within the state in artistic and cultural activities, including, but not limited to, humanities, music, theater, dance, painting, sculpture, photography, architecture and allied arts and crafts and to make recommendations concerning the appropriate methods to encourage participation in and appreciation of the arts in order to meet the legitimate needs and aspirations of persons in all parts of the state;

(6) to develop strategies on methods to attract film making enterprises to the state of Kansas; assist the division of business development in the locating and researching of locations for possible use by the movie industry; assist students in Kansas in developing film making skills; provide assistance to movie personnel who utilize Kansas as a location for filming as may be directed by the division; provide support at official hospitality functions for the film industry; participate in trade show and official functions pertaining to the film industry; and assist in the establishment of motion picture ventures and such related matters as the commission deems appropriate;

(7) to formulate, in cooperation with the state board of education, programs furthering the arts in education, including artists-in-residence programs. Such programs shall be designed to foster a greater understanding and knowledge of the arts, to utilize the arts as an intellectual stimulus, to utilize the arts as an aid in dealing with personal and social adjustment problems or learning disabilities and to facilitate and to improve other academic courses or programs by using the arts as an educational tool and medium. The commission shall disseminate information about such programs. Any board of education or the governing body of any other political subdivision, or any agent or employee thereof, may request information on such programs or request to participate in such programs, and such board of education or governing body may implement such programs with such political subdivision;

(8) to develop metrics showing the impact of the creative industries on employment development; and

(9) to submit a report of the commission's recommendations not later than February 1 of each calendar year to the governor, the secretary of commerce and the legislature.

(c) The department of commerce shall provide staff consisting of a

director and other assistance as may be required by the commission in the performance of its duties. The secretary of revenue shall provide any datum relevant in measuring the economic outcomes of arts programs to the commission.

New Sec. 5. (a) The Kansas arts commission created by K.S.A. 74-5202, and amendments thereto, and the Kansas film services commission created by K.S.A. 74-9201, and amendments thereto, are hereby abolished.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the existing Kansas arts commission and the Kansas film services commission are hereby transferred to, conferred and imposed upon the creative arts industries commission within the department of commerce, established by this act.

(c) Except as otherwise provided by this act, the creative arts industries commission within the department of commerce established by this act shall be the successor in every way to the powers, duties and functions of the Kansas arts commission and the Kansas film services commission in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the creative arts industries commission within the department of commerce established by this act shall be deemed to have the same force and effect as if performed by the Kansas arts commission and the Kansas film services commission in which such powers, duties and functions were vested prior to the effective date of this act.

(d) Except as otherwise provided by this act, whenever the Kansas arts commission or the Kansas film services commission, or words of like effect, are referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the creative arts industries commission within the department of commerce established by this act.

(e) All rules and regulations of the Kansas arts commission and the Kansas film services commission in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the creative arts industries commission within the department of commerce established by this act until revised, amended, revoked or nullified pursuant to law.

(f) All orders and directives of the Kansas arts commission and the Kansas film services commission in existence on the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the creative arts industries commission within the department of commerce established by this act, until revised, amended, revoked or nullified pursuant to law.

(g) On the effective date of this act, the creative arts industries commission within the department of commerce shall succeed to whatever

right, title or interest the Kansas arts commission and the Kansas film services commission have acquired in any real property in this state, and the creative arts industries commission within the department of commerce shall hold the same for and in the name of the state of Kansas. On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the Kansas arts commission or the Kansas film services commission to acquire, hold or dispose of real property or any interest therein, the creative arts industries commission within the department of commerce shall succeed to such power or authority.

(h) The creative arts industries commission within the department of commerce established by this act shall be a continuation of the Kansas arts commission and the Kansas film services commission.

(i) On the effective date of this act, all officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the Kansas arts commission and the Kansas film services commission which are transferred by this act, or who become a part of the creative arts industries commission within the department of commerce, and who, in the opinion of the director of the creative arts industries commission within the department of commerce, are necessary to perform the powers, duties and functions of the creative arts industries commission within the department of commerce, shall be transferred to, and shall become officers and employees of the creative arts industries commission within the department of commerce.

(j) Officers and employees of the Kansas arts commission and the Kansas film services commission transferred by this act shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. All transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rule and regulation adopted thereunder. Nothing in this act shall affect the classified status of any transferred person employed by the Kansas arts commission and the Kansas film services commission prior to the date of transfer.

(k) For the purposes of K.S.A. 12-2536, and amendments thereto, the creative arts industries commission within the department of commerce, instead of the Kansas arts commission, shall provide an appointee to serve on the metropolitan culture commission.

Sec. 6. K.S.A. 2011 Supp. 8-1,161 is hereby amended to read as follows: 8-1,161. (a) On and after January 1, 2010, any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of not more than 20,000 pounds who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one support Kansas

arts license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and the presentation of the annual logo use authorization statement provided for in subsection (b).

(b) The Kansas ~~arts commission~~ *creative arts industries commission*, created under ~~K.S.A. 74-5202~~ *section 2*, and amendments thereto, may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment to such commission derived from this section shall be credited to the Kansas ~~arts commission~~ *creative arts industries commission* special gifts fund and, shall be used in accordance with the provisions of ~~K.S.A. 74-5204~~ *section 3*, and amendments thereto. Any motor vehicle owner or lessee may annually apply to the commission for the use of such logo. Upon annual application and payment to the commission in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, the commission shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration.

(c) Any applicant for a support Kansas arts license plate may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of motor vehicles, and any applicant for the support Kansas arts license plates shall provide the annual logo use authorization statement provided for in subsection (b). Application for registration of a passenger vehicle or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or support Kansas arts license plate issued under this section shall be transferable to any other person.

(e) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides the annual logo use authorization statement provided for in subsection (b). If such logo use authorization statement is not presented at the time of registration, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the support Kansas arts license plate to the county treasurer of such person's residence.

(f) The Kansas *creative arts industries* commission shall:

(1) Pay the initial cost of silk-screening for such support Kansas arts license plates; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the Kansas *creative arts industries* commission

for information concerning the application process or the status of their license plate application.

(g) The Kansas *creative arts industries* commission, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

Sec. 7. K.S.A. 46-1801 is hereby amended to read as follows: 46-1801. (a) There is hereby established a joint committee on the arts and cultural resources which shall consist of five senators and five members of the house of representatives. The senate members shall be appointed by the committee on organization, calendar and rules. The house of representative members shall be appointed by the speaker of the house of representatives. Not less than one representative member shall be a member of the house committee on appropriations and not less than one senator member shall be a member of the senate committee on ways and means. In addition, not less than one representative member shall be a member of the house committee on economic development and not less than one senator member shall be a member of the senate committee on commerce. The committee on organization, calendar and rules shall designate a senator member to be chairperson or vice-chairperson of the joint committee as provided in this section. The speaker of the house of representatives shall designate a representative member to be chairperson or vice-chairperson of the joint committee as provided in this section.

(b) A quorum of the joint committee on the arts and cultural resources shall be six. All actions of the committee may be taken by a majority of those present when there is a quorum. In odd-numbered years the chairperson of the joint committee shall be the designated member of the house of representatives from the convening of the regular session in that year until the convening of the regular session in the next ensuing year. In even-numbered years the chairperson of the joint committee shall be the designated member of the senate from the convening of the regular session of that year until the convening of the regular session of the next ensuing year. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson.

(c) The joint committee on the arts and cultural resources shall study, investigate and analyze the following matters:

(1) The goals appropriate to the future of the arts and cultural life of Kansas including, but not limited to, the following: Public art; individual artists; films, video, radio and music; and historic preservation;

(2) the role the legislature and state government should play in the achievement of these goals;

(3) arts legislation in other states and at the federal level;

(4) the budget and programs of the Kansas *creative arts industries*

commission and other state supported arts and cultural programs and agencies;

(5) the present status of arts education in Kansas; and

(6) the economic impact of arts and cultural resources in Kansas.

(d) The joint committee shall report to the legislature on or before December 31 each year any finding and recommendations concerning the arts in Kansas which the joint committee deems appropriate. The joint committee may introduce such legislation as it deems necessary in performing its functions.

(e) The joint committee on the arts and cultural resources shall meet on call of the chairperson as authorized by the legislative coordinating council. All such meetings shall be held in Topeka, unless authorized to be held in a different place by the legislative coordinating council. Members of the joint committee shall receive compensation and travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto, when attending meetings of such committee authorized by the legislative coordinating council.

(f) Amounts paid under authority of this section shall be paid from appropriations for legislative expense and vouchers therefor shall be prepared by the director of legislative administrative services and approved by the chairperson or vice-chairperson of the legislative coordinating council.

Sec. 8. K.S.A. 74-7901 is hereby amended to read as follows: 74-7901. There is hereby created a Kansas wildlife arts council which shall be composed of five members. One member shall be a member of the Kansas wildlife and parks commission appointed by such commission, one member shall be a member of the Kansas *creative arts industries* commission appointed by such commission, one member shall be the director of the Fort Hays state university Sternberg museum, and two members shall be from the public at large appointed by the president of Fort Hays state university. The director of the Fort Hays state university Sternberg museum shall be chairperson of the council, and personnel of the Fort Hays state university Sternberg museum shall provide such staff and clerical services as the council may require.

Sec. 9. K.S.A. 75-2249 is hereby amended to read as follows: 75-2249. (a) The director of architectural services shall cause a work of sculpture, selected in the manner prescribed by this section prior to its amendment by this act, to be placed atop the state capitol.

(b) The Kansas *creative arts industries* commission is hereby authorized to receive any grants, gifts, contributions or bequests made for the purpose of financing the cost of acquiring and placing atop the state capitol the work of sculpture selected pursuant to this section prior to its amendment by this act. There is hereby established in the state treasury the state capitol dome sculpture fund. All expenditures from such fund

shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the Kansas *creative arts industries* commission.

Sec. 10. K.S.A. 2011 Supp. 75-2269 is hereby amended to read as follows: 75-2269. (a) There is hereby created a capitol preservation committee which will include the membership of the following:

- (1) The statehouse architect;
- (2) the executive director of the state historical society;
- (3) the ~~executive~~ director of the Kansas *creative arts industries* commission;
- (4) three members appointed by the governor;
- (5) two members appointed by the president of the senate and one member appointed by the minority leader of the senate; and
- (6) two members appointed by the speaker of the house of representatives and one member appointed by the minority leader of the house of representatives.

The governor shall appoint the chair of the committee. The committee shall meet at least annually and more often upon call of the chairperson, but no more than four meetings shall be called in any year.

(b) Of the members first appointed to the committee, the following term lengths shall apply:

- (1) Two members appointed by the governor shall serve two-year terms, and one member appointed by the governor shall serve a one-year term;
- (2) the members appointed by the minority leaders of the senate and the house of representatives shall each serve two-year terms; and
- (3) the members appointed by the president of the senate and the speaker of the house of representatives shall each serve one-year terms.

Successors to such members shall serve two-year terms.

(c) The committee shall have the following responsibilities:

- (1) On or after January 1, 2013, approve all proposals for renovation of all areas of the state capitol, the capitol's visitor center and the grounds surrounding the state capitol to insure that the historical beauty of the areas are preserved;
- (2) preserve the proper decor of such areas;
- (3) assure that any art or artistic displays are historically accurate and have historic significance;
- (4) the location and types of temporary displays and revolving displays in the state capitol including the visitor center; and
- (5) oversee the reconfiguration or redecoration of committee rooms within the statehouse.

Implementation of the recommendations of the committee shall be the responsibility of the division of legislative administrative services.

(d) Any permanent displays or monuments proposed to be located

on the state capitol grounds must be approved by the committee and authorized by the passage of a bill of the state legislature.

(e) The capitol preservation committee shall annually submit to the governor and the legislature a report of its activities and recommendations.

(f) Members of the committee attending meetings of the committee, or attending a subcommittee meeting thereof authorized by the committee, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto, however full-time state employees serving on the committee shall not receive such compensation.

(g) The staff of the legislative research department, the office of the revisor of statutes and the division of legislative administrative services shall provide such assistance as may be requested by the committee and to the extent authorized by the legislative coordinating council.

(h) Committee members may engage in or encourage fund raising activities for the limited purpose of funding committee responsibilities as described in subsection (c).

(i) No member of the committee shall hold a fiduciary interest, either directly or indirectly, in any contract relating to the committee responsibilities as described in subsection (c).

Sec. 11. K.S.A. 2011 Supp. 75-5072 is hereby amended to read as follows: 75-5072. (a) As used in this section:

(1) "Qualified hometown" means a city or unincorporated community that is a governor's hometown as defined by this section and which has satisfied the requirements of this section; and

(2) "governor's hometown" means the city or unincorporated community listed in the election records of the secretary of state as the residence of a successful candidate for governor of the state of Kansas the first time such candidate was elected governor.

(b) For all qualified hometowns, the secretary of the Kansas department of transportation shall install governor's hometown signs at all appropriate locations near the city limits of a city or the edges of an unincorporated community.

The secretary of transportation shall install such governors' hometown signs only if:

(1) The governing body of the city or the board of county commissioners for the unincorporated community has adopted a resolution requesting the installation of such signs;

(2) the city or unincorporated community is located on a highway which is part of the state highway system; and

(3) the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the initial cost of installing such

signs and an additional 50% of the initial cost to defray future maintenance or replacement costs of such signs.

The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing governors' hometown signs.

(c) The secretary of transportation, or the secretary's designee, shall design the governors' hometown signs. The size, shape, color, design and content of such signs shall be distinctive and shall be determined by the secretary of transportation, except that such signs shall include: (1) The name of the city or unincorporated community; (2) the governor's hometown logo; and (3) an indication that such city or unincorporated community is the hometown of one or more governors of Kansas, the name of each governor of Kansas whose hometown is such city or unincorporated community, the numerical designation of each such governor in the succession of governors of Kansas and the years each such governor served as governor of Kansas.

(d) The secretary of commerce, or the secretary's designee, shall conduct a competition for the design of the governor's hometown logo. The logo shall include a representation of the dome of the state capitol building. In organizing and conducting such competition, the secretary of commerce shall consult with and cooperate with the executive director of the state historical society, the ~~executive~~ director of the Kansas *creative arts industries* commission, Kansas humanities council and such other agencies, persons or organizations as the secretary finds appropriate.

(e) The governing body of any city or the board of county commissioners for any unincorporated community, not located on a highway which is part of the state highway system, may request a governor's hometown sign from the secretary of transportation which meets the design specifications of subsection (c). Such city or unincorporated community shall reimburse the secretary for the cost of such sign and shall be responsible for the installation, repair, maintenance or replacement of such sign.

(f) (1) The governing body of any city or the board of county commissioners for any unincorporated community which was a territorial capital of Kansas, may request a territorial governor's sign from the secretary of transportation, subject to the same procedure, conditions and limitations contained in subsections (b) and (e).

(2) The secretary of transportation, or the secretary's designee, shall design the territorial governor's signs. The size, shape, color, design and content of such signs shall be distinctive and shall be determined by the secretary of transportation, except that such signs shall include: (1) The name of the city or unincorporated community; *and* (2) an indication that such city or unincorporated community was a territorial capital of Kansas, the name of each territorial governor of Kansas who served in such territorial capital, the numerical designation of each such governor in the

succession of governors of Kansas and the years each such governor served as territorial governor of Kansas.

Sec. 12. K.S.A. 46-1801, 74-5202, 74-5203, 74-5204, 74-5205, 74-5206, 74-7901 and 75-2249 and K.S.A. 2011 Supp. 8-1,161, 74-9201, 74-9202, 75-2269 and 75-5072 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 10, 2012.

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## CHAPTER 112

House Substitute for SENATE BILL No. 62

AN ACT concerning medical care facilities; relating to abortion; sterilization; amending K.S.A. 65-443, 65-446 and 65-447 and K.S.A. 2011 Supp. 65-444 and repealing the existing sections.

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

Section 1. K.S.A. 65-443 is hereby amended to read as follows: 65-443. No person shall be required to perform, *refer for*, or participate in medical procedures *or in the prescription or administration of any device or drug* which result in the termination of a pregnancy *or an effect of which the person reasonably believes may result in the termination of a pregnancy*, and the refusal of any person to perform, *refer for*, or participate in those medical procedures, *prescription or administration* shall not be a basis for civil liability to any person. No ~~hospital, hospital~~ *medical care facility, medical care facility* administrator or governing board of any ~~hospital~~ *medical care facility* shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any person because of such person's ~~refusal to perform or participate in the termination of any human pregnancy~~ *exercise of rights protected by this section*.

Sec. 2. K.S.A. 2011 Supp. 65-444 is hereby amended to read as follows: 65-444. No ~~hospital, hospital~~ *medical care facility, medical care facility* administrator or governing board of any *medical care facility* shall be required to permit *the performance, referral for, or participation in medical procedures or in the prescription or administration of any device or drug* which result in the termination of human pregnancies *of an effect of which the medical care facility, administrator or board reasonably believes may result in the termination of human pregnancies* within its ~~institution~~ *facility* and the refusal to permit such procedures, *prescription or administration* shall not be grounds for civil liability to any person. A ~~hospital~~ *medical care facility* may establish criteria and procedures under

which pregnancies may be terminated within its institution, in addition to those which may be prescribed by licensing, regulating or accrediting agencies.

Sec. 3. K.S.A. 65-446 is hereby amended to read as follows: 65-446. No person shall be required to perform, *refer for* or participate in medical procedures which result in sterilization of a person, and the refusal of any person to perform, *refer for* or participate in those medical procedures shall not be a basis for civil liability to any person. No ~~hospital, hospital medical care facility, medical care facility~~ administrator or governing board of any ~~hospital~~ *medical care facility* shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any person because of ~~his refusal to perform or participate in such medical procedures~~ *such person's exercise of rights protected by this section.*

Sec. 4. K.S.A. 65-447 is hereby amended to read as follows: 65-447. No ~~hospital, hospital medical care facility, medical care facility~~ administrator, or governing board *of any medical care facility* shall be required to permit *the performance, referral for or participation in* medical procedures resulting in sterilization within its ~~institution~~ *facility* and the refusal to permit such procedures shall not be grounds for civil liability to any person. A ~~hospital~~ *medical care facility* may establish criteria and procedures under which sterilizations may be performed within its institution, in addition to those which may be prescribed by licensing, regulating or accrediting agencies.

Sec. 5. K.S.A. 65-443, 65-446 and 65-447 and K.S.A. 2011 Supp. 65-444 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 10, 2012.

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CHAPTER 113  
HOUSE BILL No. 2471

AN ACT concerning adult care homes; relating to licensure and adult care home administrators; amending K.S.A. 39-931a and K.S.A. 2011 Supp. 39-923, 39-931 and 65-3506 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 65-3506 is hereby amended to read as follows: 65-3506. (a) There is hereby established the board of adult care home administrators. The board shall be attached to the department of health and environment and shall be within the department as a part

thereof. All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the secretary of health and environment. The department shall serve as the administrative agency of the board in all respects and shall perform such services and duties as it may be legally called upon to perform. The attorney for the board shall be an assistant attorney general appointed by the attorney general. The office of the attorney general shall serve as the enforcement agency for the board. All vouchers for expenditures and all payrolls of the board shall be approved by the chairperson of the board and by the secretary of health and environment.

(b) The board of adult care home administrators shall be composed of seven members appointed by the governor, ~~two of whom are as follows:~~

(1) *Two members shall be* representatives of professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients;

(2) *two members shall be* consumer representatives who have no current or previous involvement in the financial affairs or as a member of the governing body of any adult care home or any association directly concerned with the regulation or licensure of adult care homes in the state; and

(3) ~~three members shall be licensed in Kansas as licensed adult care home administrators who, at the time of their appointment, are licensed by the state and who, subject to the following requirements:~~

(A) (i) *One such member shall be a representative of the not-for-profit adult care home industry in Kansas. At least 30 days prior to the expiration of such member's term, Leading Age Kansas, or the successor of such entity, shall submit at least one but not more than three names of persons of recognized ability and qualification to the governor, who may consider such list in making appointments to the board under subsection (b)(3);*

(ii) *one such member shall be a representative of the for-profit adult care home industry in Kansas. At least 30 days prior to the expiration of such member's term, the Kansas health care association, or the successor of such entity, shall submit at least one but not more than three names of persons of recognized ability and qualification to the governor, who may consider such list in making appointments to the board under subsection (b)(3); and*

(iii) *one such member shall be a representative of the professional association for the adult care home industry in Kansas. At least 30 days prior to the expiration of such member's term, the Kansas adult care executives association, or the successor of such entity, shall submit at least one but not more than three names of persons of recognized ability and qualification to the governor, who may consider such list in making appointments to the board under subsection (b)(3);*

(B) ~~all such members shall have been actively engaged for the three~~

~~years immediately preceding appointment and who are currently actively engaged in the administration of adult care homes within the state of Kansas for the three years immediately preceding appointment;~~

~~(C) all such members shall be actively engaged in the administration of adult care homes within the state of Kansas; and~~

~~(D) no such members shall have had or shall have any published disciplinary action taken by the board of adult care administrators against such members.~~

(c) No more than three members of the board may be licensed *adult care home* administrators. Members of the board, other than the licensed *adult care home* administrators, shall have no direct financial interest in adult care homes. Members of the board shall serve on the board for terms of ~~two~~ three years or until otherwise disqualified from serving on the board. ~~On the effective date of this act, the current expiration date of the term of office of each existing board member shall be extended by one year from such expiration date. On and after the effective date of this act, no member shall serve more than two consecutive terms.~~ The provisions of ~~this act or the act of which this section is amendatory~~ *article 35 of chapter 65 of the Kansas Statutes Annotated* shall not affect the office of any member of the board of adult care home administrators appointed prior to the effective date of this ~~act section. All members of the board appointed~~ *On and after the effective date of this act, shall be appointed by the governor*. as positions become vacant on the board, appointments shall be made in a manner so as to comply with the provisions of this section.

~~(e)~~(d) Members of the board of adult care home administrators shall meet at such times as may be appropriate but in no case less than once each four months. The chairperson of the board shall be elected annually from among the members of the board. All final orders shall be in writing and shall be issued in accordance with the Kansas administrative procedure act.

~~(d)~~(e) Members of the board who attend meetings of such board, or attend a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

Sec. 2. On and after July 1, 2012, K.S.A. 2011 Supp. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

(1) “Adult care home” means any nursing facility, nursing facility for mental health, intermediate care facility for ~~the mentally retarded people~~ *with intellectual disability*, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility; all of which are classifications of adult care homes and are required to be licensed by the secretary of aging.

(2) “Nursing facility” means any place or facility operating 24 hours

a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) “Nursing facility for mental health” means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) “Intermediate care facility for ~~the mentally retarded~~ *people with intellectual disability*” means any place or facility operating 24 hours a day, seven days a week, caring for ~~six~~ *four* or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by ~~mental retardation~~ *intellectual disability* or related conditions, need services to compensate for activities of daily living limitations.

(5) “Assisted living facility” means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week, for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) “Residential health care facility” means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-days-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) “Home plus” means any residence or facility caring for not more

than 12 individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided to residents shall be determined by preparation of the staff and rules and regulations developed by the department on aging. An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than 12-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous. Any home plus that provides care for more than eight individuals after the effective date of this act shall adjust staffing personnel and resources as necessary to meet residents' needs in order to maintain the current level of nursing care standards. Personnel of any home plus who provide services for residents with dementia shall be required to take annual dementia care training.

(8) "Boarding care home" means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of or assistance with activities of daily living.

(10) "Place or facility" means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

(11) "Skilled nursing care" means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

(12) "Supervised nursing care" means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

(13) “Resident” means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

(14) “Person” means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

(15) “Operate an adult care home” means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word “own” and the word “lease” shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

(16) “Licensing agency” means the secretary of aging.

(17) “Skilled nursing home” means a nursing facility.

(18) “Intermediate nursing care home” means a nursing facility.

(19) “Apartment” means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

(20) “Individual living unit” means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.

(21) “Operator” means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the secretary of health and environment on principles of assisted living and such other requirements as may be established by the secretary of health and environment by rules and regulations.

(22) “Activities of daily living” means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, *and* toileting.

(23) “Personal care” means care provided by staff to assist an individual with, or to perform activities of daily living.

(24) “Functional impairment” means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(25) “Kitchen” means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(26) The term “intermediate personal care home” for purposes of those individuals applying for or receiving veterans’ benefits means residential health care facility.

(27) “Paid nutrition assistant” means an individual who is paid to feed residents of an adult care home, or who is used under an arrangement with another agency or organization, who is trained by a person meeting

nurse aide instructor qualifications as prescribed by 42 C.F.R. § 483.152, 42 C.F.R. § 483.160 and paragraph (h) of 42 C.F.R. § 483.35, and who provides such assistance under the supervision of a registered professional or licensed practical nurse.

(28) “*Medicaid program*” means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended, or any successor federal or state, or both, health insurance program or waiver granted thereunder.

(b) The term “adult care home” shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.*, and amendments thereto, and which provide services only to hospice patients.

(c) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(d) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

(e) Nursing facilities with less than 60 beds converting a portion of the facility to residential health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.

(f) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

Sec. 3. On and after July 1, 2012, K.S.A. 2011 Supp. 39-931 is hereby amended to read as follows: 39-931. (a) Whenever the licensing agency finds a substantial failure to comply with the requirements, standards or rules and regulations established under this act or that a receiver has been appointed under K.S.A. 39-958, and amendments thereto, it shall make an order denying, suspending or revoking the license after notice and a

hearing in accordance with the provisions of the Kansas administrative procedure act, K.S.A. 77-501 *et seq.*, and amendments thereto. Any applicant or licensee who is aggrieved by the order may appeal such order in accordance with the provisions of the Kansas judicial review act, K.S.A. 77-601 *et seq.*, and amendments thereto.

(b) *Except as provided in subsection (c), whenever the licensing agency denies, suspends or revokes a license under this section, the applicant or licensee shall not be eligible to apply for a new license or reinstatement of a license for a period of two years from the date of denial, suspension or revocation.*

(c) (1) *Any applicant or licensee issued an emergency order by the licensing agency denying, suspending or revoking a license under this section may apply for a new license or reinstatement of a license at any time upon submission of a written waiver of any right conferred upon such applicant or licensee under the Kansas administrative procedure act, K.S.A. 77-501 *et seq.*, and amendments thereto, and the Kansas judicial review act, K.S.A. 77-601 *et seq.*, and amendments thereto, to the licensing agency in a settlement agreement or other manner as approved by the licensing agency.*

(2) *Any licensee issued a notice of intent to take disciplinary action by the licensing agency under this section may enter into a settlement agreement or other manner as approved by the licensing agency, with the licensing agency, at any time upon submission of a written waiver of any right conferred upon such licensee under the Kansas administrative procedure act, K.S.A. 77-501 *et seq.*, and amendments thereto, and the Kansas judicial review act, K.S.A. 77-601 *et seq.*, and amendments thereto.*

(d) *No person shall operate an intermediate care facility for people with intellectual disability of five beds or less, as defined by subsection (a)(4) of K.S.A. 39-923, and amendments thereto, within this state unless such person:*

(A) *Is issued a license by the licensing agency on or before January 1, 2012; or*

(B) *participated in the medicaid program as an intermediate care facility for people with intellectual disability of five beds or less, on or before January 1, 2012.*

Sec. 4. On and after July 1, 2012, K.S.A. 39-931a is hereby amended to read as follows: 39-931a. (a) As used in this section, the term "person" means any person who is an applicant for a license to operate an adult care home or who is the licensee of an adult care home and who has any direct or indirect ownership interest of 25% or more in an adult care home or who is the owner, in whole or in part, of any mortgage, deed of trust, note or other obligation secured, in whole or in part, by such facility or any of the property or assets of such facility, or who, if the facility is

organized as a corporation, is an officer or director of the corporation, or who, if the facility is organized as a partnership, is a partner.

(b) Pursuant to K.S.A. 39-931, and amendments thereto, the licensing agency may deny a license to any person and may suspend or revoke the license of any person who:

(1) Has willfully or repeatedly violated any provision of law or rules and regulations adopted pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated and ~~acts amendatory of the provisions thereof or supplemental amendments~~ thereto;

(2) *has had a license to operate an adult care home denied, suspended, revoked or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia or other country, a certified copy of the record of such action of the other jurisdiction being conclusive evidence thereof;*

(3) *has failed or refused to comply with the medicaid requirements of title XIX of the social security act, or medicaid regulations under chapter IV of title 42 of the code of federal regulations, a certified copy of the record of such action being conclusive evidence thereof;*

(4) *has failed or refused to comply with the medicare requirements of chapter 7 of title 42 of the United States code, or medicare regulations under chapter IV of title 42 of the code of federal regulations, a certified copy of the record of such action being conclusive evidence thereof;*

(5) has been convicted of a felony;

~~(3)(6)~~ has failed to assure that nutrition, medication and treatment of residents, including the use of restraints, are in accordance with acceptable medical practices; ~~or~~

~~(4)(7)~~ has aided, abetted, sanctioned or condoned any violation of law or rules and regulations adopted pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated; or

~~(5)(8)~~ has willfully admitted a person to a nursing facility in violation of K.S.A. 39-968, and amendments thereto.

Sec. 5. K.S.A. 2011 Supp. 65-3506 is hereby repealed.

Sec. 6. On and after July 1, 2012, K.S.A. 39-931a and K.S.A. 2011 Supp. 39-923 and 39-931 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 14, 2012.

Published in the *Kansas Register* May 24, 2012.

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## CHAPTER 114

SENATE BILL No. 14  
(Amends Chapter 91)

AN ACT concerning the department of health and environment; relating to education and screening for congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases and disorders; creating the Kansas newborn screening fund; amending K.S.A. 2011 Supp. 65-180, as amended by section 39 of 2012 Substitute for Senate Bill No. 397 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 65-180, as amended by section 39 of 2012 Substitute for Senate Bill No. 397, is hereby amended to read as follows: 65-180. The secretary of health and environment shall:

(a) Institute and carry on an intensive educational program among physicians, hospitals, public health nurses and the public concerning congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases detectable with the same specimen. This educational program shall include information about the nature of such conditions and examinations for the detection thereof in early infancy in order that measures may be taken to prevent intellectual disability or morbidity resulting from such conditions.

(b) Provide recognized screening tests for phenylketonuria, galactosemia, hypothyroidism and such other diseases as may be appropriately detected with the same specimen. The initial laboratory screening tests for these diseases shall be performed by the department of health and environment or its designee for all infants born in the state. Such services shall be performed without charge.

(c) Provide a follow-up program by providing test results and other information to identified physicians; locate infants with abnormal newborn screening test results; with parental consent, monitor infants to assure appropriate testing to either confirm or not confirm the disease suggested by the screening test results; with parental consent, monitor therapy and treatment for infants with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria or other genetic diseases being screened under this statute; and establish ongoing education and support activities for individuals with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases being screened under this statute and for the families of such individuals.

(d) Maintain a registry of cases including information of importance for the purpose of follow-up services to prevent intellectual disability or morbidity.

(e) Provide, within the limits of appropriations available therefor, the necessary treatment product for diagnosed cases for as long as medically indicated, when the product is not available through other state agencies.

In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual meets medicaid eligibility, such individuals' needs shall be covered under the medicaid state plan. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual is not medicaid eligible, but is below 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of between 50% to 100% of the product cost in accordance with rules and regulations adopted by the secretary of health and environment. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual exceeds 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of an amount not to exceed 50% of the product cost in accordance with rules and regulations adopted by the secretary of health and environment.

(f) Provide state assistance to an applicant pursuant to subsection (e) only after it has been shown that the applicant has exhausted all benefits from private third-party payers, medicare, medicaid and other government assistance programs and after consideration of the applicant's income and assets. The secretary of health and environment shall adopt rules and regulations establishing standards for determining eligibility for state assistance under this section.

(g) (1) Except for treatment products provided under subsection (e), if the medically necessary food treatment product for diagnosed cases must be purchased, the purchaser shall be reimbursed by the department of health and environment for costs incurred up to \$1,500 per year per diagnosed child age 18 or younger at 100% of the product cost upon submission of a receipt of purchase identifying the company from which the product was purchased. For a purchaser to be eligible for reimbursement under this subsection, the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(2) As an option to reimbursement authorized under subsection (g)(1), the department of health and environment may purchase food treatment products for distribution to diagnosed children in an amount not to exceed \$1,500 per year per diagnosed child age 18 or younger. For a diagnosed child to be eligible for the distribution of food treatment products under this subsection, the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not

exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(3) In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection ~~(g)~~.

(h) The department of health and environment shall continue to receive orders for both necessary treatment products and necessary food treatment products, purchase such products, and shall deliver the products to an address prescribed by the diagnosed individual. The department of health and environment shall bill the person or persons who have legal responsibility for the diagnosed patient for a *pro-rata* share of the total costs, in accordance with the rules and regulations adopted pursuant to this section.

(i) ~~Not later than July 1, 2008,~~ The secretary of health and environment shall adopt rules and regulations as needed to require, to the extent of available funding, newborn screening tests to screen for treatable disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American college of medical genetics entitled “Newborn Screening: Toward a Uniform Screening Panel and System” or another report determined by the department of health and environment to provide more appropriate newborn screening guidelines to protect the health and welfare of newborns for treatable disorders.

(j) In performing the duties under subsection (i), the secretary of health and environment shall appoint an advisory council to advise the department of health and environment on implementation of subsection (i).

(k) The department of health and environment shall periodically review the newborn screening program to determine the efficacy and cost effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening program.

(l) *There is hereby established in the state treasury the Kansas newborn screening fund which shall be administered by the secretary of health and environment. All expenditures from the fund shall be for the newborn screening program. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or the secretary's designee. Each month, the director of accounts and reports shall determine the amount credited to the state general fund pursuant to K.S.A. 40-3213, and amendments thereto, and shall transfer the portion of such amount that is necessary to fund the newborn screening program for the preceding month as cer-*

*tified by the secretary of health and environment or the secretary's designee, to the newborn screening fund, except that such amount shall not exceed the amount to be credited to the state general fund pursuant to K.S.A. 40-3213, and amendments thereto.*

Sec. 2. K.S.A. 2011 Supp. 65-180, as amended by section 39 of 2012 Substitute for Senate Bill No. 397, is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 14, 2012.

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## CHAPTER 115

### SENATE BILL No. 262°

AN ACT concerning children; relating to grandparent custody, visitation and residency.

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

Section 1. (a) Notwithstanding the provisions of other statutes, when a child is removed from the custody of a parent and not placed with the child's other parent, a grandparent who requests custody shall receive substantial consideration when evaluating what custody, visitation or residency arrangements are in the best interests of the child. Such evaluation of custody, visitation or residency arrangements shall be stated on the record.

(b) In deciding whether to give custody to a grandparent, the court should be guided by the best interests of the child and should consider all relevant factors including, but not limited to, the following:

- (1) The wishes of the parents, child and grandparent;
- (2) the extent to which the grandparent has cared for, nurtured and supported the child;
- (3) the intent and circumstances under which the child is placed with the grandparent, including whether domestic violence is a factor and whether the child is placed to allow the parent to seek work or attend school; and
- (4) the physical and mental health of all individuals involved.

(c) If the court does not give custody of a child to a grandparent pursuant to subsection (b) and the child is placed in the custody of the secretary of social and rehabilitation services, a grandparent who requests placement of the child in such grandparent's home shall receive substantial consideration in the evaluation of the secretary's placement of the child. The secretary shall consider all relevant factors, including, but not limited to, all factors listed in subsection (b) in deciding whether to place the child in the home of such grandparent. If the secretary decides that

the child is not to be placed in the home of such grandparent, the secretary shall prepare and maintain a written report providing the specific reasons for such finding.

(d) The provisions of this section shall not apply to actions filed under the Kansas adoption and relinquishment act, K.S.A. 59-2111 *et seq.*, and amendments thereto.

(e) This section shall be part of and supplemental to the revised Kansas code for care of children.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 14, 2012.

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CHAPTER 116  
HOUSE BILL No. 2562

AN ACT concerning public health; relating to emergency care or assistance at the scene of an emergency or accident; concerning certain contracts by the board of healing arts with persons licensed to practice the healing arts; amending K.S.A. 2011 Supp. 65-2878 and repealing the existing section.

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

New Section 1. Any person who is not a health care provider pursuant to K.S.A. 2011 Supp. 65-2891, and amendments thereto, who in good faith without compensation renders emergency care or assistance to a person, including a minor without first obtaining the consent of the parent or guardian of such minor, at the scene of an emergency or accident shall not be held liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

Sec. 2. K.S.A. 2011 Supp. 65-2878 is hereby amended to read as follows: 65-2878. (a) The board shall appoint an executive director, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed as executive director shall exercise any power, duty or function as executive director until confirmed by the senate. The executive director shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and approved by the governor. The executive director shall not be a member of the board. Under the supervision of the board, the executive director shall be the chief administrative officer of the board and shall perform such duties as may be specified by the board and as may be required by law. The executive director shall be the custodian of the

common seal of the board, the books and records of the board and shall keep minutes of all board proceedings.

(b) The board may employ an administrative assistant. The administrative assistant shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and approved by the governor. Under the supervision of the executive director, the administrative assistant shall assist the executive director in the performance of the duties of the executive director.

(c) The board may employ such clerical and other employees, who shall be in the classified service under the Kansas civil service act, as it considers necessary in order to administer and execute, under the supervision of the executive director, the provisions of this act or other statutes delegating duties and responsibilities to the board, except that any attorney employed by the board shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and approved by the governor.

(d) As necessary, the board shall be represented by an attorney appointed by the attorney general as provided by law, whose compensation shall be determined and paid by the board with the approval of the governor.

(e) The board may contract with one or more persons who are licensed to practice the healing arts in this state and who are not members of the board to provide such advice and assistance as necessary on: License matters including review, investigation and disposition of complaints; clinical and patient care matters; and the ethical conduct and professional practice of licensees; or to perform other duties as assigned by the executive director or the board. *For the purposes of contracting with such persons, the board shall be exempt from the provisions of K.S.A. 75-3739, and amendments thereto.*

Sec. 3. K.S.A. 2011 Supp. 65-2878 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 16, 2012.

Published in the *Kansas Register* May 24, 2012.

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## CHAPTER 117

Senate Substitute for Senate Substitute for HOUSE BILL No. 2249

AN ACT concerning confidentiality of health information; amending K.S.A. 2011 Supp. 65-6828 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 65-6828 is hereby amended to read as follows: 65-6828. To the extent any provision of state law regarding the confidentiality, privacy, security or privileged status of any protected health information conflicts with the provisions of this act, the provisions of this act shall control, except that: (a) Nothing in this act shall limit or restrict the effect and application of the peer review statute, K.S.A. 65-4915, and amendments thereto; the risk management statute, K.S.A. 65-4921, and amendments thereto; ~~or any statutory health care provider-patient privilege or any statutory health care provider-patient evidentiary privilege applicable to a judicial or administrative proceeding;~~ and (b) nothing in this act shall limit or restrict the ability of any state agency to require the disclosure of protected health information by any person or entity pursuant to law.

~~This section shall take effect on and after July 1, 2011.~~

Sec. 2. K.S.A. 2011 Supp. 65-6828 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 16, 2012.

## CHAPTER 118

Senate Substitute for Substitute for HOUSE BILL No. 2004

AN ACT concerning the low-income family postsecondary savings account incentive program; amending K.S.A. 2011 Supp. 75-650 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 75-650 is hereby amended to read as follows: 75-650. (a) As used in this section:

(1) "Federal poverty level" means the most recent poverty income guidelines published in the calendar year by the United States department of health and human services.

(2) "Program" means the low-income family postsecondary savings accounts incentive program established by this section.

(3) "Qualified individual or family" means an individual or family who resides within the state of Kansas and whose household income is *positive*

and not more than 200% of the federal poverty level for the tax year prior to the year in which the application is submitted.

(4) "Participant" means a qualified individual or family who has been approved for a matching grant under the program.

(5) "District" means a congressional district of the state of Kansas.

(6) "Application" means an application for a matching grant under the program.

(7) "*Third-party contributor*" means any individual or organization who contributes money to a family postsecondary savings account established pursuant to K.S.A. 75-640 et seq., and amendments thereto, other than the account owner who established such family postsecondary savings account for the benefit of the participant.

~~(7)~~(8) Words and phrases have the meanings provided by K.S.A. 75-643, and amendments thereto, unless otherwise provided by this section.

(b) There is hereby established the low-income family postsecondary savings accounts incentive program. The purpose of the program is to encourage the establishment of family postsecondary savings accounts pursuant to K.S.A. 75-640, and amendments thereto, by qualified individuals and families.

(c) The treasurer shall:

(1) Implement and administer the program;

(2) develop marketing plans and promotional material for the program;

(3) prescribe the procedure for, and requirements relating to, the submission and approval of applications;

(4) do all things necessary and proper to carry out the purposes of this act; and

(5) adopt any rules and regulations and policies deemed necessary for implementation and administration of the program.

(d) Applications shall be submitted to the treasurer in the manner and form required by the treasurer. Applications shall be accompanied by any information deemed necessary by the treasurer. Applications must be submitted each year using the applicant's household income from the previous tax year.

(e) Beginning in calendar year 2009, the treasurer may approve no more than 300 applications from a single district. If 300 applications from residents of a district are not approved in calendar year 2009 or any year thereafter, the treasurer may approve additional applications submitted by residents of the remaining districts up to the program total of 1,200 applications per year. Applications shall be approved on a first come, first served basis. The treasurer shall provide written notice, to an applicant, of the approval or nonapproval of such person's application.

(f) The amount of contributions made to an account by ~~a participant~~ *an account owner who establishes a family postsecondary savings account for the benefit of a participant* pursuant to K.S.A. 75-640 et seq., and

amendments thereto, shall be matched by the state on a dollar-for-dollar basis if the ~~participant~~ *account owner* contributes at least \$100 to a *family postsecondary education savings account for the benefit of the participant* during the calendar year for which the application has been approved. The aggregate of all matching amounts for any ~~participant~~ *family postsecondary savings account* shall not exceed \$600 in any calendar year. *All contributions by a third-party contributor shall be deposited in the matching grant account for the participant established by the treasurer or another similar account for which the withdrawals are restricted as required by subsection (h).*

(g) Between January 1 and January 31 of each state fiscal year, the director of accounts and reports shall transfer from the state general fund to the Kansas postsecondary education savings program trust fund the amount, as certified by the treasurer, necessary to meet the matching obligations under subsection (f) for the preceding calendar year, except that the amount transferred from the state general fund to the Kansas postsecondary education savings program trust fund shall not exceed the maximum amount specified by appropriation act for such purpose for that state fiscal year. On or before January 31 of each year, the treasurer shall transfer from the Kansas postsecondary education savings program trust fund to the account of each participant the amount determined by the treasurer to meet the matching obligation due to such participant under subsection (f) for the preceding calendar year.

(h) The treasurer shall ensure that all withdrawals of matching funds are used for qualified withdrawals under K.S.A. 75-640 *et seq.*, and amendments thereto.

(i) The treasurer shall prepare and submit to the governor and the legislature a report on the program on or before January 31 of each year. Such report shall include the number of accounts opened under the program, the amount of moneys contributed to such accounts by the participants, the amount of matching moneys transferred by the treasurer pursuant to subsection (g), the average income of the participants, an analysis of the success of the program in meeting the purpose of the program and any other information deemed appropriate by the treasurer.

(j) The provisions of this section shall be part of and supplemental to the Kansas postsecondary education savings program.

Sec. 2. K.S.A. 2011 Supp. 75-650 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after January 1, 2013, and its publication in the statute book.

Approved May 16, 2012.

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## CHAPTER 119

## HOUSE BILL No. 2534

AN ACT concerning children and minors; relating to reporting of disappearance or death of a child; relating to interference with law enforcement; amending K.S.A. 2011 Supp. 21-5904 and repealing the existing section.

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

New Section 1. (a) Failure to report the disappearance of a child is knowingly failing to report to a law enforcement officer, law enforcement agency or state investigative agency, as soon as practically possible, the disappearance of a child under the age of 13 by a parent, legal guardian or caretaker when:

(1) Such person knows or reasonably should know that such child has been missing, with the intent to conceal the commission of a crime, other than a violation of this subsection; or

(2) such person knows that such child is missing and has reason to believe that such child is in imminent danger of death or great bodily harm.

(b) (1) Failure to report the death of a child is knowingly failing to promptly report the death of a child to a law enforcement officer, law enforcement agency or state investigative agency, with the intent to conceal the commission of a crime, other than a violation of this subsection, by a:

(A) Parent, legal guardian or caretaker; or

(B) person required to make a report as provided in subsection (a) of K.S.A. 38-2223, and amendments thereto, unless such person is a parent, legal guardian or caretaker.

(2) The provisions of this subsection shall not apply when the child's death has been reported by another person or is otherwise known by a law enforcement officer, law enforcement agency or state investigative agency.

(c) (1) Failure to report the disappearance of a child is a severity level 8, nonperson felony.

(2) Failure to report the death of a child as defined in:

(A) Subsection (b)(1)(A) is a severity level 8, nonperson felony; and

(B) subsection (b)(1)(B) is a class B nonperson misdemeanor.

(d) As used in this section, "caretaker" means a person 16 years of age or older that had willfully assumed responsibility for the care of a child at the time of the child's disappearance or death.

Sec. 2. K.S.A. 2011 Supp. 21-5904 is hereby amended to read as follows: 21-5904. (a) Interference with law enforcement is:

(1) Falsely reporting to a law enforcement officer, *law enforcement agency* or state investigative agency that a crime has been committed *or any information concerning a crime or suspected crime*, knowing that such

information is false and intending that the officer or agency shall act in reliance upon such information; ~~or~~

(2) *falsely reporting to a law enforcement officer, law enforcement agency or state investigative agency any information concerning the death, disappearance or potential death or disappearance of a child under the age of 13, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or*

(3) knowingly obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

(b)~~(1)~~ Interference with law enforcement as defined in:

(1) Subsection (a)(1) is a class A misdemeanor;

(2) *subsection (a)(2) is a severity level 8, nonperson felony; and*

(3) ~~Interference with law enforcement as defined in subsection (a)(2)(3) is a:~~

(A) Severity level 9, nonperson felony in the case of a felony, or resulting from parole or any authorized disposition for a felony; and

(B) class A nonperson misdemeanor in the case of a misdemeanor, or resulting from any authorized disposition for a misdemeanor, or a civil case.

Sec. 3. K.S.A. 2011 Supp. 21-5904 is hereby repealed.

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

Approved May 16, 2012.

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## CHAPTER 120

### HOUSE BILL No. 2684\*

AN ACT establishing the justice reinvestment working group.

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

Section 1. (a) The secretary of corrections shall establish the justice reinvestment working group.

(b) The working group shall consist of the following members:

(1) One senator appointed by the president of the senate;

(2) one representative appointed by the speaker of the house of representatives;

(3) one senator appointed by the minority leader of the senate;

(4) one representative appointed by the minority leader of the house of representatives;

(5) one member appointed by the governor;

- (6) one member appointed by the attorney general;
- (7) one member appointed by the chief justice of the supreme court;
- (8) one member shall represent court services officers, appointed by the chief justice of the supreme court;
- (9) the secretary of corrections;
- (10) the director of victims services of the department of corrections;
- (11) one member shall represent community corrections, appointed by the secretary of corrections;
- (12) one member of the prisoner review board, appointed by the secretary of corrections;
- (13) one member shall be a prosecuting attorney, appointed by the Kansas county and district attorneys association;
- (14) one member shall represent public defenders, appointed by the executive director of the state board of indigents' defense services;
- (15) one member shall represent mental health providers, appointed by the secretary for aging and disability services;
- (16) one member shall be a sheriff, appointed by the Kansas sheriff's association; and
- (17) one member shall be a law enforcement officer, appointed by the Kansas association of chiefs of police.

(c) The members appointed by the president of the senate and the speaker of the house of representatives shall serve as co-chairs of the working group. The secretary of corrections shall serve as vice-chairperson. The working group shall meet on call of either co-chair or on the request of nine members of the working group. Nine members of the working group shall constitute a quorum. All actions of the working group shall be taken by a majority of all members of the working group.

(d) The working group shall undertake a study of the data-driven, fiscally responsible policies and practices that can increase public safety and reduce recidivism and spending on corrections in Kansas.

(e) On or before January 1, 2013, the working group shall submit a report of the working group's activities and recommendations regarding increased public safety and reducing recidivism and spending on corrections in Kansas to the secretary of the senate and the chief clerk of the house of representatives.

(f) The members of the working group attending meetings of such working group, or attending a subcommittee meeting thereof authorized by such working group, shall receive amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto, upon vouchers approved by the secretary of corrections or a person or persons designated by the secretary.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 16, 2012.

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CHAPTER 121  
SENATE BILL No. 211

AN ACT concerning pharmacists; relating to dispensing prescriptions; amending K.S.A. 2011 Supp. 65-1637 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 65-1637 is hereby amended to read as follows: 65-1637. In every store, shop or other place defined in this act as a “pharmacy” there shall be a pharmacist in charge and, except as otherwise provided by law, the compounding and dispensing of prescriptions shall be limited to pharmacists only. Except as otherwise provided by the pharmacy act of this state, when a pharmacist is not in attendance at a pharmacy, the premises shall be enclosed and secured. Prescription orders may be written, oral, telephonic or by electronic transmission unless prohibited by law. Blank forms for written prescription orders may have two signature lines. If there are two lines, one signature line shall state: “Dispense as written” and the other signature line shall state: “Brand exchange permissible.” Prescriptions shall only be filled or refilled in accordance with the following requirements:

(a) All prescriptions shall be filled in strict conformity with any directions of the prescriber, except:

(1) *That a pharmacist may provide up to three-month supply of a prescription drug that is not a controlled substance or psychotherapeutic drug when a practitioner has written a drug order to be filled with a smaller supply but included sufficient numbers of refills for a three-month supply; and*

(2) that a pharmacist who receives a prescription order for a brand name drug product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser unless:

~~(1)(A)~~ The prescriber, in the case of a prescription signed by the prescriber and written on a blank form containing two signature lines, signs the signature line following the statement “dispense as written,” ~~or~~

~~(2)(B)~~ the prescriber, in the case of a prescription signed by the prescriber, writes in the prescriber’s own handwriting “dispense as written” on the prescription, ~~or~~

~~(3)(C)~~ the prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates the prescription is to be dispensed as communicated, or

~~(4)(D)~~ the federal food and drug administration has determined that a drug product of the same generic name is not bioequivalent to the prescribed brand name prescription medication.

(b) Prescription orders shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be dispensed by the pharmacist. This record, if telephoned by other than the physician shall bear the name of the person so telephoning. Nothing in this paragraph shall be construed as altering or affecting in any way laws of this state or any federal act requiring a written prescription order.

(c) (1) Except as provided in paragraph (2), no prescription shall be refilled unless authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist.

(2) A pharmacist may refill a prescription order issued on or after the effective date of this act for any prescription drug except a drug listed on schedule II of the uniform controlled substances act or a narcotic drug listed on any schedule of the uniform controlled substances act without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety and welfare. Such prescription refill shall only be in an amount judged by the pharmacist to be sufficient to maintain the patient until the prescriber can be contacted, but in no event shall a refill under this paragraph be more than a seven day supply or one package of the drug. However, if the prescriber states on a prescription that there shall be no emergency refilling of that prescription, then the pharmacist shall not dispense any emergency medication pursuant to that prescription. A pharmacist who refills a prescription order under this subsection (c)(2) shall contact the prescriber of the prescription order on the next business day subsequent to the refill or as soon thereafter as possible. No pharmacist shall be required to refill any prescription order under this subsection (c)(2). A prescriber shall not be subject to liability for any damages resulting from the refilling of a prescription order by a pharmacist under this subsection (c)(2) unless such damages are occasioned by the gross negligence or willful or wanton acts or omissions by the prescriber.

(d) If any prescription order contains a provision that the prescription may be refilled a specific number of times within or during any particular period, such prescription shall not be refilled except in strict conformity with such requirements.

(e) If a prescription order contains a statement that during any particular time the prescription may be refilled at will, there shall be no limitation as to the number of times that such prescription may be refilled except that it may not be refilled after the expiration of the time specified

or one year after the prescription was originally issued, whichever occurs first.

(f) Any pharmacist who exercises brand exchange and dispenses a less expensive drug product shall not charge the purchaser more than the regular and customary retail price for the dispensed drug.

Nothing contained in this section shall be construed as preventing a pharmacist from refusing to fill or refill any prescription if in the pharmacist's professional judgment and discretion such pharmacist is of the opinion that it should not be filled or refilled.

Sec. 2. K.S.A. 2011 Supp. 65-1637 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2012.

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## CHAPTER 122

House Substitute for SENATE BILL No. 129

AN ACT concerning elections and campaign finance; amending K.S.A. 25-4153 and K.S.A. 2011 Supp. 2-624, 24-414, 25-2908 and 65-2418 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 2-624 is hereby amended to read as follows: 2-624. (a) The governing body of each extension district shall be composed of four representatives from each county included in the extension district. At the conclusion of the terms of the members first appointed to membership on the governing body of the district, the four members representing each county in an extension district shall be elected in a county-wide election by the qualified electors of the county.

(b) At the conclusion of the terms of the members first appointed to membership on the governing body of the district, each member of the governing body shall hold office for a term of four years and until such member's successor is elected and qualified. Each such term of office shall commence on the date of receipt of certification of election by the member elected and shall continue until the member's successor is elected and qualified.

(c) (1) Except as otherwise provided in this act, an election to elect successors to members of the governing body whose terms are expiring shall be held on the first Tuesday in April in each odd-numbered year.

(2) Elections to choose members of the governing body of an extension district shall be conducted, the returns made and the results ascertained in the manner provided by law for general county elections except as otherwise provided by this act. Not later than 12 noon of the Tuesday,

10 weeks preceding the first Tuesday in April in ~~odd-numbered~~ *election* years, each person desiring to be a candidate for membership on the governing body, in any election, shall file a declaration of candidacy, *accompanied by a filing fee of \$5*, with the county election officer of the county represented by the member of the governing body whose successor is to be elected, as a candidate in such election. *The county election officer shall remit such filing fees to the county treasurer for deposit in the county general fund.* The county election officer in making up the ballots and in placing the names thereon shall place the names on the ballots in alphabetical order.

(3) The county election officer of each county within the extension district shall appoint election boards as provided by law for other elections and shall designate places for holding the election. The county election officer shall cause to be ascertained the names of all persons within the district who are qualified electors, and shall furnish lists thereof to the judges of the election. Notice of the time and place of holding each election, signed by the county election officer, shall be given in a newspaper published in the county and posted in a conspicuous place in the office of the governing body at least five days before the holding thereof.

(4) All election expenses shall be paid by the extension district. Election officials shall receive the same compensation as provided under the general election laws.

(d) Any vacancy in the membership of the governing body of an extension district shall be filled by appointment by the governing body for the unexpired term of office. Each member so appointed shall be a resident of the county which was represented by the member creating the vacancy.

(e) The governing body of each extension district shall organize annually in July by electing from among its members a chairperson, vice-chairperson, secretary and treasurer.

Sec. 2. K.S.A. 2011 Supp. 24-414 is hereby amended to read as follows: 24-414. (a) Elections to choose directors shall be conducted, the returns made and the results ascertained in the manner provided by law for general county elections except as otherwise provided by law, and all persons desiring to be voted upon as director, in any election, shall, not later than ~~12:00~~ 12 noon of the ~~Wednesday~~ *Tuesday*, 10 weeks preceding the first Tuesday in April in election years, file a declaration of candidacy, *accompanied by a filing fee of \$5*, with the county election officer of the county wherein the district is located, as a candidate in such election, and the election officer in making up the ballots and in placing the names thereon shall place the names on the ballots in alphabetical order, but the returns of all special or bond elections shall be made to the secretary and canvassed by the

board of directors. *The county election officer shall remit such filing fees to the county treasurer for deposit in the county general fund.* The county election officer of the county wherein the drainage district is situated shall appoint election boards as provided by law for other elections and shall designate places for holding the election. The county clerk shall cause to be ascertained the names of all persons within the district who are also qualified electors, and shall furnish lists thereof to the judges of the election.

(b) Notice of the time and place of holding each election, signed by the county election officer, shall be given in a newspaper published in the county and posted in a conspicuous place in the office of the board of directors at least five days before the holding thereof. At all elections and meetings held under the provisions of this act, only persons who are qualified electors shall be entitled to vote. In counties having a population of more than 150,000, at all elections and meetings held under the provisions of this act, only persons who are taxpayers and residents of the district who are qualified electors shall be entitled to vote. All election expenses shall be paid for out of the general fund of the drainage district. Election officials shall receive the same compensation as provided under the general election laws.

(c) As used in this section, “taxpayer” means any person who owns any real property or tangible property within the district who pays taxes assessed on such property.

Sec. 3. K.S.A. 2011 Supp. 25-2908 is hereby amended to read as follows: 25-2908. (a) Each polling place shall use either: (1) A registration book and a poll book, as defined in K.S.A. 25-2507(a) and K.S.A. 25-2507(b)(1), and amendments thereto; or (2) a registration book, as defined in K.S.A. 25-2507(b)(2), and amendments thereto. The county election officer shall determine which books are used in each county, and which book voters shall sign.

(b) A person desiring to vote shall provide to the election board: (1) The voter’s name; (2) if required, the voter’s address; (3) the voter’s signature on the registration or poll book; and (4) a valid form of identification listed in subsection (h). A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter’s direction if the signature reflects such voter’s intention.

(c) A member of the election board shall:

- (1) Announce the voter’s name in a loud and distinct tone of voice, and, if the name is in the registration books, the member of the election board having the registration record shall repeat the name;
- (2) request the voter’s signature on the registration or poll book;
- (3) provide the required signature at the request of and on behalf of

any voter who is unable to personally affix a signature by reason of temporary illness or disability, or lack of proficiency in reading the English language;

(4) request a valid form of identification from the voter. If the member of the election board is satisfied that the voter is the person depicted in the identification and that the identification provided is one of the valid forms of identification listed in subsection (h), the member of the election board shall place such member's initials in the space provided and allow the voter to vote;

(5) give the voter one ballot, on the upper right-hand corner of which shall be written the number corresponding to the voter's number in the registration book or poll book; and

(6) mark the voter's name in the registration book and party affiliation list.

(d) If a voter is unable or refuses to provide current and valid identification, the voter may vote a provisional ballot pursuant to K.S.A. 25-409, and amendments thereto. If the voter's name and address do not match the voter's name and address on the registration book or poll book, the voter may vote a provisional ballot according to K.S.A. 25-409, and amendments thereto. The voter shall provide a valid form of identification as defined in subsection (h) of this section to the county election officer in person or provide a copy by mail or electronic means before the meeting of the county board of canvassers. At the meeting of the county board of canvassers the county election officer shall present copies of identification received from provisional voters and the corresponding provisional ballots. If the county board of canvassers determines that a voter's identification is valid and the provisional ballot was properly cast, the ballot shall be counted.

(e) If the name of any person desiring to vote at an election is not in the registration books, an election board member shall print the name and address of the person appearing to vote in the registration book or poll book. The person appearing to vote shall add such person's signature to the registration book or poll book beside such person's printed name, as listed in the registration book or poll book, and the election board judge shall challenge such person's vote pursuant to K.S.A. 25-414, and amendments thereto. During the pendency of a challenge other voters shall be given ballots and be permitted to vote.

(f) A voter who has received an advance voting ballot may vote a provisional ballot on election day at the precinct polling place where the voter resides. If the voter returns the advance voting ballot to a judge or clerk at the precinct polling place, the judge or clerk shall void such advance voting ballot. Any such provisional ballot shall be counted only if the county board of canvassers determines that the provisional ballot was properly cast and the voter has not otherwise voted at such election.

(g) The secretary of state may adopt rules and regulations in order to

implement the provisions of this section and define valid forms of identification with greater specificity, however the requirement that a voter must provide a form of identification that complies with the subsection (h) may not be altered.

(h) (1) The following forms of identification shall be valid if the identification contains the name and photograph of the voter and has not expired. Expired documents shall be valid if the bearer of the document is 65 years of age or older:

(A) A driver's license issued by Kansas or by another state or district of the United States;

(B) a state identification card issued by Kansas or by another state or district of the United States;

(C) a concealed carry of handgun license issued by Kansas or a concealed carry of handgun or weapon license issued by another state or district of the United States;

(D) a United States passport;

(E) an employee badge or identification document issued by a municipal, county, state, or federal government office or agency;

(F) a military identification document issued by the United States;

(G) a student identification card issued by an accredited postsecondary institution of education in the state of Kansas; ~~or~~

(H) a public assistance identification card issued by a municipal, county, state, or federal government office or agency; *or*

(I) *an identification card issued by an Indian tribe.*

(2) If the person fails to furnish the identification required by this subsection, the person shall be allowed to vote a provisional ballot. The canvassing board shall determine the validity of the ballot pursuant to K.S.A. 25-3002, and amendments thereto.

(i) The following persons are exempt from the photographic identification document requirements of this section:

(1) Persons with a permanent physical disability that makes it impossible for such persons to travel to a county or state office to obtain a qualifying form of identification and have qualified for permanent advance voting status under K.S.A. 25-1124, and amendments thereto;

(2) members of the uniformed service on active duty who, by reason of such active duty, are absent from the county on election day;

(3) members of the merchant marine who, by reason of service in the merchant marine, are absent from the county on election day;

(4) the spouse or dependent of a member referred to in paragraph (2) or (3), who, by reason of the active duty or service of the member, is absent from the county on election day; and

(5) any voter whose religious beliefs prohibit photographic identification. Any person seeking an exemption under this provision must complete and transmit a declaration concerning such religious beliefs to the county election officer or the Kansas secretary of state. The declaration

form shall be available on the official website of the Kansas secretary of state.

(j) *“Indian tribe” or “tribe” means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including any Alaska native village, as defined in 43 U.S.C. § 1602(c).*

Sec. 4. K.S.A. 25-4153 is hereby amended to read as follows: 25-4153.

(a) The aggregate amount contributed to a candidate and such candidate's candidate committee and to all party committees and political committees and dedicated to such candidate's campaign, by any political committee or any person except a party committee, the candidate or the candidate's spouse, shall not exceed the following:

(1) For the pair of offices of governor and lieutenant governor or for other state officers elected from the state as a whole, \$2,000 for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election;

(2) For the office of member of the house of representatives, district judge, district magistrate judge, district attorney, ~~member of the state board of education~~ or a candidate for local office, \$500 for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election.

(3) For the office of state senator *or member of the state board of education*, \$1,000 for each primary election (or in lieu thereof a caucus or convention of a political party) and an equal amount for each general election.

(b) For the purposes of this section, the face value of a loan at the end of the period of time allocable to the primary or general election is the amount subject to the limitations of this section. A loan in excess of the limits herein provided may be made during the allocable period if such loan is reduced to the permissible level, when combined with all other contributions from the person making such loan, at the end of such allocable period.

(c) For the purposes of this section, all contributions made by unemancipated children under 18 years of age shall be considered to be contributions made by the parent or parents of such children. The total amount of such contribution shall be attributed to a single custodial parent and 50% of such contribution to each of two parents.

(d) The aggregate amount contributed to a state party committee by a person other than a national party committee or a political committee shall not exceed \$15,000 in each calendar year; and the aggregate amount contributed to any other party committee by a person other than a national party committee or a political committee shall not exceed \$5,000 in each calendar year.

The aggregate amount contributed by a national party committee to a state party committee shall not exceed \$25,000 in any calendar year, and the aggregate amount contributed to any other party committee by a national party committee shall not exceed \$10,000 in any calendar year.

The aggregate amount contributed to a party committee by a political committee shall not exceed \$5,000 in any calendar year.

(e) Any political funds which have been collected and were not subject to the reporting requirements of this act shall be deemed a person subject to these contribution limitations.

(f) Any political funds which have been collected and were subject to the reporting requirements of the campaign finance act shall not be used in or for the campaign of a candidate for a federal elective office.

(g) The amount contributed by each individual party committee of the same political party other than a national party committee to any candidate for office, for any primary election at which two or more candidates are seeking the nomination of such party shall not exceed the following:

(1) For the pair of offices of governor and lieutenant governor and for each of the other state officers elected from the state as a whole, \$2,000 for each primary election (or in lieu thereof a caucus or convention of a political party);

(2) For the office of member of the house of representatives, district judge, district magistrate judge, district attorney, ~~member of the state board of education~~ or a candidate for local office, \$500 for each primary election (or in lieu thereof a caucus or convention of a political party).

(3) For the office of state senator *or member of the state board of education*, \$1,000 for each primary election (or in lieu thereof a caucus or convention of a political party).

(h) When a candidate for a specific cycle does not run for office, the contribution limitations of this section shall apply as though the individual had sought office.

(i) No person shall make any contribution or contributions to any candidate or the candidate committee of any candidate in the form of money or currency of the United States which in the aggregate exceeds \$100 for any one primary or general election, and no candidate or candidate committee of any candidate shall accept any contribution or contributions in the form of money or currency of the United States which in the aggregate exceeds \$100 from any one person for any one primary or general election.

Sec. 5. K.S.A. 2011 Supp. 65-2418 is hereby amended to read as follows: 65-2418. (a) (1) The secretary shall fix and charge by rules and regulations the fees to be paid for certified copies or abstracts of certificates or for search of the files for birth, death, fetal death, marriage or divorce records when no certified copy or abstract is made. Except as

otherwise provided in this section, the secretary shall remit all moneys received by or for the secretary from fees, charges or penalties, under the uniform vital statistics act, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the civil registration and health statistics fee fund created by K.S.A. 2011 Supp. 65-2418e, and amendments thereto.

(2) The secretary shall not charge any fee for a certified copy of a certificate or abstract or for a search of the files or records if the certificate, abstract or search is requested by a person who exhibits correspondence from the United States department of veterans affairs or the Kansas commission on veterans affairs which indicates that the person is applying for benefits from the United States department of veterans affairs and that such person needs the requested information to obtain such benefits, except that, for a second or subsequent certified copy of a certificate, abstract or search of the files requested by the person, the usual fee shall be charged. The secretary may provide by rules and regulations for exemptions from such fees.

(3) The secretary shall not charge or accept any fee for a certified copy of a birth certificate if the certificate is requested by any person who is 17 years of age or older for purposes of *voting if the applicant lacks the identification required by K.S.A. 25-2908(h), and amendments thereto, or meeting to meet* the voter registration requirements of K.S.A. 25-2309, and amendments thereto ~~such person~~. *For voter registration purposes, an applicant for registration shall swear under oath: (1) That such person plans to register to vote in Kansas; and (2) that such person does not possess any of the documents that constitute evidence of United States citizenship under K.S.A. 25-2309(1), and amendments thereto. The affidavit shall specifically list the documents that constitute evidence of United States citizenship under K.S.A. 25-2309(1), and amendments thereto. The secretary shall adopt rules and regulations in order to implement the provisions of this subsection.*

(4) Upon receipt of any such remittance of a fee for a certified copy of a birth certificate or abstract, \$3 of each such fee for the first copy of a birth certificate or abstract and \$1 of each such fee for each additional copy of the same birth certificate or abstract requested at the same time shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the permanent families account of the family and children investment fund created by K.S.A. 38-1808, and amendments thereto. The balance of the money received for a fee for a certified copy of a birth certificate or abstract shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments

thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the civil registration and health statistics fee fund created under this act.

(5) Upon receipt of any such remittance of a fee for a certified copy of a death certificate or abstract, \$4 of each such fee for the first certified copy of a death certificate or abstract and \$2 of each such fee for each additional copy of the same death certificate or abstract requested at the same time shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the district coroners fund created by K.S.A. 22a-245, and amendments thereto. The balance of the money received for a fee for a certified copy of a death certificate or abstract shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the civil registration and health statistics fee fund created by K.S.A. 2011 Supp. 65-2418e, and amendments thereto.

(b) Subject to K.S.A. 65-2415, and amendments thereto, the national office of vital statistics may be furnished copies or data it requires for national statistics. The state shall be reimbursed for the cost of furnishing the data. The data shall not be used for other than statistical purposes by the national office of vital statistics unless so authorized by the state registrar of vital statistics.

Sec. 6. K.S.A. 25-4153 and K.S.A. 2011 Supp. 2-624, 24-414, 25-2908 and 65-2418 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2012.

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## CHAPTER 123

### SENATE BILL No. 356

AN ACT concerning amusement rides; relating to regulation of home-owned amusement rides; amending K.S.A. 2011 Supp. 44-1601, 44-1613 and 44-1614 and repealing the existing sections.

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

New Section 1. The owner of a home-owned amusement ride shall acquire and maintain a general liability insurance policy, and shall annually submit proof of such insurance to the secretary in such form and manner as prescribed by the secretary. The owner of the home-owned

amusement ride shall make such proof of insurance available for inspection upon request.

Sec. 2. K.S.A. 2011 Supp. 44-1601 is hereby amended to read as follows: 44-1601. As used in this act:

(a) (1) "Amusement ride" means any mechanical or electrical device that carries or conveys passengers along, around or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement and shall include, but not be limited to:

(A) Rides commonly known as ferris wheels, carousels, parachute towers, bungee jumping, reverse bungee jumping, tunnels of love and roller coasters;

(B) equipment generally associated with winter activities, such as ski lifts, ski tows, j-bars, t-bars, chair lifts and aerial tramways; and

(C) equipment not originally designed to be used as an amusement ride, such as cranes or other lifting devices, when used as part of an amusement ride.

(2) "Amusement ride" does not include:

(A) Games, concessions and associated structures;

(B) any single passenger coin-operated ride that: (i) Is manually, mechanically or electrically operated; (ii) is customarily placed in a public location; and (iii) does not normally require the supervision or services of an operator; ~~or~~

(C) nonmechanized playground equipment, including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, moon walks and other inflatable equipment and physical fitness devices; *or*

(D) *home-owned amusement rides.*

(b) "Certificate of inspection" means a certificate, signed and dated by a qualified inspector, showing that an amusement ride has satisfactorily passed inspection by such inspector.

(c) "Department" means the department of labor.

(d) "Home-owned amusement ride" means an amusement ride owned by a not-for-profit entity and operated:

(1) Solely within a single county;

(2) by individuals on a volunteer basis; and

(3) for a period not to exceed 12 days within one calendar year.

(e) "Nondestructive testing" means the development and application of technical methods such as radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual and leak testing to:

(1) Examine materials or components in ways that do not impair the future usefulness and serviceability in order to detect, locate, measure and evaluate discontinuities, defects and other imperfections;

- (2) assess integrity, properties and composition; and
- (3) measure geometrical characters.
- (f) “Operator” means a person actually engaged in or directly controlling the operations of an amusement ride.
- (g) “Owner” means a person who owns, leases, controls or manages the operations of an amusement ride and may include the state or any political subdivision of the state.
- (h) “Parent or guardian” means any parent, guardian or custodian responsible for the control, safety, training or education of a minor or an adult or minor with an impairment in need of a guardian or a conservator, or both, as those terms are defined by K.S.A. 59-3051, and amendments thereto.
  - (i) (1) “Patron” means any individual who is:
    - (A) Waiting in the immediate vicinity of an amusement ride to get on the ride;
    - (B) getting on an amusement ride;
    - (C) using an amusement ride;
    - (D) getting off an amusement ride; or
    - (E) leaving an amusement ride and still in the immediate vicinity of the ride.
  - (2) “Patron” does not include employees, agents or servants of the owner while engaged in the duties of their employment.
- (j) “Person” means any individual, association, partnership, corporation, limited liability company, government or other entity.
- (k) “Qualified inspector” means a person who holds a current certification or other evidence of qualification to inspect amusement rides, issued by a program specified by rules and regulations adopted under K.S.A. 2011 Supp. 44-1603, and amendments thereto.
  - (l) “Secretary” means the secretary of labor.
  - (m) “Serious injury” means an injury that results in:
    - (1) Death, dismemberment, significant disfigurement or permanent loss of the use of a body organ, member, function or system;
    - (2) a compound fracture; or
    - (3) other significant injury or illness that requires immediate admission and overnight hospitalization and observation by a licensed physician.
  - (n) “Sign” means any symbol or language reasonably calculated to communicate information to patrons or their parents or guardians, including placards, prerecorded messages, live public address, stickers, pictures, pictograms, guide books, brochures, videos, verbal information and visual signals.

Sec. 3. K.S.A. 2011 Supp. 44-1613 is hereby amended to read as follows: ~~(a) The provisions of K.S.A. 2011 Supp. 44-1601 through 44-1612, and amendments thereto, shall not apply to home-owned amuse-~~

~~ment rides, as defined in K.S.A. 2011 Supp. 44-1601, and amendments thereto.~~

~~(b) The provisions of K.S.A. 2011 Supp. 44-1601 through 44-1612, and section 1, and amendments thereto, and this section, and amendments thereto, shall be known as the Kansas amusement ride act.~~

Sec. 4. K.S.A. 2011 Supp. 44-1614 is hereby amended to read as follows: 44-1614. The secretary of labor shall adopt rules and regulations necessary to implement provisions of the Kansas amusement ride act, K.S.A. 2011 Supp. 44-1601 through ~~44-1612~~ 44-1613 and section 1, and amendments thereto, ~~and K.S.A. 2011 Supp. 44-1613, and amendments thereto. Nothing herein shall be construed to authorize the secretary of labor to adopt rules and regulations regulating amusement rides exempted from the Kansas amusement ride act. Such rules and regulations shall be adopted on or before July 1, 2010.~~

Sec. 5. K.S.A. 2011 Supp. 44-1601, 44-1613 and 44-1614 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2012.

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CHAPTER 124  
HOUSE BILL No. 2757\*

AN ACT concerning roads and bridges; relating to memorial bridges; designating bridge no. 060 on United States highway 77 in Marshall county as the SP4 Michael T. Martin memorial bridge; designating bridge no. 054 on United States highway 36 in Marshall county as the SGT Joseph A. Zutterman Jr. memorial bridge.

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

Section 1. Bridge no. 060 on United States highway 77 in Marshall county is hereby designated as the SP4 Michael T. Martin memorial bridge. The secretary of transportation shall place suitable signs to indicate the bridge is the SP4 Michael T. Martin memorial bridge, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and an additional 50% of the initial cost to defray future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 2. Bridge no. 054 on United States highway 36 in Marshall county is hereby designated as the SGT Joseph A. Zutterman Jr. memorial bridge. The secretary of transportation shall place suitable signs to indi-

cate the bridge is the SGT Joseph A. Zutterman memorial bridge, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and an additional 50% of the initial cost to defray future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2012.

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## CHAPTER 125

Senate Substitute for HOUSE BILL No. 2596

AN ACT concerning agriculture; relating to animal health; amending K.S.A. 47-120, 47-121, 47-122, 47-237, 47-238, 47-419, 47-422, 47-424, 47-1001, 47-1002, 47-1005, 47-1010, 47-1102, 47-1213, 47-1217, 47-1219, 47-1301, 47-1305, 47-1306, 47-1509, 47-1701, 47-1710, 47-1711, 47-1723, 47-1725, 47-1726, 47-1727, 47-1801, 47-1804, 47-1807 and 47-2306 and K.S.A. 2011 Supp. 47-1008, 47-1302, 47-1706, 47-1707, 47-1708, 47-1709, 47-1809, 47-1825 and 47-1826 and repealing the existing sections; also repealing K.S.A. 47-619, 47-621, 47-636, 47-637, 47-638, 47-639, 47-641, 47-642, 47-643, 47-644, 47-647, 47-648, 47-649, 47-650, 47-651, 47-652, 47-653, 47-653d, 47-653e, 47-653f, 47-653g, 47-653h, 47-654, 47-655, 47-656, 47-666, 47-667, 47-668, 47-669, 47-670, 47-671, 47-921, 47-922, 47-923 and 47-1005b and K.S.A. 2011 Supp. 47-672 and 47-1307.

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

New Section 1. In addition to the remedies provided under K.S.A. 47-1001 *et seq.*, and amendments thereto, the commissioner is hereby authorized to apply to the district court for an injunction restraining any person from violating any provision of K.S.A. 47-1001 *et seq.*, and amendments thereto. Such court, upon a showing of cause therefore, shall have jurisdiction to grant such injunction irrespective of whether or not there exists an adequate remedy at law.

New Sec. 2. For purposes of administrative proceedings of the division of animal health of the Kansas department of agriculture, “agency head” means the Kansas secretary of agriculture or the animal health commissioner of the Kansas department of agriculture, when acting on behalf of the secretary.

Sec. 3. K.S.A. 47-120 is hereby amended to read as follows: 47-120. (a) Nothing herein contained shall be so construed as to prevent drovers or other persons from driving ~~swine~~ livestock from one place to another along any public highway, the owner or owners being responsible for all

damages that any person or persons may sustain in consequence of the driving of such ~~swine~~ livestock.

(b) *For the purposes of K.S.A. 47-120 through 47-122, and amendments thereto, "livestock" shall mean any cattle, bison, swine, sheep, goats, horses, mules, domesticated deer, camelids, all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas, and any other animal as deemed necessary by the animal health commissioner established through rules and regulations.*

Sec. 4. K.S.A. 47-121 is hereby amended to read as follows: 47-121. That any person or persons other than the owner or ~~his such owner's~~ authorized agent who shall willfully drive or cause to be driven any ~~horses, cattle, mules, sheep or swine or other domestic animals~~ livestock further from their usual and customary range than the nearest corral obtainable without the written consent of the owner, or who shall neglect to return such ~~horses, mules, cattle, sheep or swine or other domestic animals~~ livestock immediately to their accustomed range, shall in either case be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding ninety days, or by a fine of not less than ~~twenty-five dollars~~ \$100 nor more than ~~one hundred dollars~~ \$1,000, or by both such fine and imprisonment, in the discretion of the court.

Sec. 5. K.S.A. 47-122 is hereby amended to read as follows: 47-122. It shall be unlawful for any ~~domestic animal, other than dogs and cats,~~ livestock to run at large.

Sec. 6. K.S.A. 47-237 is hereby amended to read as follows: 47-237. If any person shall unlawfully take up any stray or fails to comply with the provisions of this act or uses or works such stray before giving notice or shall drive the same on any premises for the purpose of unlawfully taking up the same, or shall keep the same out of the county when taken up more than five days at one time before sale, ~~he such person~~ shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding ~~one hundred dollars~~ \$500, or by imprisonment for not exceeding ~~thirty~~ 30 days, or by both such fine and imprisonment.

Sec. 7. K.S.A. 47-238 is hereby amended to read as follows: 47-238. After the sheriff has received notice of the taking up of any stray, and the ownership not having been established, the sheriff shall advertise such stray in the area where taken up, and shall cause the stray ~~animal~~ to be delivered to a public livestock market ~~or to a terminal livestock market,~~ and shall sell or cause ~~said such stray animal~~ to be sold at such a market, to the highest bidder for cash. ~~Provided,~~ Such advertisement shall be at least seven ~~(7)~~ days before sale date, and such sale date shall be at least ~~twenty-one (21)~~ 21 days after *the* date the stray was reported to the sheriff.

Sec. 8. K.S.A. 47-419 is hereby amended to read as follows: 47-419.

When any brand is recorded, as provided herein, the owner thereof shall be entitled to one certified copy of the record of such brand from the commissioner. Additional certified copies of such record may be obtained by anyone upon the payment of a fee in an amount fixed by the commissioner ~~and approved by the director of accounts and reports under K.S.A. 45-204 for each copy.~~

Sec. 9. K.S.A. 47-422 is hereby amended to read as follows: 47-422. (a) Any brand ~~recorded with the Kansas animal health board~~ *registered with the animal health commissioner of the Kansas department of agriculture* in compliance with the requirements of this act shall be the property of the person causing such record to be made ~~and~~. *Such brand* shall be subject to sale, assignment, transfer, devise, and descent as other personal property. Instruments of writing evidencing the sale, assignment or transfer of such brand shall be recorded by the ~~livestock-animal health commissioner, and~~. The fee for recording such instruments of writing shall be \$15. Such instruments shall have the same force and effect as recorded instruments affecting real estate, ~~and~~. A certified copy of the record of any such instrument may be introduced in evidence the same as is now provided for certified copies of instruments affecting real estate. Any brand recorded with the ~~Kansas animal health department~~ *Kansas department of agriculture division of animal health* shall not be used by any person other than the recorded owner.

(b) Any person violating any provision of this section shall be guilty of a class C misdemeanor.

Sec. 10. K.S.A. 47-424 is hereby amended to read as follows: 47-424. The commissioner shall from time to time cause to be published in book form *or produce in electronic format*, a list of all brands and marks on record at the time of such publication. Such lists may be supplemented from time to time. Such publication *or production* shall contain a facsimile of all brands recorded, together with the owner's name and post-office address. ~~Said~~ *Such* records shall be arranged in convenient form for reference. The commissioner shall send, to the sheriff of each county, one copy of ~~said~~ *such* brand book and supplement thereto *or electronically formatted copy thereof*, which shall be kept as a matter of public record. The commissioner may exchange brand books and supplements thereto *or electronically formatted copies thereof* with livestock brand commissioners and directors of other states, and with the executive officer of a statewide organization of any other state which is charged with administration of brand laws of such state. The commissioner may make other distribution of brand books and supplements *or electronically formatted copies thereof* without charge, to Kansas licensed veterinarians and licensed public livestock market operators, when ~~he~~ *the commissioner* deems such distribution desirable and an aid to the effective administration of the brand laws of this state. ~~Said~~ *Such* books *or electronically*

*formatted copies of the production* may be sold to the general public at a price to be determined by the commissioner which shall be based on the cost of printing *or storing*, preparation and postage.

Sec. 11. K.S.A. 47-1001 is hereby amended to read as follows: 47-1001. As used in this act, except where the context clearly indicates a different meaning:

(a) "Commissioner" means the ~~livestock~~ *animal health* commissioner of the ~~state of Kansas~~ *department of agriculture*.

(b) "Livestock" means and includes cattle, *bison*, swine, sheep, goats, horses, mules, domesticated deer, *camelids*, *domestic poultry*, *domestic waterfowl*, all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas, and any other animal as deemed necessary by the commissioner established through rules and regulations.

(c) "Person" means and includes any individual, partnership, corporation or association.

(d) "Producer" means any person engaged in the business of breeding, grazing or feeding livestock.

(e) "Consignor" means any person who ships or delivers to any public livestock market livestock for handling, sale or resale at a public livestock market.

(f) "Public livestock market" means any place, establishment or facility commonly known as a "livestock market," "livestock auction market," "sales ring," "stockyard," "community sale" as such term is used in article 10 of chapter 47 of the Kansas Statutes Annotated, *and amendments thereto*, which includes any business conducted or operated for compensation or profit as a public market for livestock, consisting of pens, or other enclosures, and their appurtenances, in which livestock are received, held, sold or kept for sale or shipment except that this term shall not apply to any livestock market where federal veterinary inspection is regularly maintained.

(g) "Public livestock market operator" means any person who, in this state, receives on consignment, or solicits from the producer or consignor thereof, or holds in trust or custody for another, any livestock for sale or exchange, on behalf of such producer or consignor at a public livestock market, or sells, or offer for sale, at a public livestock market, for the account of the producer or consignor thereof, any livestock or directly or indirectly owns, conducts or operates a public livestock market. The term "public livestock market operator" shall not be construed to include any packer or agent of a packer who receives or purchases livestock for prompt slaughter.

(h) "Packer" means any person engaged in the business of buying livestock for purposes of slaughter, or of manufacturing or preparing meats or meat food products for sale or shipment, or of manufacturing

or preparing livestock products for sale or shipment, or of marketing meats, meat food products, livestock products, dairy products, poultry or poultry products.

(i) "Board" means any three members of the Kansas animal health board designated by the chairperson of the Kansas animal health board for each particular hearing. The chairperson may be included in such designation.

(j) "Dealer" as used in article 10 of chapter 47 of the Kansas Statutes Annotated, ~~to which this act is amendatory and supplemental, and amendments thereto~~, shall have the same meaning as the term "public livestock market operator."

(k) "Domesticated deer" means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

(l) "Occasional livestock sale" means livestock auctions or sales, that receive on consignment, or solicits from the producer or consignor thereof, or holds in trust or custody for another, any livestock for sale or exchange, on behalf of such producer or consignor at such auction or sale, or sells, or offers for sale, at such auction or sale, for the account of the producer or consignor thereof, any livestock or directly or indirectly owns, conducts or operates such auction or sale and such auctions or sales are held 12 or less times per year.

(m) "Electronic auction" means a live audio-visual broadcast of an actual auction where livestock are offered for sale and shall include auctions conducted by satellite communications and over the internet.

Sec. 12. K.S.A. 47-1002 is hereby amended to read as follows: 47-1002. (a) ~~The required bond required by K.S.A. 47-1001a, and amendments thereto, shall be in the minimum amount of twenty thousand dollars (\$20,000)~~ \$20,000 for each license year or fraction thereof, but may be a continuous bond. Each license year shall expire on June 30. ~~Said~~ Such bond shall be conditioned upon compliance by the principal with the provisions of this act and upon the prompt, faithful and honest handling by the principal of such livestock and the prompt remittance of the proceeds from the sale, purchase or exchange thereof to the lawful owner of such livestock. ~~Said~~ Such bond shall be to the state for the use and benefit of such person or persons as may suffer loss or damage by breach of the condition thereof. ~~Provided, That where the~~ *If the* commissioner is the trustee and custodian of a surety bond *or bond equivalent* wherein ~~said~~ such public livestock market operator is the principal and is operating under the provisions of the packers and stockyards act of 1921 of the United States, the commissioner may accept such bond *or bond equivalent* in lieu of the one herein otherwise required.

(b) For the purposes of this section, a bond equivalent shall be in one of the following forms:

(1) A trust fund agreement governing funds actually deposited or invested in fully negotiable obligations of the United States of federally-insured deposits or accounts in the name of and readily convertible to currency by a trustee; or

(2) a trust agreement governing funds which may be drawn by a trustee, under one or more irrevocable, transferable, standby letters of credit, issued by a federally-insured bank or institution and physically received and retained by the trustee.

(c) Any producer, consignor or purchaser of livestock claiming to be injured by the breach of any public livestock market operator of any of the terms and provisions of ~~said~~ such bond may bring action thereon in district court to recover the damages caused by such breach.

(d) When ~~said~~ such bond shall have been given, the commissioner shall thereupon issue to such applicant a license entitling the applicant, if a public livestock market operator, to conduct the business described in the application at the place named therein for a period expiring on June 30 following date of issuance, and for such additional license year periods as the public livestock market operator may be entitled to by reason of ~~his~~ the operator's having paid the annual application fee and the proof of ~~his~~ the operator's having paid the annual premium upon such continuous bond, or until such license shall have been revoked for cause.

Sec. 13. K.S.A. 47-1005 is hereby amended to read as follows: 47-1005. (a) After notice and an opportunity for a hearing, conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner may refuse to grant a license, or suspend or revoke a license, upon a finding of the existence of any of the following facts:

~~(a)~~(1) That any provision of this act, order or rule and regulation lawfully promulgated thereunder by the commissioner has been violated by the licensee;

~~(b)~~(2) that the licensee has knowingly received on consignment or sold at a public livestock market any stolen livestock, or mortgaged livestock without authority of the lawful owner or mortgagee;

~~(c)~~(3) that the licensee was guilty of fraud or deception in the procurement of such license;

~~(d)~~(4) that the licensee has violated the laws of the state, or official regulations governing the interstate or intrastate movement, shipment or transportation of any livestock;

~~(e)~~(5) that the licensee fails to practice measures of sanitation, disinfection and inspection, as prescribed by law or by the commissioner, of premises used for yarding, stabling, housing or holding of livestock; ~~or~~

~~(f)~~(6) that there has been failure to keep records required by the commissioner or a refusal on the part of the licensee to produce records

of transactions in the carrying on of the business for which such license is granted, or that the licensee selling livestock by weight fails or refuses to have livestock handled by such licensee weighed on scales that are regularly inspected and tested for accuracy by duly authorized public authority or authorities;

(7) *that there has been failure to make timely remittances of fees due under the act to the commissioner; or*

(8) *that the licensee has failed to properly maintain custodial accounts or bonds.*

(b) *Notwithstanding the provisions of subsection (a), nothing shall preclude the commissioner from issuing an emergency order in accordance with K.S.A. 77-536, and amendments thereto, to suspend the license of a public livestock market for the following reasons:*

(1) *If the bond or bond equivalent as described in K.S.A. 47-1002, and amendments thereto, for a livestock market operator expires or is terminated and no valid replacement bond or bond equivalent has been filed with the commissioner at the time expiration of such surety occurs; or*

(2) *if a shortage exists in any of the licensee's custodial accounts which the commissioner determines to endanger the public welfare.*

Sec. 14. K.S.A. 2011 Supp. 47-1008 is hereby amended to read as follows: 47-1008. (a) Livestock shall not be offered for sale or sold at any licensed public livestock market if such livestock:

(1) Is infected with a disease that permanently renders the livestock unfit for human consumption;

(2) has severe neoplasia;

(3) has severe actinomycosis;

(4) is unable to rise to its feet by itself; or

(5) has an obviously fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without that limb collapsing.

(b) If, in the judgment of an accredited veterinarian, the livestock consigned and delivered on the premises of any licensed public livestock market is in any of the conditions described in subsection (a), such veterinarian shall euthanize humanely the livestock or direct the consignor to immediately remove the livestock from the premises of the public livestock market. All expenses incurred for euthanasia and disposal of the livestock under the provisions of this subsection shall be the responsibility of the consignor. Collection of expenses shall not be the responsibility of the consignee.

(c) All livestock consigned and delivered on the premises of any licensed public livestock market, before being offered for sale, shall be inspected by a veterinarian authorized by the commissioner who shall visually examine or test, or both, each animal consigned to such market,

for the purpose of determining its condition of health and freedom of clinical signs of infectious or contagious animal diseases that are determined to be reportable by the ~~livestock~~ *livestock animal health* commissioner. Such regulatory veterinary services shall be contracted for by the ~~livestock~~ *livestock animal health* commissioner, who shall select an accredited veterinarian for each public livestock market. The public livestock market operator, for each public livestock market, shall submit to the ~~livestock~~ *livestock animal health* commissioner a list of accredited veterinarians to be considered for the position ~~or positions~~. Such veterinarian shall be authorized to make all required examinations and tests, and to issue certificates of inspection at the public livestock market where such veterinarian serves. All livestock sold, resold, exchanged or transferred, or offered for sale or exchange at a livestock market shall be treated as may be necessary to prevent the spread of contagious or infectious diseases. A certificate of inspection, on a form to be approved by the commissioner, shall be issued to the purchaser by the inspector. For the visual inspection of livestock offered for sale, there shall be collected by the market operator from the consignor a fee which shall be determined by negotiation between the market operator and the market veterinarian but shall not be less than \$.07 per head, except that no fee for inspection shall be collected unless the inspection actually has been made. If the charges per head collected on all livestock inspected at a livestock market on any sales day do not amount to a minimum per diem of \$40 or any amount greater than \$40 negotiated by the operator, the market operator shall be required to supply sufficient funds to provide such amount. Any amount lesser or greater than the \$40 amount specified, shall be determined by negotiation between the market operator and the market veterinarian. A copy of any agreement or contract shall be on file with the commissioner. Payments for veterinary services rendered under a contract as provided in this section shall be paid from the veterinary inspection fee fund, and for such services rendered prior to the end of a fiscal year, payment may be made within 90 days after the end of the fiscal year.

(d) Livestock market operators shall pay amounts received and amounts due under this section to the ~~livestock~~ *livestock animal health* commissioner. The commissioner shall remit all such amounts received to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the veterinary inspection fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or by a person or persons designated by such commissioner.

(e) The ~~livestock~~ *livestock animal health* commissioner shall promulgate rules and regulations as may be necessary to carry out the purposes of this

section, including, but not limited to, rules and regulations designating any disease as a disease that renders livestock or the carcasses thereof permanently unfit for human consumption. ~~The livestock commissioner shall promulgate all such rules and regulations in accordance with existing antemortem inspection regulations promulgated by the United States department of agriculture food safety and inspection service, as in effect on July 1, 1997.~~

(f) All livestock sold by a licensed electronic auction, before being delivered to an out-of-state buyer, shall have a health certificate issued by a licensed, accredited veterinarian. Kansas buyers shall be furnished a health certificate upon request.

Sec. 15. K.S.A. 47-1010 is hereby amended to read as follows: 47-1010. (a) *In addition to the penalties provided in subsection (b), any person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than ~~two hundred dollars (\$200)~~ \$100 or more than ~~five hundred dollars (\$500)~~ \$1,000, who commits any of the following acts:*

~~(a)~~(1) Assumes or attempts to act as a public livestock market operator without a license;

~~(b)~~(2) imposes false charges for handling or services in connection with livestock handled, sold or offered for sale at a public livestock market;

~~(c)~~(3) fails to account promptly, correctly and fully for any livestock sold or handled by him and properly to make settlements therefor;

~~(d)~~(4) makes false or misleading statements as to market conditions at any public livestock market conducted or operated by ~~him or it, the person making such statement or for whom such individual is in the employment of;~~

~~(e)~~(5) makes any false or misleading statements as to the health or physical condition of the livestock or quantity of livestock shipped or sold;  
or

~~(f)~~(6) fails to comply in any respect with this act and any and all lawful rules, regulations and orders of the commissioner issued and promulgated hereunder.

(b) *The commissioner, upon finding that a person has violated any provision of K.S.A. 47-1001 et seq., and amendments thereto, or any rule and regulation adopted thereunder, after notice and opportunity for a hearing are given in accordance with the provisions of the Kansas administrative procedure act, may impose a civil penalty in an amount not more than \$5,000 per violation. For the purposes of this section, violations shall include, but not be limited to, acts recognized in subsection (a) and acts or omissions which are grounds for administrative action pursuant to K.S.A. 47-1005, and amendments thereto.*

(c) *In the case of a continuing violation, every day such violation*

*continues shall be deemed a separate violation for the purposes of assessing civil penalties therefor. Such civil penalty may be assessed in addition to any other penalty provided by law. The recipient of a civil penalty may appeal the order to the district court in the manner provided by the Kansas judicial review act.*

*(d) Any penalty recovered pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.*

Sec. 16. K.S.A. 47-1102 is hereby amended to read as follows: 47-1102. *(a) ~~Every~~ Any person, firm or corporation violating or failing to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than ~~five hundred dollars or~~ \$1,000, by imprisonment in the county jail for not less than ~~sixty~~ 60 days nor more than six months or by both such fine and imprisonment.*

Sec. 17. K.S.A. 47-1213 is hereby amended to read as follows: 47-1213. *The commissioner, ~~after providing notice and opportunity for a hearing in accordance with the Kansas administrative procedure act,~~ shall have power to suspend or revoke any license or permit issued under this act for the failure or refusal of any licensee or permit holder to obey and comply with the provisions of this act and all rules and regulations authorized and adopted thereunder, ~~except that before any such license or permit is suspended or revoked the licensee or permit holder shall be notified of the alleged violations and the time and place of hearing thereon, as fixed by the commissioner, and a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.~~*

Sec. 18. K.S.A. 47-1217 is hereby amended to read as follows: 47-1217. *The willful violation of any of the provisions of this act, or the willful failure to comply with any of the provisions of this act, or any of the rules and regulations adopted thereunder, is hereby made a misdemeanor, and any person upon conviction thereof shall be punished by a fine of not less than ~~twenty-five dollars~~ \$25 nor more than ~~five hundred dollars~~ \$500. It shall be the duty of the attorney general and the various county attorneys, to file suit in a court of competent jurisdiction to enjoin any violation of this act or any rule ~~or~~ and regulation authorized and adopted under the provisions of this act.*

Sec. 19. K.S.A. 47-1219 is hereby amended to read as follows: 47-1219. *(a) Any person or persons who shall put any dead animals, carcasses of such animals or domestic fowl, or any part thereof, into any well, spring, brook, branch, river, creek, pond, road, street, alley, ~~lane, lot, field, meadow or common~~ lane other than the person's own private driveway,*

*lot not owned or leased by such person, field not owned or leased by such person, meadow not owned or leased by such person or commonly-owned or public property* shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding ~~\$100~~ \$500.

(b) Any owner or owners of any dead animals, carcasses of such animals or domestic fowl, or any part thereof, who shall knowingly permit the same to remain in any well, spring, brook, branch, river, creek, pond, road, street, alley, ~~lane, lot, field, meadow or common lane~~ *other than the person's own private driveway, lot not owned or leased by such person, field not owned or leased by such person, meadow not owned or leased by such person or commonly-owned or public property* to the injury of the health or to the annoyance of or damage to the citizens of the state or any of them, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding ~~\$100~~ \$500. Every 24 hours the owners shall permit the same to remain thereafter shall be deemed an additional offense.

(c) Persons disposing of dead animals shall do so in one of the following ways: (1) Burial; (2) incineration; (3) delivery or unloading of the carcasses of dead animals or packing house refuse at a disposal plant, substation, rendering plant or place of transfer licensed by the commissioner; (4) *composting*; or ~~(4)~~(5) in accordance with rules and regulations adopted pursuant to K.S.A. ~~2000 Supp.~~ 65-1,199, *and amendments thereto*.

Sec. 20. K.S.A. 47-1301 is hereby amended to read as follows: 47-1301. As used in ~~this act~~ *article 13 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto*, "garbage" means all waste material derived in whole or in part from the meat of any animal, including fish and poultry, ~~or other waste animal material~~, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking or consumption of food. *For the purposes of article 13 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto, "garbage" shall not be deemed to include pasteurized dairy products.*

Sec. 21. K.S.A. 2011 Supp. 47-1302 is hereby amended to read as follows: 47-1302. (a) Except as provided in subsection (b) ~~or (c)~~, it shall be unlawful for any person, firm, partnership or corporation to feed garbage to animals.

~~(b) Any person, firm, partnership or corporation who on the effective date of this act is registered as a garbage feeding operator may continue to feed garbage to animals through October 31, 2001, if such garbage has been heated to a temperature of 212 degrees Fahrenheit (boiling point) for at least 30 minutes as provided by rules and regulations promulgated by the state livestock commissioner.~~

~~(c)~~(b) Nothing in this section shall prohibit an individual from feeding

such individual's own animals only the garbage obtained from such individual's own household.

Sec. 22. K.S.A. 47-1305 is hereby amended to read as follows: 47-1305. Any person, firm, partnership, corporation, city or official of any corporation or city, violating the provisions of this act or of any rule or regulation promulgated pursuant thereto shall, upon conviction thereof, be fined not less than ~~one hundred dollars (\$100)~~ \$100 nor more than ~~five hundred dollars (\$500)~~ \$500. Each day the provisions of this act or any rule ~~or~~ and regulation made pursuant thereto is violated shall be a separate offense.

Sec. 23. K.S.A. 47-1306 is hereby amended to read as follows: 47-1306. It shall be unlawful to move any garbage or the refuse of any locker plant or slaughterhouse upon any public street, alley, or highway, ~~without compliance with the following: (1) Such~~ unless such garbage and such refuse shall be contained in a liquid-tight barrel or container, and so covered as to prevent spilling, or access to flies or insects; ~~(2) shall be moved from point of origin to a registered garbage feeding establishment. Provided, Nothing in article 12 of chapter 47 of the Kansas Statutes Annotated, shall prohibit such movement.~~

Sec. 24. K.S.A. 47-1509 is hereby amended to read as follows: 47-1509. Any person violating any of the provisions of this act, or any regulation promulgated by the commissioner, thereunder, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding ~~one hundred dollars (\$100)~~ \$500. ~~Provided, That~~ Each day upon which a violation shall be committed, or shall be permitted to continue, shall be deemed to be a separate offense.

Sec. 25. K.S.A. 47-1701 is hereby amended to read as follows: 47-1701. As used in the Kansas pet animal act, unless the context otherwise requires:

(a) "Adequate feeding" means supplying at suitable intervals, ~~(not to exceed 24 hours), of~~ a quantity of wholesome foodstuff, suitable for the animal species and age, and sufficient to maintain a reasonable level of nutrition in each animal.

(b) "Adequate watering" means a supply of clean, fresh, potable water, supplied in a sanitary manner and either continuously accessible to each animal or supplied at intervals suitable for the animal species, not to exceed intervals of 12 hours.

(c) "Ambient temperature" means the temperature surrounding the animal.

(d) (1) "Animal" means any live dog, cat, rabbit, rodent, nonhuman primate, bird or other warm-blooded vertebrate or any fish, snake or other cold-blooded vertebrate.

(2) Animal does not include horses, cattle, sheep, goats, swine, ratites, domesticated deer or domestic fowl.

(e) “Animal breeder” means any person who operates *an* animal breeder premises.

(f) “Animal breeder premises” means any premises where all or part of six or more litters of dogs or cats, or both, or 30 or more dogs or cats, or both, are sold, or offered or maintained for sale, primarily at wholesale for resale to another.

(g) “Animal shelter” or “pound” means a facility which is used or designed for use to house, contain, impound or harbor any seized stray, homeless, relinquished or abandoned animal or a person who acts as an animal rescuer, or who collects and cares for unwanted animals or offers them for adoption. Animal shelter or pound also includes a facility of an individual or organization, profit or nonprofit, maintaining 20 or more dogs or cats, or both, for the purpose of collecting, accumulating, amassing or maintaining the animals or offering the animals for adoption.

(h) “Cat” means an animal which is wholly or in part of the species *Felis domesticus*.

(i) “Commissioner” means the ~~livestock-animal health~~ commissioner appointed by ~~of the Kansas animal health board~~ *department of agriculture*.

(j) “Dog” means any animal which is wholly or in part of the species *Canis familiaris* ~~but does not include any greyhound, as defined by K.S.A. 74-8802 and amendments thereto.~~

(k) “Animal control officer” means any person employed by, contracted with or appointed by the state, or any political subdivision thereof, for the purpose of aiding in the enforcement of this law, or any other law or ordinance relating to the licensing or permitting of animals, control of animals or seizure and impoundment of animals, and includes any state, county or municipal law enforcement officer, dog warden, constable or other employee, whose duties in whole or in part include assignments which involve the seizure or taking into custody of any animal.

(l) “Euthanasia” means the humane destruction of an animal, which may be accomplished by any of those methods provided for in K.S.A. 47-1718, and amendments thereto.

(m) “Hobby breeder premises” means any premises where all or part of ~~3, 4 or 5~~ *three, four or five* litters of dogs or cats, or both, are produced for sale or sold, offered or maintained for sale *per license year*. This provision applies only if the total number of dogs or cats, or both, sold, offered or maintained for sale is less than 30 individual animals.

(n) “Hobby breeder” means any person who operates a hobby breeder premises.

(o) “Housing facility” means any room, building or area used to contain a primary enclosure or enclosures.

(p) ~~“Kennel Boarding or training kennel operator”~~ means any person who operates an establishment where four or more dogs or cats, or both,

are maintained in any one week *during the license year* for boarding, training or similar purposes for a fee or compensation.

(q) ~~“Kennel Boarding or training kennel operator premises”~~ means the facility of a *boarding or training* kennel operator.

(r) “License year” or “permit year” means the 12-month period ending on June 30.

(s) “Person” means any individual, association, partnership, corporation or other entity.

(t) (1) “Pet shop” means any premises where there are sold, or offered or maintained for sale, at retail and not for resale to another:

(A) Any dogs or cats, or both; or (B) any other animals except those which are produced and raised on such premises and are sold, or offered or maintained for sale, by a person who resides on such premises.

(2) Pet shop does not include: (A) Any pound or animal shelter; (B) any premises where only fish are sold, or offered or maintained for sale; or (C) any animal distributor premises, hobby breeder premises, retail breeder premises or animal breeder premises.

(3) Nothing in this section prohibits inspection of those premises which sell only fish to verify that only fish are being sold.

(u) “Pet shop operator” means any person who operates a pet shop.

(v) “Primary enclosure” means any structure used or designed for use to restrict any animal to a limited amount of space, such as a room, pen, cage, compartment or hutch.

(w) “Research facility” means any place, laboratory or institution, except an elementary school, secondary school, college or university, at which any scientific test, experiment or investigation involving the use of any living animal is carried out, conducted or attempted.

(x) “Sale,” “sell” and “sold” include transfers by sale or exchange. Maintaining animals for sale is presumed whenever 20 or more dogs or cats, or both, are maintained by any person.

(y) “Sanitize” means to make physically clean and to remove and destroy, to a practical minimum, agents injurious to health, at such intervals as necessary.

(z) “Animal distributor” means any person who operates an animal distributor premises.

(aa) “Animal distributor premises” means the premises of any person engaged in the business of buying for resale dogs or cats, or both, as a principal or agent, or who holds such distributor’s self out to be so engaged.

(bb) “Out-of-state distributor” means any person residing in a state other than Kansas, who is engaged in the business of buying for resale dogs or cats, or both, within the state of Kansas, as a principal or agent.

(cc) “Food animals” means rodents, rabbits, reptiles, fish or amphibians that are sold or offered or maintained for sale for the sole purpose of being consumed as food by other animals.

(dd)-(1) “Adequate veterinary medical care” means:

~~(A)~~(1) A documented program of disease control and prevention, euthanasia and routine veterinary care shall be established and maintained under the supervision of a licensed veterinarian, on a form provided by the commissioner, and shall include a documented on-site visit to the premises by the veterinarian at least once a year; ~~and~~

~~(B)~~(2) that diseased, ill, injured, lame or blind animals shall be provided with veterinary care as is needed for the health and well-being of the animal, *and such veterinary care shall be documented and maintained on the premises; and*

(3) *all documentation required by subsections (dd)(1) and (dd)(2) shall be made available to the commissioner or the commissioner’s authorized representative for inspection or copying upon request and shall be maintained for three years after the effective date of the program or the administration of such veterinary care.*

~~(2)~~(4) As used in the Kansas pet animal act, “adequate veterinary medical care” shall not apply to United States department of agriculture licensed animal breeders or animal distributors.

(ee) “Ratites” means all creatures of the ratite family that *are* not indigenous to this state, including, but not limited to, ostriches, emus and rheas.

(ff) “Retail breeder” means any person who operates a retail breeder premises.

(gg) “Retail breeder premises” means any premises where all or part of six or more litters or 30 or more dogs or cats, or both, are sold, or offered or maintained for sale, primarily at retail and not for resale to another.

(hh) “Retail” means any transaction where the animal is sold to the final consumer.

(ii) “Wholesale” means any transaction where the animal is sold for the purpose of resale to another.

Sec. 26. K.S.A. 2011 Supp. 47-1706 is hereby amended to read as follows: 47-1706. (a) The commissioner may refuse to issue or renew or may suspend or revoke any license or permit required under K.S.A. 47-1701 *et seq.*, and amendments thereto, for any one or more of the following reasons:

(1) Material misstatement in the application for the original license or permit, or in the application for any renewal of a license or permit;

(2) willful disregard of any provision of the Kansas pet animal act or any rule and regulation adopted hereunder, or any willful aiding or abetting of another in the violation of any provision of the Kansas pet animal act or any rule and regulation adopted hereunder;

(3) permitting any license or permit issued hereunder to be used by

an unlicensed or unpermitted person or transferred to unlicensed or unpermitted premises;

(4) the conviction of any crime relating to the theft of animals ~~or a first conviction of cruelty to animals;~~

(5) substantial misrepresentation;

(6) misrepresentation or false promise, made through advertising, salespersons, agents or otherwise, in connection with the operation of business of the licensee or permittee;

(7) fraudulent bill of sale;

(8) the housing facility or the primary enclosure is inadequate; ~~or~~

(9) the feeding, watering, sanitizing and housing practices at the licensee's or permittee's premises are not consistent with the Kansas pet animal act or the rules and regulations adopted hereunder;:

(10) *failure to provide adequate veterinary medical care to the animals in such licensee or permittee's custody or care; or*

(11) *failure to maintain or provide documentation of the provision of adequate veterinary medical care, as required in K.S.A. 47-1701(dd), and amendments thereto, to animals in such licensee or permittee's custody or care when access to such is requested by the commissioner or the commissioner's authorized representatives.*

(b) The commissioner shall refuse to issue or renew and shall suspend or revoke any license or permit required under K.S.A. 47-1701 *et seq.*, and amendments thereto, for ~~the second or subsequent~~ a conviction of cruelty to animals, K.S.A. 21-4310, prior to its repeal, or subsections (a)(1) through (a)(5) of K.S.A. 2011 Supp. 21-6412, and amendments thereto.

(c) Any refusal to issue or renew a license or permit, and any suspension or revocation of a license or permit, under this section shall be *issued only after notice and opportunity for a hearing are provided* in accordance with the provisions of the Kansas administrative procedure act and shall be subject to review in accordance with the Kansas judicial review act.

(d) *Notwithstanding subsection (c), nothing shall preclude the commissioner from issuing a quarantine order in accordance with K.S.A. 77-536, and amendments thereto, on any premises regulated under this act wherein the animals are found to be infected with a contagious or zoonotic disease which may infect animals or humans that may come into contact with or be exposed to such animals.*

~~(d)~~(e) Whenever the commissioner denies, suspends or revokes a license or permit under this section, the commissioner or the commissioner's authorized, trained representatives shall seize and impound any animals in the possession, custody or care of the person whose license or permit is denied, suspended or revoked if there are reasonable grounds to believe that the animals' health, safety or welfare is endangered. Except as provided by K.S.A. 2011 Supp. 21-6412, and amendments thereto, such animals may be returned to the person owning them if there is satisfactory

evidence that the animals will receive adequate care by that person or such animals may be sold, placed or euthanized, at the discretion of the commissioner. Costs of care and services for such animals while seized and impounded shall be paid by the person from whom the animals were seized and impounded, if that person's license or permit is denied, suspended or revoked. Such funds shall be paid to the commissioner for reimbursement of care and services provided during seizure and impoundment. If such person's license or permit is not denied, suspended or revoked, the commissioner shall pay the costs of care and services provided during seizure and impoundment.

Sec. 27. K.S.A. 2011 Supp. 47-1707 is hereby amended to read as follows: 47-1707. (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the commissioner, upon a finding that a person has violated or failed to comply with any provision of the Kansas pet animal act or any rule and regulation adopted hereunder, may impose on such person a civil ~~fine penalty~~ not exceeding \$1,000 for each violation or ~~requirement~~ *require such person* to attend an educational course regarding animals and their care and treatment. If the commissioner imposes the educational course, such person may choose either the ~~fine penalty~~ or the educational course. If such person chooses the ~~fine penalty~~, the commissioner shall establish the amount pursuant to the ~~fine penalty~~ provisions of this section. The educational course shall be administered by the commissioner in consultation with Kansas state university college of veterinary medicine.

(b) Any imposition of a civil ~~fine penalty~~ pursuant to this section shall be only upon notice and *opportunity for a hearing conducted* in accordance with the Kansas administrative procedure act and shall be subject to review in accordance with the Kansas judicial review act.

(c) Whenever the commissioner has reasonable grounds to believe that a person or premises required to be licensed or permitted under the Kansas pet animal act has failed to comply with or has violated any provision of the Kansas pet animal act or any rule and regulation adopted hereunder and that the health, safety or welfare of animals in such person's possession, custody or care is endangered thereby, the commissioner shall seize and impound such animals using emergency adjudicative proceedings in accordance with the Kansas administrative procedure act. Except as provided by K.S.A. 2011 Supp. 21-6412, and amendments thereto, such animals may be returned to the person owning them if there is satisfactory evidence that the animals will receive adequate care by that person or such animals may be sold, placed or euthanized, at the discretion of the commissioner. Costs of care and services for such animals while seized and impounded shall be paid by the person from whom the animals were seized and impounded, if that person is found to be in violation of the Kansas pet animal act or any rules and regulations adopted

hereunder. Such funds shall be paid to the commissioner for reimbursement of care and services provided during seizure and impoundment. If such person is not found to be in violation of the Kansas pet animal act or any rules and regulations adopted hereunder, the commissioner shall pay the costs of care and services provided during seizure and impoundment.

Sec. 28. K.S.A. 2011 Supp. 47-1708 is hereby amended to read as follows: 47-1708. Any action of the commissioner pursuant to K.S.A. ~~47-1705 or 47-1706 or 47-1707~~, and amendments thereto, is subject to review in accordance with the Kansas judicial review act.

Sec. 29. K.S.A. 2011 Supp. 47-1709 is hereby amended to read as follows: 47-1709. (a) The commissioner or the commissioner's authorized, trained representatives shall make an inspection of the premises for which an application for an original license or permit is made under K.S.A. 47-1701 *et seq.*, and amendments thereto, before issuance of such license or permit. *No license or permit shall be issued by the commissioner to an applicant described in this subsection until the premises for which application is made has passed a licensing or permitting inspection.* The application for a license shall conclusively be deemed to be the consent of the applicant to the right of entry and inspection of the premises sought to be licensed or permitted by the commissioner or the commissioner's authorized, trained representatives at reasonable times with the owner or owner's representative present. Refusal of such entry and inspection shall be grounds for denial of the license or permit. Notice need not be given to any person prior to inspection.

(b) The commissioner or the commissioner's authorized, trained representatives may ~~make an inspection of~~ *inspect* each premises for which a license or permit has been issued under K.S.A. 47-1701 *et seq.*, and amendments thereto. ~~If such premises are premises of a person licensed or permitted under public law 91-579 (7 U.S.C. § 2131 *et seq.*), such premises may be inspected at least once each year. Otherwise, the premises may be inspected at least twice each year.~~ The acceptance of a license or permit shall conclusively be deemed to be the consent of the licensee or permittee to the right of entry and inspection of the licensed or permitted premises by the commissioner or the commissioner's authorized, trained representatives at reasonable times with the owner or owner's representative present. Refusal of such entry and inspection shall be grounds for suspension or revocation of the license or permit. Notice need not be given to any person prior to inspection.

(c) The commissioner or the commissioner's authorized, trained representatives shall make inspections of the premises of a person required to be licensed or permitted under K.S.A. 47-1701 *et seq.*, and amendments thereto, upon a determination by the commissioner that there are reasonable grounds to believe that the person is violating the provisions

of K.S.A. 47-1701 *et seq.*, and amendments thereto, or rules and regulations adopted thereunder or that there are grounds for suspension or revocation of such person's license or permit.

(d) Any complaint filed with the commissioner shall be confidential and shall not be released to any person other than employees of the commissioner as necessary to carry out the duties of their employment.

(e) Any person making inspections under this section shall be trained by the commissioner in reasonable standards of animal care.

(f) The commissioner may request a licensed veterinarian to assist in any inspection or investigation made by the commissioner or the commissioner's authorized representative under this section.

(g) Any person acting as the commissioner's authorized representative for purposes of making inspections and conducting investigations under this section who knowingly falsifies the results or findings of any inspection or investigation or ~~who~~ intentionally fails or refuses to make an inspection or conduct an investigation pursuant to this section shall be guilty of a class A nonperson misdemeanor.

(h) No person shall act as the commissioner's authorized representative for the purposes of making inspections and conducting investigations under this section if such person has a beneficial interest in a person required to be licensed or permitted pursuant to K.S.A. 47-1701 *et seq.*, and amendments thereto.

(i) Records of inspections pursuant to this section shall be maintained in the office of the Kansas ~~animal health department~~ *department of agriculture division of animal health*. Records of a deficiency or violation shall not be maintained for longer than three years after the deficiency or violation is remedied.

(j) The commissioner ~~shall~~, in consultation with Kansas state university college of veterinary medicine, *shall*: (1) Continue procedures to provide for pet animal training or updated training for authorized trained representatives who inspect premises under the pet animal act and to allow the owners of such facilities licensed or permitted under the pet animal act to attend and participate at the training workshops for the authorized trained representatives; and (2) make available to such owners and other interested persons an inspection handbook describing the duties and responsibilities of such authorized trained representatives.

(k) *If the commissioner or the commissioner's authorized representative is denied access to any location where such access is sought for the purposes authorized under the Kansas pet animal act, the commissioner may apply to any court of competent jurisdiction for an administrative search warrant authorizing access to such location for such purposes. Upon such application and a showing of cause therefore, the court shall issue the search warrant for the purposes requested.*

Sec. 30. K.S.A. 47-1710 is hereby amended to read as follows: 47-

1710. (a) An animal shall not be disposed of by an owner or operator of a pound or of an animal shelter as a pound until after expiration of a minimum of three full *business* days of custody during which the public has clear access to inspect and recover the animal through time periods ordinarily accepted as usual business hours. During such time of custody, any owner or operator of such facility shall attempt to notify the owner or custodian of any animal maintained or impounded by such facility if such owner or custodian is known or reasonably ascertainable. Such an animal may at any time be released to the legal owner, moved to a veterinary hospital for treatment or observation, released in any manner, if such animal was a gift animal to an animal shelter, or euthanized by a duly incorporated humane society or by a licensed veterinarian if it appears to an officer of such humane society or to such veterinarian that the animal is diseased or disabled beyond recovery for any useful purpose.

(b) After the expiration of the holding period established in subsection (a), the governing body of a political subdivision regulating the operation of a pound shall have ownership of such animal and shall determine the method of disposition of any animal. Any pound releasing live animals to prospective owners shall comply with the provisions established in K.S.A. 47-1731, and amendments thereto. Any *such* proceeds derived from the sale or other disposition of such animals shall be paid directly to the treasurer of the political subdivision, and no part of such proceeds shall accrue to any individual.

(c) After the expiration of the holding period established in subsection (a), the board of directors of any humane society operating an animal shelter as a pound, shall have ownership of such animal and shall determine the method of disposition of any animal. Any animal shelter releasing live animals to prospective owners shall comply with the provisions established in K.S.A. 47-1731, and amendments thereto. Any *such* proceeds derived from such sale or disposition shall be paid directly to the treasurer of the humane society and no part of such proceeds shall accrue to any individual.

Sec. 31. K.S.A. 47-1711 is hereby amended to read as follows: 47-1711. An animal control officer shall not be granted an animal distributor's, *animal breeder's*, retail breeder's, hobby breeder's or a pet shop operator's license. Each application for any such license shall include a statement that neither the applicant nor any of the applicant's employees is an animal control officer. An animal control officer, upon taking custody of any animal in the course of such officer's official duties, shall immediately make a record which shall include the color, breed, sex, approximate weight and other description of the animal, the reason for seizure, the location of seizure, the owner's name and address, if known, the animal license number, and any other identification number. Complete information relating to the disposition of the animal shall be shown on

the record, ~~this~~ and shall be added immediately following the disposition of the animal. *Such records shall be made available to the commissioner or the commissioner's authorized representative upon request.*

Sec. 32. K.S.A. 47-1723 is hereby amended to read as follows: 47-1723. (a) It shall be unlawful for any person, except a licensed veterinarian, to act as or be a *boarding or training* kennel operator unless such person has obtained from the commissioner a *boarding or training* kennel operator license for each premises operated by such person. Application for such license shall be made in writing on a form provided by the commissioner. The license period shall be for the license year ending on June 30 following the issuance date.

(b) This section shall be part of and supplemental to K.S.A. 47-1701 *et seq.*, and amendments thereto.

Sec. 33. K.S.A. 47-1725 is hereby amended to read as follows: 47-1725. (a) There is hereby created the Kansas pet animal advisory board, consisting of 10 members. Members shall be appointed by the governor as follows:

- (1) One member shall be a representative of a licensed animal shelter or pound;
- (2) one member shall be an employee of a licensed research facility;
- (3) one member shall be a licensed animal breeder;
- (4) one member shall be a licensed retail breeder;
- (5) one member shall be a licensed pet shop operator;
- (6) one member shall be a licensed veterinarian and shall be selected from a list of three names presented to the governor by the Kansas veterinary medical association;
- (7) one member shall be a private citizen with no link to the industry;
- (8) one member shall be a licensed animal distributor;
- (9) one member shall be a licensed hobby breeder; and
- (10) one member shall be a licensed *boarding or training* kennel operator.

(b) ~~Of the members first appointed to the board, the governor shall designate three whose terms shall expire June 30, 1992, three whose terms shall expire June 30, 1993, and three whose terms shall expire June 30, 1994. After the expiration of such terms, Each member shall be appointed for a term of three years and until a successor is appointed and qualified.~~

(c) A vacancy on the board of a member shall be filled for the unexpired term by appointment by the governor.

(d) The board shall meet at least once every calendar quarter regularly or at such other times as the chairperson or a majority of the board members determine. A majority of the members shall constitute a quorum for conducting board business.

(e) The members of the board shall annually elect a chairperson.

(f) The board shall have the following duties, authorities and powers:

(1) To advise the ~~Kansas livestock animal health~~ commissioner on hiring a director to implement the Kansas pet animal act;

(2) to review the status of the Kansas pet animal act;

(3) to make recommendations on changes to the Kansas pet animal act; and

(4) to make recommendations concerning the rules and regulations for the Kansas pet animal act.

(g) Board members who are required to be licensed except retail breeders shall be affiliated with or a member of an organized pet animal association which is representative of the position such person will hold on the board.

~~(h) Upon the effective date of this act, the governor shall appoint a licensed kennel operator. When the current board members' terms expire, the governor shall appoint persons or representatives in accordance with this section.~~

Sec. 34. K.S.A. 47-1726 is hereby amended to read as follows: 47-1726. K.S.A. 47-1701 through 47-1721, K.S.A. 47-1723 through 47-1727, 47-1731, and K.S.A. 47-1732 through 47-1736, and amendments thereto, shall be known and may be cited as the Kansas pet animal act. This act shall license, permit and regulate the conditions of certain premises and facilities within the state of Kansas where animals are maintained, sold or offered or maintained for sale. *The provisions of this act shall not apply to any farm, kennel or other premises registered with and inspected by the national greyhound association which is used solely for the purposes of breeding, maintaining, training or selling greyhound dogs, as greyhound is defined in K.S.A. 74-8802, and amendments thereto. The commissioner shall have the authority to enter into agreements with the national greyhound association pertaining to the aforementioned greyhound premises. Notwithstanding any other provisions of this section, any agreements between the commissioner and the national greyhound association may contain terms allowing the commissioner to access records, complete inspections of such premises and other related matters.*

Sec. 35. K.S.A. 47-1727 is hereby amended to read as follows: 47-1727. Notwithstanding the existence or pursuit of any other remedy, when it appears to the commissioner, ~~as head of the licensing and permitting agency,~~ that any person is violating any provisions of the Kansas pet animal act, the commissioner may ~~in that capacity~~ bring an action in a court of competent jurisdiction or other process against such person to enjoin, restrain or prevent such person from continuing operation in violation of the Kansas pet animal act without regard to whether administrative proceedings have been or may be instituted or whether criminal proceedings may be or have been instituted.

Sec. 36. K.S.A. 47-1801 is hereby amended to read as follows: 47-

1801. As used in ~~this act~~ K.S.A. 47-1801 through 47-1803, and amendments thereto, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this section:

(a) “Livestock” means cattle, hogs, sheep, *goats, bison, camelids*, all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas or domesticated deer;

(b) “slaughter” means killing livestock with the intent to process and distribute the meat and by-products of such livestock, regardless of the period of time elapsing between the purchase and the killing of such livestock;

(c) “person” means any individual, firm, partnership, corporation or other organization or business entity;

(d) “payment by check” means the actual delivery of the check to the seller or the seller’s representative at the location where the transfer of ownership is accomplished. In the case of “grade and yield” selling, “payment by check” means making the check available at the packing plant, subject to the instructions of the seller or the seller’s representative;

(e) “wire transfer” means any telephonic, telegraphic, electronic or similar communication between the bank of the purchaser and the bank of the seller which results in the transfer of funds or credits of the purchaser to an account of the seller.

(f) “Domesticated deer” means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

Sec. 37. K.S.A. 47-1804 is hereby amended to read as follows: 47-1804. As used in ~~this act~~ K.S.A. 47-1804 through 47-1808, and amendments thereto, unless the context otherwise requires:

(a) “Commissioner” means the ~~livestock-animal health~~ commissioner of the ~~state of Kansas~~ *department of agriculture*.

(b) “Livestock” means cattle, *bison*, swine, horses, sheep, goats, ~~poultry, camelids~~ and all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas and domesticated deer.

(c) “Livestock dealer” means any person engaged in the business of buying or selling livestock in commerce, either on that person’s own account or as the employee or agent of the seller or purchaser, or any person engaged in the business of buying or selling livestock in commerce on a commission basis and shall include any person who buys or sells livestock with the use of a video. “Livestock dealer” does not include any person who buys or sells livestock as part of that person’s own breeding, feeding or dairy operation, nor any person who receives livestock exclusively for immediate slaughter.

(d) “Person” means any individual, partnership, corporation, company, firm or association. “Person” does not include any public livestock market operator licensed under K.S.A. 47-1001 *et seq.*, and amendments thereto, or any feedlot operator licensed under K.S.A. 47-1501 *et seq.*, and amendments thereto.

(e) “Domesticated deer” means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

Sec. 38. K.S.A. 47-1807 is hereby amended to read as follows: 47-1807. (a) Any person violating or failing to comply with the provisions of ~~this act~~ K.S.A. 47-1804 through 47-1808, and amendments thereto, shall be deemed guilty of a class A misdemeanor.

(b) *The commissioner, after providing notice and opportunity for a hearing in accordance with the Kansas administrative procedure act, may assess a civil penalty against any person who violates or fails to comply with the requirements of this act, or any rules and regulations adopted hereunder, of not less than \$100 nor more than \$1,000 per violation. A separate civil penalty may be assessed for each separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law.*

Sec. 39. On January 1, 2013, K.S.A. 2011 Supp. 47-1809 is hereby amended to read as follows: 47-1809. (a) As used in this section, “feral swine” means any untamed or undomesticated hog, boar or pig; swine whose reversion from the domesticated state to the wild state is apparent; or an otherwise freely roaming swine having no visible tags, markings or characteristics indicating that such swine is from a domestic herd, and reasonable inquiry within the area does not identify an owner. *Feral swine includes members of the species sus scrofa lineas, including, but not limited to, swine commonly known as old world swine, Russian wild boar, European wild boar, Eurasian wild boar and razorbacks. Feral swine does not include members of the species sus domestica which are involved in domestic hog production.*

(b) No person shall import, transport or possess live feral swine in this state.

(c) No person shall intentionally or knowingly release any hog, boar, pig or swine to live in a wild or feral state upon public or private land.

(d) *No person shall engage in, sponsor, or assist in the operation of a contained hunting preserve of swine, whether such swine are feral or otherwise, within this state. For the purposes of this subsection, any tract of land on which a fence or other apparatus is used to prevent the free roaming of swine which are to be hunted and not used solely for domestic swine production shall be deemed to be a contained hunting preserve.*

~~(d)~~(e) No person shall engage in, sponsor, instigate, assist or profit

from the release, killing, wounding or attempted killing or wounding of feral swine for the purpose of sport, pleasure, amusement or production of a trophy.

~~(e)~~(f) Violation of subsection (b) ~~or~~, (c) *or* (d) may result in a civil penalty in the amount of not less than \$1,000 nor more than \$5,000 for each such violation. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

~~(f)~~(g) Violation of subsection ~~(d)~~(e) may result in a civil penalty of not less than \$250 nor more than \$2,500 for each such violation.

~~(g)~~(h) Any duly authorized agent of the ~~livestock~~*animal health* commissioner, upon a finding that any person, or agent or employee thereof, has violated any of the provisions stated above, may impose a civil penalty upon such person as provided in this section.

~~(h)~~(i) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the ~~livestock~~*animal health* commissioner to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person ~~to appeal to the commissioner to request a hearing in the matter~~. Any such person, within 20 days after notification, may make written request to the commissioner for a hearing in accordance with the provisions of the Kansas administrative procedure act. ~~The commissioner shall affirm, reverse or modify the order and shall specify the reasons therefor.~~

~~(i)~~(j) Any person aggrieved by an order of the commissioner made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

~~(j)~~(k) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

~~(k)~~(l) The ~~livestock~~*animal health* commissioner *of the Kansas department of agriculture*, or the authorized representative of the ~~livestock~~*animal health* commissioner, may destroy or require the destruction of any feral swine upon discovery of such swine.

~~(l)~~(m) The provisions of this section shall not be construed to prevent owners or legal occupants of land, the employees of such owners or legal occupants or persons designated by such owners or legal occupants from killing any feral swine when found on their premises or when destroying property. Such designees shall have a permit issued by the ~~livestock~~*animal health* commissioner in their possession at the time of the killing of the feral swine.

~~(m)~~(n) The ~~livestock~~*animal health* commissioner may adopt rules and regulations to carry out the provisions of this section.

Sec. 40. K.S.A. 2011 Supp. 47-1825 is hereby amended to read as follows: 47-1825. ~~This act~~ *The provisions of K.S.A. 47-1825 through 47-1828, and amendments thereto*, shall be known and may be cited as the farm animal and field crop and research facilities protection act.

Sec. 41. K.S.A. 2011 Supp. 47-1826 is hereby amended to read as follows: 47-1826. As used in ~~this~~ *the farm animal and field crop and research facilities protection act*:

(a) “Animal” means any warm or coldblooded animal used in food, fur or fiber production, agriculture, research, testing or education and includes dogs, cats, poultry, fish and invertebrates.

(b) “Animal facility” includes any vehicle, building, structure, research facility or premises where an animal is kept, handled, housed, exhibited, bred or offered for sale.

(c) “Consent” means assent in fact, whether express or apparent.

(d) “Deprive” means to:

(1) Withhold an animal or other property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(2) restore the animal or other property only upon payment of reward or other compensation; or

(3) dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

(e) “Effective consent” includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(1) Induced by force, *fraud, deception, duress* or threat;

(2) given by a person the offender knows is not legally authorized to act for the owner; or

(3) given by a person who by reason of youth, mental disease or defect or under the influence of drugs or alcohol is known by the offender to be unable to make reasonable decisions.

(f) “Owner” means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

(g) “Person” means any individual, state agency, corporation, association, nonprofit corporation, joint stock company, firm, trust, partnership, two or more persons having a joint or common interest or other legal entity.

(h) “Possession” means actual care, custody, control or management.

(i) “Research facility” means any place, laboratory, institution, medical care facility, elementary school, secondary school, college or university, at which any scientific test, experiment or investigation involving the use of any living animal or field crop product is carried out, conducted or attempted.

Sec. 42. K.S.A. 47-2306 is hereby amended to read as follows: 47-

2306. Any person who shall violate any of the provisions of ~~this act~~ *article 23 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto*, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ~~\$25~~ *\$100* nor more than ~~\$500~~ *\$1,000* or by imprisonment in the county jail for not less than 30 nor more than 90 days, or by both such fine and imprisonment.

Sec. 43. K.S.A. 47-120, 47-121, 47-122, 47-237, 47-238, 47-419, 47-422, 47-424, 47-619, 47-621, 47-636, 47-637, 47-638, 47-639, 47-641, 47-642, 47-643, 47-644, 47-647, 47-648, 47-649, 47-650, 47-651, 47-652, 47-653, 47-653d, 47-653e, 47-653f, 47-653g, 47-653h, 47-654, 47-655, 47-656, 47-666, 47-667, 47-668, 47-669, 47-670, 47-671, 47-921, 47-922, 47-923, 47-1001, 47-1002, 47-1005, 47-1005b, 47-1010, 47-1102, 47-1213, 47-1217, 47-1219, 47-1301, 47-1305, 47-1306, 47-1509, 47-1701, 47-1710, 47-1711, 47-1723, 47-1725, 47-1726, 47-1727, 47-1801, 47-1804, 47-1807 and 47-2306 and K.S.A. 2011 Supp. 47-672, 47-1008, 47-1302, 47-1307, 47-1706, 47-1707, 47-1708, 47-1709, 47-1825 and 47-1826 are hereby repealed.

Sec. 44. On January 1, 2013, K.S.A. 2011 Supp. 47-1809 is hereby repealed.

Sec. 45. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2012.

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CHAPTER 126  
SENATE BILL No. 207

AN ACT concerning certain municipalities relating to taxation and other matters; amending K.S.A. 79-2024 and K.S.A. 2011 Supp. 12-1750 and repealing the existing sections; also repealing K.S.A. 79-2102.

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

New Section 1. (a) Any county may accept credit or debit cards for the payment of any taxes, utility fees or other exactions. The county may establish the type of credit or debit card the county will accept. The county may set a fee to be added to each credit card transaction equal to the charge paid by the county for the use of the credit card by the person. If the county imposes a fee for payments made by credit card, the county shall provide notice of such fee to the person making payment by credit card.

(b) Any transaction involving payment by credit card pursuant to this section shall not be subject to the provisions of K.S.A. 16a-2-403, and amendments thereto.

New Sec. 2. (a) The governing body of any school district the boundaries of which are located entirely within the corporate limits of a city that previously established a recreation system and the governing body of the city within which such school district is located may take joint action to initiate the conversion of the existing recreation system to a city recreation system by adopting a joint ordinance and resolution proposing to change the existing school district recreation system to a city recreation system and authorizing publication of a notice of intent to do so. Such notice of intent shall be published once each week for two consecutive weeks in the official city newspaper, and, if within 30 days after the last publication of the notice a petition is signed by at least 5% of the qualified voters of the city requesting an election upon such question, an election shall be called and held thereon. Such election shall be called and held in the manner provided by the general bond law, and the cost of the election shall be borne equally by the school district and the city. If no protest or no sufficient protest is filed or if an election is held and the proposition carries by a majority of those voting thereon, the governing bodies of the school district and the city, by joint resolution and ordinance, may provide for the conversion of the existing school district recreation system to a city recreation system effective as of the next succeeding July 1 subsequent to the publication of the notice of intent or the date of the election, whichever is later.

(b) The mill levy rate for a recreation commission established under subsection (a) shall not be subject to the one mill levy limitation for a new recreation system established in K.S.A. 12-1927, and amendments thereto.

(c) Any conversion of an existing school district recreation system to a city recreation system under subsection (a) shall provide for the transfer of the assets of the existing school district recreation system to the city recreation system, the assumption of the liabilities of the existing school district recreation system by the city recreation system and thereafter maintain and continue the operations of the city recreation system.

(d) In connection with the conversion of a school district recreation system to a city recreation system under subsection (a), the members of the school district recreation commission shall serve the balance of their respective terms in office as members of the city recreation commission and, upon the expiration thereof, the members of the city recreation commission shall be appointed by the governing body of the city.

Sec. 3. K.S.A. 79-2024 is hereby amended to read as follows: 79-2024. Notwithstanding any other provision of law to the contrary, the county treasurer of every county may accept partial payment of delinquent real property tax or *personal property tax* in accordance with payment guidelines established therefor by the county treasurer. *Nothing in this section shall be construed to modify any consequences of untimely payment.*

Sec. 4. K.S.A. 2011 Supp. 12-1750 is hereby amended to read as follows: 12-1750. As used in this act:

- (a) “Structure” means any building, wall or other structure.
- (b) “Enforcing officer” means the building inspector or other officer designated by ordinance and charged with the administration of the provisions of this act.
- (c) “Abandoned property” means:
  - (1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days; or
  - (2) *commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties. “Commercial real estate” means any real estate for which the present use is other than one to four residential units or for agricultural purposes.*
- (d) “Blighting influence” means conditions in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the municipality or which have an adverse impact on properties in the area. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; air pollution; light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations.
- ~~(d)~~(e) “Organization” means any nonprofit corporation organized under the laws of this state and which has among its purposes the improvement of housing.
- ~~(e)~~(f) “Rehabilitation” means the process of improving the property into compliance with applicable fire, housing and building codes.
- ~~(f)~~(g) “Parties in interest” means any owner or owners of record, judgment creditor, tax purchaser or other party having any legal or equitable title or interest in the property.
- ~~(g)~~(h) “Last known address” includes the address where the property is located, or the address as listed in the tax records.

Sec. 5. K.S.A. 79-2024 and 79-2102 and K.S.A. 2011 Supp. 12-1750 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2012.

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CHAPTER 127  
HOUSE BILL No. 2324

AN ACT concerning cigarettes and tobacco products; relating to electronic cigarettes; amending K.S.A. 2011 Supp. 79-3301, 79-3303 and 79-3321 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 79-3321 is hereby amended to read as follows: 79-3321. It shall be unlawful for any person:

(a) To possess, except as otherwise specifically provided by this act, more than 200 cigarettes without the required *tax indicia* being affixed as herein provided.

(b) To mutilate or attach to any individual package of cigarettes any stamp that has in any manner been mutilated or that has been heretofore attached to a different individual package of cigarettes or to have in possession any stamps so mutilated.

(c) To prevent the director or any officer or agent authorized by law, to make a full inspection for the purpose of this act, of any place of business and all premises connected thereto where cigarettes are or may be manufactured, sold, distributed, or given away.

(d) To use any artful device or deceptive practice to conceal any violation of this act or to mislead the director or officer or agent authorized by law in the enforcement of this act.

(e) Who is a dealer to fail to produce on demand of the director or any officer or agent authorized by law any records or invoices required to be kept by such person.

(f) Knowingly to make, use, or present to the director or agent thereof any falsified invoice or falsely state the nature or quantity of the goods invoiced.

(g) Who is a dealer to fail or refuse to keep and preserve for the time and in the manner required by this act all the records required by this act to be kept and preserved.

(h) To wholesale cigarettes to any person, other than a manufacturer's salesperson, retail dealer or wholesaler who is:

(1) Duly licensed by the state where such manufacturer's salesperson, retail dealer or wholesaler is located; or

(2) exempt from state licensing under applicable state or federal laws or court decisions including any such person operating as a retail dealer

upon land allotted to or held in trust for an Indian tribe recognized by the United States bureau of Indian affairs.

(i) To have in possession any evidence of *tax indicia* provided for herein not purchased from the director.

(j) To fail or refuse to permit the director or any officer or agent authorized by law to inspect a carrier transporting cigarettes.

(k) To vend small cigars, or any products so wrapped as to be confused with cigarettes, from a machine vending cigarettes, nor shall a vending machine be so built to vend cigars or products that may be confused with cigarettes, be attached to a cigarette vending machine.

(l) To sell, furnish or distribute cigarettes, *electronic cigarettes* or tobacco products to any person under 18 years of age.

(m) Who is under 18 years of age to purchase or attempt to purchase cigarettes, *electronic cigarettes* or tobacco products.

(n) Who is under 18 years of age to possess or attempt to possess cigarettes, *electronic cigarettes* or tobacco products.

(o) To sell cigarettes to a retailer or at retail that do not bear Kansas *tax indicia* or upon which the Kansas cigarette tax has not been paid.

(p) To sell cigarettes without having a license for such sale as provided herein.

(q) To sell a vending machine without having a vending machine distributor's license.

(r) Who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "By law, cigarettes, *electronic cigarettes* and tobacco products may be sold only to persons 18 years of age and older."

(s) To distribute samples within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is:

(1) In an area to which persons under 18 years of age are denied access;

(2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or

(3) at or adjacent to an outdoor production, repair or construction site or facility.

(t) To sell cigarettes, *electronic cigarettes* or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except that this subsection shall not apply to:

(1) The installation and use by the proprietor of the establishment, or by the proprietor's agents or employees, of vending machines behind a counter, or in some place in such establishment, or portion thereof, to which minors are prohibited by law from having access;

(2) the installation and use of a vending machine in a commercial building or industrial plant, or portions thereof, where the public is not

customarily admitted and where machines are intended for the sole use of adult employees employed in the building or plant; or

(3) a vending machine which has a lock-out device which is inoperable in the continuous standby mode and which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine.

(u) To sell cigarettes, *electronic cigarettes* or tobacco products by means of a self-service display in any establishment, except that the provisions of this subsection shall not apply to:

(1) A vending machine that is permitted under subsection (t); or

(2) a self-service display that is located in a tobacco specialty store.

(v) To sell or distribute in this state; to acquire, hold, own, possess or transport for sale or distribution in this state; or to import or cause to be imported, into this state for sale or distribution in this state:

(1) Any cigarettes the package of which (A) bears any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including but not limited to, labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S." or similar wording; or (B) does not comply with (i) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including but not limited to the precise warning labels specified in the federal cigarette labeling and advertising act, 15 U.S.C. § 1333; and (ii) all federal trademark and copyright laws;

(2) any cigarettes imported into the United States in violation of 26 U.S.C. § 5754 or any other federal law, or federal regulations implementing such laws;

(3) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(4) any cigarettes for which there has not been submitted to the secretary of the U.S. department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal cigarette labeling and advertising act, 15 U.S.C. § 1335a.

(w) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(1) Any statement, label, stamp, sticker or notice described in subsection (v); or

(2) any health warning that is not specified in, or does not conform with, the requirements of, the federal cigarette labeling and advertising act, 15 U.S.C. § 1333.

(x) To affix any stamp required pursuant to K.S.A. 79-3311, and

amendments thereto, to the package of any cigarettes described in subsection (v) or altered in violation of subsection (w).

Sec. 2. K.S.A. 2011 Supp. 79-3301 is hereby amended to read as follows: 79-3301. As used in K.S.A. 79-3301 *et seq.*, and amendments thereto:

(a) “Carrier” means one who transports cigarettes from a manufacturer to a wholesale dealer or from one wholesale dealer to another.

(b) “Carton” means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer.

(c) “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.

(d) “Consumer” means the person purchasing or receiving cigarettes or tobacco products for final use.

(e) “Dealer” means any person who engages in the sale or manufacture of cigarettes in the state of Kansas, and who is required to be licensed under the provisions of this act.

(f) “Dealer establishment” means any location or premises, other than vending machine locations, at or from which cigarettes are sold, and where records are kept.

(g) “Director” means the director of taxation.

(h) “Distributor” means: (1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;

(2) any person who makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; or

(3) any person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.

(i) “Division” means the division of taxation.

(j) “License” means the privilege of a licensee to sell cigarettes or tobacco products in the state of Kansas, and the written evidence of such authority or privilege as issued by the director.

(k) “Licensee” means any person holding a current license issued pursuant to this act.

(l) “Manufacturer’s salesperson” means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers.

(m) “Meter imprints” means *tax indicia* applied by means of ink printing machines.

(n) (1) “Package” means a container in which no more than 25 in-

dividual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer;

(2) for the purposes of subsections (u), (v) and (w) of K.S.A. 79-3321, and amendments thereto, “package” means the same as provided in 15 U.S.C. § 1332(4).

(o) “Person” means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise and any combination of individuals.

(p) “Received” means the coming to rest of cigarettes for sale by any dealer in the state of Kansas.

(q) “Retail dealer” means a person, other than a vending machine operator, in possession of cigarettes or *electronic cigarettes* for the purpose of sale to a consumer.

(r) “Sale” means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration.

(s) “Sample” means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.

(t) “Self-service display” means a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer’s consumers, and from which such consumers can readily access cigarettes or tobacco products without the assistance of a salesperson. A display case that holds cigarettes or tobacco products behind locked doors does not constitute a self-service display.

(u) “Stamps” means *tax indicia* applied either by means of water applied gummed paper or heat process.

(v) “*Tax indicia*” means visible evidence of tax payment in the form of stamps or meter imprints.

(w) “Tobacco products” means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products do not include cigarettes.

(x) “Tobacco speciality store” means a dealer establishment that derives at least 75% of such dealer establishment’s revenue from cigarettes or tobacco products.

(y) “Vending machine” means any coin operated machine, contrivance or device, by means of which merchandise may be sold.

(z) “Vending machine distributor” means any person who sells ciga-

rette vending machines to a vending machine operator operating vending machines in the state of Kansas.

(aa) “Vending machine operator” means any person who places a vending machine, owned, leased or operated by such person, at locations where cigarettes are sold from such vending machine. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, nor shall the owner or lessee, or any employee or agent of the owner or lessee be considered an authorized agent of the vending machine operator, if the owner or lessee does not own or lease the machine and the owner’s or lessee’s sole remuneration from the machine is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, or a combination of both.

(bb) “Wholesale dealer” means any person who sells cigarettes to other wholesale dealers, retail dealers, vending machine operators and manufacturer’s salespersons for the purpose of resale in the state of Kansas.

(cc) “Wholesale sales price” means the original net invoice price for which a manufacturer sells a tobacco product to a distributor, as shown by the manufacturer’s original invoice.

(dd) “Importer” means the same as provided in 26 U.S.C. § 5702(l).

(ee) “Manufacturer” means the same as provided in 26 U.S.C. § 5702(d).

(ff) “*Electronic cigarette*” means a battery-powered device, whether or not such device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

Sec. 3. K.S.A. 2011 Supp. 79-3303 is hereby amended to read as follows: 79-3303. (a) Each person engaged in the business of selling cigarettes or *electronic cigarettes* in the state of Kansas and each vending machine distributor shall obtain a license as provided by this act. A separate application, license and fee is required for each dealer establishment owned or operated by a dealer. A vending machine operator is required to obtain a vending machine operator’s master license and, in addition, a separate permit for each vending machine operated by the operator. A vending machine operator may submit one application for the vending machine operator’s master license and all permits for vending machines operated by the operator. The license shall be displayed in the dealer establishment and the vending machine permit shall remain securely and visibly attached to the vending machine and contain such information as the director may require. Any vending machine found without such permit attached to the machine shall be sealed by an agent of the director and such seal shall be removed only by an agent of the director after payment of the permit fee and the penalties provided by this act.

(b) The application for a vending machine operator's master license and vending machine permits shall list the brand name and serial number of each machine and such other information as required by the director. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the division to divulge or make known in any way the location of any vending machine to any person not an officer or employee of the division, except that such information may be divulged to any law enforcement officer for use in the officer's official duties. Any officer or employee revealing any such location in violation of this provision, in addition to the penalties otherwise provided in this act, shall be dismissed from office.

(c) A vending machine operator, in the course of business as a vending machine operator, may dispose of or sell vending machines without securing a license to sell vending machines. The vending machine operator may move vending machines from one location to another and, if a vending machine becomes inoperative or is disposed of, the permit for such machine may be transferred to another machine. A vending machine operator, within 10 days, shall notify the director of the brand name and serial number of vending machines that become inoperative or that the operator disposes of, sells, acquires or brings into service in this state as additional machines.

(d) The key to the lower or storage compartment of a vending machine shall remain only in the possession of the vending machine operator or the operator's authorized agent. All services connected with the operation of a vending machine shall be performed by the vending machine operator or the operator's authorized agent. All vending machines shall be subject to inspection by the director or the director's authorized agents. No permit shall be issued for a vending machine unless it is constructed so that at least one package of each vertical column of cigarettes located therein is visible showing *tax indicia*.

(e) All vending machines operated on military installations shall have a permit affixed to the machines and the cigarettes shall show *tax indicia* of the Kansas tax.

(f) On or before the 10th day of each month, each vending machine distributor shall report to the director, on forms provided by the director, all sales of cigarette vending machines by the distributor to persons in the state of Kansas during the preceding month; the name and address of the purchaser; and the brand name, serial number and sale price of the machines.

(g) Concurrently with a change in ownership of a dealer establishment the license applicable to the establishment is void and shall be surrendered to the director and shall not be transferred. On removal of a dealer establishment from one location to another, the owner of the establishment shall notify the director and surrender the owner's license. The director shall issue a new license for the unexpired term of the sur-

rendered license on payment of a fee of \$2. If a dealer's license is lost, stolen or destroyed, the director may issue a new license on proof of loss, theft or destruction, at a cost of \$2. The director shall remit all moneys received under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 4. K.S.A. 2011 Supp. 79-3301, 79-3303 and 79-3321 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2012.

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## CHAPTER 128

Senate Substitute for HOUSE BILL No. 2313\*

AN ACT concerning civil procedure; relating to private rights of action;  
certain restrictions.

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

Section 1. (a) This section shall be known as the transparency in lawsuits protection act and shall be part of and supplemental to the Kansas code of civil procedure.

(b) It is the intent of the legislature that no statute, rule, regulation or other enactment of the state shall create a private right of action unless such right is expressly stated therein.

(c) Any legislation enacted in this state creating a private right of action shall contain express language providing for such a right. Courts of this state shall not construe a statute to imply a private right of action in the absence of such express language.

(d) Nothing in this act shall be construed to prevent the breach of any duty imposed by law from being used as the basis for a cause of action under any theory of recovery otherwise recognized by law, including, but not limited to, theories of recovery under the law of torts or contract.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2012.

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## CHAPTER 129

## SENATE BILL No. 83

AN ACT concerning the Kansas product liability act; relating to a product liability claim arising from an alleged defect in a used product; amending K.S.A. 60-3306 and repealing the existing section.

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

Section 1. K.S.A. 60-3306 is hereby amended to read as follows: 60-3306. (a) A product seller shall not be subject to liability in a product liability claim arising from an alleged defect in a product, if the product seller establishes that: ~~(a)~~(1) Such seller had no knowledge of the defect; ~~(b)~~(2) such seller in the performance of any duties the seller performed, or was required to perform, could not have discovered the defect while exercising reasonable care; ~~(c)~~(3) ~~the such~~ seller was not a manufacturer of the defective product or product component; ~~(d)~~(4) the manufacturer of the defective product or product component is subject to service of process either under the laws of the state of Kansas or the domicile of the person making the product liability claim; and ~~(e)~~(5) any judgment against the manufacturer obtained by the person making the product liability claim would be reasonably certain of being satisfied.

*(b) A product seller that is a retail seller of used products shall not be subject to liability in a product liability claim arising from an alleged defect in a used product sold by the retail seller, if the retail seller establishes that:*

*(1) Such seller is exempt from federal income taxation pursuant to section 501(c)(3) of the internal revenue code of 1986;*

*(2) the product liability claim is for strict liability in tort; or*

*(3) (A) Such seller resold the product after the product was used by a consumer or other product user;*

*(B) the product was sold in substantially the same condition as it was when it was acquired for resale;*

*(C) the manufacturer of the defective product or product component is subject to service of process either under the laws of the state of Kansas or the domicile of the person making the product liability claim; and*

*(D) any judgment against the manufacturer obtained by the person making the product liability claim would be reasonably certain of being satisfied.*

Sec. 2. K.S.A. 60-3306 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 21, 2012.

## CHAPTER 130

## SENATE BILL No. 300

AN ACT concerning motor vehicles; relating to distinctive license plates; temporary vehicle registration permits; amending K.S.A. 8-127, 8-1,148, 8-1,150 and 8-1,151 and K.S.A. 2011 Supp. 8-135, 8-135c, 8-143, 8-198, 8-1,141, 8-1,142, 8-1,153, 8-1,158, 8-1,161, 8-1,162, 8-1,164 and 8-2409 and repealing the existing sections.

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

Section 1. K.S.A. 8-127 is hereby amended to read as follows: 8-127.

(a) Every owner of a motor vehicle, motorized bicycle, trailer or semi-trailer intended to be operated upon any highway in this state, whether such owner is a resident of this state or another state, or such motor vehicle, motorized bicycle, trailer or semitrailer is based in this state or another state ~~shall~~, before any such vehicle is operated in this state, *shall* apply for and obtain registration in this state under the provisions of K.S.A. 8-126 to 8-149, inclusive, and ~~acts amendatory thereof or supplemental amendments~~ thereto, except as otherwise provided by law or by any interstate contract, agreement, arrangement or declaration made by the director of vehicles.

(b) Any truck or truck tractor bearing registration of a state other than Kansas which is engaged in intrastate movements within this state shall have Kansas registration, except such vehicles which are registered under the provisions of K.S.A. 8-1,101 to 8-1,123, inclusive, and amendments thereto, and except such vehicles as are entitled to engage in intrastate movements within this state under any interstate contract, agreement, consent, arrangement or declaration made by the director of vehicles.

(c) Whenever any person has a current motorcycle, motorized bicycle, passenger vehicle, truck or truck tractor registration and license plate for a vehicle which has been sold, traded or otherwise disposed of not later than ~~30-60~~ days, inclusive of weekends and holidays, after acquiring another motorcycle, motorized bicycle, passenger vehicle, truck or truck tractor to which the registration and license plate will be transferred and such person has complied with all of the conditions precedent to the transfer of the registration except having the registration transferred in the office of the county treasurer, such person may operate the motorcycle, motorized bicycle, passenger vehicle, truck or truck tractor acquired for a period of not to exceed ~~30-60~~ days, inclusive of weekends and holidays, after acquiring the same and pending transferral of registration and license plate in the office of the county treasurer by displaying the motorcycle license plate on the motorcycle acquired, the motorized bicycle license plate on the motorized bicycle acquired, the passenger vehicle license plate on the passenger vehicle acquired, or the truck or truck tractor license plate on the truck or truck tractor acquired. If the acquired vehicle is a new vehicle, such person also must carry and have

in possession the assigned certificate of title or bill of sale when operating the acquired vehicle during ~~said thirty-day~~ *such sixty-day* period.

Sec. 2. K.S.A. 2011 Supp. 8-135 is hereby amended to read as follows: 8-135. (a) Upon the transfer of ownership of any vehicle registered under this act, the registration of the vehicle and the right to use any license plate thereon shall expire and thereafter there shall be no transfer of any registration, and the license plate shall be removed by the owner thereof. Except as provided in K.S.A. 8-172, and amendments thereto, and 8-1,147, and amendments thereto, it shall be unlawful for any person, other than the person to whom the license plate was originally issued, to have possession thereof. When the ownership of a registered vehicle is transferred, the original owner of the license plate may register another vehicle under the same number, upon application and payment of a fee of \$1.50, if such other vehicle does not require a higher license fee. If a higher license fee is required, then the transfer may be made upon the payment of the transfer fee of \$1.50 and the difference between the fee originally paid and that due for the new vehicle.

(b) Subject to the provisions of subsection (a) of K.S.A. 8-198, and amendments thereto, upon the transfer or sale of any vehicle by any person or dealer, or upon any transfer in accordance with K.S.A. 59-3511, and amendments thereto, the new owner thereof, within ~~30-60~~ days, inclusive of weekends and holidays, from date of such transfer shall make application to the division for registration or reregistration of the vehicle, but no person shall operate the vehicle on any highway in this state during the ~~thirty-day~~ *sixty-day* period without having applied for and obtained temporary registration from the county treasurer or from a dealer. After the expiration of the ~~thirty-day~~ *sixty-day* period, it shall be unlawful for the owner or any other person to operate such vehicle upon the highways of this state unless the vehicle has been registered as provided in this act. For failure to make application for registration as provided in this section, a penalty of \$2 shall be added to other fees. When a person has a current motorcycle or passenger vehicle registration and license plate, including any registration decal affixed thereto, for a vehicle and has sold or otherwise disposed of the vehicle and has acquired another motorcycle or passenger vehicle and intends to transfer the registration and the license plate to the motorcycle or passenger vehicle acquired, but has not yet had the registration transferred in the office of the county treasurer, such person may operate the motorcycle or passenger vehicle acquired for a period of not to exceed ~~30-60~~ days by displaying the license plate on the rear of the vehicle acquired. If the acquired vehicle is a new vehicle such person also must carry the assigned certificate of title or manufacturer's statement of origin when operating the acquired vehicle, except that a dealer may operate such vehicle by displaying such dealer's dealer license plate.

(c) Certificate of title: No vehicle required to be registered shall be registered or any license plate or registration decal issued therefor, unless the applicant for registration shall present satisfactory evidence of ownership and apply for an original certificate of title for such vehicle. The following paragraphs of this subsection shall apply to the issuance of a certificate of title for a nonhighway vehicle, salvage vehicle or rebuilt salvage vehicle, as defined in K.S.A. 8-197, and amendments thereto, except to the extent such paragraphs are made inapplicable by or are inconsistent with K.S.A. 8-198, and amendments thereto, and to any electronic certificate of title, except to the extent such paragraphs are made inapplicable by or are inconsistent with K.S.A. 2011 Supp. 8-135d, and amendments thereto, or with rules and regulations adopted pursuant to K.S.A. 2011 Supp. 8-135d, and amendments thereto.

The provisions of paragraphs (1) through (14) shall apply to any certificate of title issued prior to January 1, 2003, which indicates that there is a lien or encumbrance on such vehicle.

(1) An application for certificate of title shall be made by the owner or the owner's agent upon a form furnished by the division and shall state all liens or encumbrances thereon, and such other information as the division may require. Notwithstanding any other provision of this section, no certificate of title shall be issued for a vehicle having any unreleased lien or encumbrance thereon, unless the transfer of such vehicle has been consented to in writing by the holder of the lien or encumbrance. Such consent shall be in a form approved by the division. In the case of members of the armed forces of the United States while the United States is engaged at war with any foreign nation and for a period of six months next following the cessation of hostilities, such application may be signed by the owner's spouse, parents, brother or sister. The county treasurer shall use reasonable diligence in ascertaining whether the facts stated in such application are true, and if satisfied that the applicant is the lawful owner of such vehicle, or otherwise entitled to have the same registered in such applicant's name, shall so notify the division, who shall issue an appropriate certificate of title. The certificate of title shall be in a form approved by the division, and shall contain a statement of any liens or encumbrances which the application shows, and such other information as the division determines.

(2) The certificate of title shall contain upon the reverse side a form for assignment of title to be executed by the owner. This assignment shall contain a statement of all liens or encumbrances on the vehicle at the time of assignment. The certificate of title shall also contain on the reverse side blank spaces so that an abstract of mileage as to each owner will be available. The seller at the time of each sale shall insert and certify the mileage and the purchase price on the form filed for application or reassignment of title, and the division shall insert such mileage on the certificate of title when issued to purchaser or assignee. The signature of the

purchaser or assignee is required on the form filed for application or reassignment of title, acknowledging the odometer and purchase price certification made by the seller, except that vehicles which are 10 model years or older and trucks with a gross vehicle weight of more than 16,000 pounds shall be exempt from the mileage acknowledgment requirement of the purchaser or assignee. Such title shall indicate whether the vehicle for which it is issued has been titled previously as a nonhighway vehicle or salvage vehicle. In addition, the reverse side shall contain two forms for reassignment by a dealer, stating the liens or encumbrances thereon. The first form of reassignment shall be used only when a dealer sells the vehicle to another dealer. The second form of reassignment shall be used by a dealer when selling the vehicle to another dealer or the ultimate owner of the vehicle. The reassignment by a dealer shall be used only where the dealer resells the vehicle, and during the time that the vehicle remains in the dealer's possession for resale, the certificate of title shall be dormant. When the ownership of any vehicle passes by operation of law, or repossession upon default of a lease, security agreement, or executory sales contract, the person owning such vehicle, upon furnishing satisfactory proof to the county treasurer of such ownership, may procure a certificate of title to the vehicle. When a vehicle is registered in another state and is repossessed in another state, the owner of such vehicle shall not be entitled to obtain a valid Kansas title or registration, except that when a vehicle is registered in another state, but is financed originally by a financial institution chartered in the state of Kansas or when a financial institution chartered in Kansas purchases a pool of motor vehicle loans from the resolution trust corporation or a federal regulatory agency, and the vehicle is repossessed in another state, such Kansas financial institution shall be entitled to obtain a valid Kansas title or registration. In addition to any other fee required for the issuance of a certificate of title, any applicant obtaining a certificate of title for a repossessed vehicle shall pay a fee of \$3.

(3) Dealers shall execute, upon delivery to the purchaser of every new vehicle, a manufacturer's statement of origin stating the liens and encumbrances thereon. Such statement of origin shall be delivered to the purchaser at the time of delivery of the vehicle or at a time agreed upon by the parties, not to exceed 30 days, inclusive of weekends and holidays. The agreement of the parties shall be executed on a form approved by the division. In the event delivery of title cannot be made personally, the seller may deliver the manufacturer's statement of origin by restricted mail to the address of purchaser shown on the purchase agreement. The manufacturer's statement of origin may include an attachment containing assignment of such statement of origin on forms approved by the division. Upon the presentation to the division of a manufacturer's statement of origin, by a manufacturer or dealer for a new vehicle, sold in this state, a certificate of title shall be issued if there is also an application for regis-

tration, except that no application for registration shall be required for a travel trailer used for living quarters and not operated on the highways.

(4) The fee for each original certificate of title shall be \$10 in addition to the fee for registration of such vehicle, trailer or semitrailer. The certificate of title shall be good for the life of the vehicle, trailer or semitrailer while owned or held by the original holder of the certificate of title.

(5) Except for a vehicle registered by a federally recognized Indian tribe, as provided in paragraph (16), upon sale and delivery to the purchaser of every vehicle subject to a purchase money security interest as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto, the dealer or secured party may complete a notice of security interest and when so completed, the purchaser shall execute the notice, in a form prescribed by the division, describing the vehicle and showing the name and address of the secured party and of the debtor and other information the division requires. On and after July 1, 2007, only one lien shall be taken or accepted for vehicles with a gross vehicle weight rating of 26,000 pounds or less. As used in this section "gross vehicle weight rating" shall have the meaning ascribed thereto in K.S.A. 66-1,108, and amendments thereto. The dealer or secured party, within 30 days of the sale and delivery, may mail or deliver the notice of security interest, together with a fee of \$2.50, to the division. The notice of security interest shall be retained by the division until it receives an application for a certificate of title to the vehicle and a certificate of title is issued. The certificate of title shall indicate any security interest in the vehicle. Upon issuance of the certificate of title, the division shall mail or deliver confirmation of the receipt of the notice of security interest, the date the certificate of title is issued and the security interest indicated, to the secured party at the address shown on the notice of security interest. The proper completion and timely mailing or delivery of a notice of security interest by a dealer or secured party shall perfect a security interest in the vehicle, as referenced in K.S.A. 2011 Supp. 84-9-311, and amendments thereto, on the date of such mailing or delivery. The county treasurers shall mail a copy of the title application to the lienholder. For any vehicle subject to a lien, the county treasurer shall collect from the applicant a \$1.50 service fee for processing and mailing a copy of the title application to the lienholder.

(6) It shall be unlawful for any person to operate in this state a vehicle required to be registered under this act, or to transfer the title to any such vehicle to any person or dealer, unless a certificate of title has been issued as herein provided. In the event of a sale or transfer of ownership of a vehicle for which a certificate of title has been issued, which certificate of title is in the possession of the transferor at the time of delivery of the vehicle, the holder of such certificate of title shall endorse on the same an assignment thereof, with warranty of title in a form prescribed by the division and printed thereon and the transferor shall deliver the

same to the buyer at the time of delivery to the buyer of the vehicle or at a time agreed upon by the parties, not to exceed ~~30-60~~ days, inclusive of weekends and holidays, after the time of delivery. The agreement of the parties shall be executed on a form provided by the division. The requirements of this paragraph concerning delivery of an assigned title are satisfied if the transferor mails to the transferee by restricted mail the assigned certificate of title within the ~~30-60~~ days, and if the transferor is a dealer, as defined by K.S.A. 8-2401, and amendments thereto, such transferor shall be deemed to have possession of the certificate of title if the transferor has made application therefor to the division. The buyer shall then present such assigned certificate of title to the division at the time of making application for registration of such vehicle. A new certificate of title shall be issued to the buyer, upon payment of the fee of \$10. If such vehicle is sold to a resident of another state or country, the dealer or person making the sale shall notify the division of the sale and the division shall make notation thereof in the records of the division. When a person acquires a security interest that such person seeks to perfect on a vehicle subsequent to the issuance of the original title on such vehicle, such person shall require the holder of the certificate of title to surrender the same and sign an application for a mortgage title in form prescribed by the division. Upon such surrender such person shall immediately deliver the certificate of title, application, and a fee of \$10 to the division. Delivery of the surrendered title, application and tender of the required fee shall perfect a security interest in the vehicle as referenced in K.S.A. 2011 Supp. 84-9-311, and amendments thereto. On and after July 1, 2007, only one lien may be taken or accepted for security for an obligation to be secured by a lien to be shown on a certificate of title for vehicles with a gross vehicle weight rating, as defined in K.S.A. 66-1,108, and amendments thereto, of 26,000 pounds or less. A refinancing shall not be subject to the limitations of this act. A refinancing is deemed to occur when the original obligation is satisfied and replaced by a new obligation. Lien obligations created before July 1, 2007, which are of a continuing nature shall not be subject to the limitations of this act until the obligation is satisfied. A lien in violation of this provision is void. Upon receipt of the surrendered title, application and fee, the division shall issue a new certificate of title showing the liens or encumbrances so created, but only one lien or encumbrance may be shown upon a title for vehicles with a gross vehicle rating of 26,000 pounds or less, and not more than two liens or encumbrances may be shown upon a title for vehicles in excess of 26,000 pounds gross vehicle weight rating. When a prior lienholder's name is removed from the title, there must be satisfactory evidence presented to the division that the lien or encumbrance has been paid. When the indebtedness to a lienholder, whose name is shown upon a title, is paid in full, such lienholder shall comply with the provisions of K.S.A. 2011 Supp. 8-1,157, and amendments thereto.

(7) It shall be unlawful for any person to buy or sell in this state any vehicle required to be registered, unless, at the time of delivery thereof or at a time agreed upon by the parties, not to exceed ~~30~~60 days, inclusive of weekends and holidays, after the time of delivery, there shall pass between the parties a certificate of title with an assignment thereof. The sale of a vehicle required to be registered under the laws of this state, without assignment of the certificate of title, is fraudulent and void, unless the parties shall agree that the certificate of title with assignment thereof shall pass between them at a time other than the time of delivery, but within ~~30~~60 days thereof. The requirements of this paragraph concerning delivery of an assigned title shall be satisfied if (A) the seller mails to the purchaser by restricted mail the assigned certificate of title within ~~30~~60 days, or (B) if the transferor is a dealer, as defined by K.S.A. 8-2401, and amendments thereto, such seller shall be deemed to have possession of the certificate of title if such seller has made application therefor to the division, or (C) if the transferor is a dealer and has assigned a title pursuant to paragraph (9) of this subsection (c).

(8) In cases of sales under the order of a court of a vehicle required to be registered under this act, the officer conducting such sale shall issue to the purchaser a certificate naming the purchaser and reciting the facts of the sale, which certificate shall be *prima facie* evidence of the ownership of such purchaser for the purpose of obtaining a certificate of title to such motor vehicle and for registering the same. Any such purchaser shall be allowed ~~30~~60 days, inclusive of weekends and holidays, from the date of sale to make application to the division for a certificate of title and for the registering of such motor vehicle.

(9) Any dealer who has acquired a vehicle, the title for which was issued under the laws of and in a state other than the state of Kansas, shall not be required to obtain a Kansas certificate of title therefor during the time such vehicle remains in such dealer's possession and at such dealer's place of business for the purpose of sale. The purchaser or transferee shall present the assigned title to the division of vehicles when making application for a certificate of title as provided in subsection (c)(1).

(10) Motor vehicles may be held and titled in transfer-on-death form.

(11) Notwithstanding the provisions of this act with respect to time requirements for delivery of a certificate of title, or manufacturer's statement of origin, as applicable, any person who chooses to reaffirm the sale in writing on a form approved by the division which advises them of their rights pursuant to paragraph (7) of subsection (c) and who has received and accepted assignment of the certificate of title or manufacturer's statement of origin for the vehicle in issue may not thereafter void or set aside the transaction with respect to the vehicle for the reason that a certificate of title or manufacturer's statement of origin was not timely delivered, and in such instances the sale of a vehicle shall not be deemed to be fraudulent and void for that reason alone.

(12) The owner of any vehicle assigning a certificate of title in accordance with the provisions of this section may file with the division a form indicating that such owner has assigned such certificate of title. Such forms shall be furnished by the division and shall contain such information as the division may require. Any owner filing a form as provided in this paragraph shall pay a fee of \$10. The filing of such form shall be *prima facie* evidence that such certificate of title was assigned and shall create a rebuttable presumption. If the assignee of a certificate of title fails to make application for registration, an owner assigning such title and filing the form in accordance with the provisions of this paragraph shall not be held liable for damages resulting from the operation of such vehicle.

(13) Application for a certificate of title on a boat trailer with a gross weight over 2,000 pounds shall be made by the owner or the owner's agent upon a form to be furnished by the division and shall contain such information as the division shall determine necessary. The division may waive any information requested on the form if it is not available. The application together with a bill of sale for the boat trailer shall be accepted as *prima facie* evidence that the applicant is the owner of the boat trailer, provided that a Kansas title for such trailer has not previously been issued. If the application and bill of sale are used to obtain a certificate of title for a boat trailer under this paragraph, the certificate of title shall not be issued until an inspection in accordance with subsection (a) of K.S.A. 8-116a, and amendments thereto, has been completed.

(14) In addition to the two forms for reassignment under paragraph (2) of subsection (c), a dealer may attach one additional reassignment form to a certificate of title. The director of vehicles shall prescribe and furnish such reassignment forms. The reassignment form shall be used by a dealer when selling the vehicle to another dealer or the ultimate owner of the vehicle only when the two reassignment forms under paragraph (2) of subsection (c) have already been used. The fee for a reassignment form shall be \$6.50. A dealer may purchase reassignment forms in multiples of five upon making proper application and the payment of required fees.

(15) A first stage manufacturer, as defined in K.S.A. 8-2401, and amendments thereto, who manufactures a motor vehicle in this state, and who sells such motor vehicles to dealers located in a foreign country, may execute a manufacturer's statement of origin to the division of vehicles for the purpose of obtaining an export certificate of title. The motor vehicle issued an export certificate of title shall not be required to be registered in this state. An export certificate of title shall not be used to register such vehicle in the United States.

(16) A security interest in a vehicle registered by a federally recognized Indian tribe shall be deemed valid under Kansas law if validly perfected under the applicable tribal law and the lien is noted on the face of the tribal certificate of title.

(17) On and after January 1, 2010, a certificate of title issued for a rebuilt salvage vehicle for the initial time, shall indicate on such title, the reduced classification of such vehicle as provided under K.S.A. 79-5104, and amendments thereto.

Sec. 3. K.S.A. 2011 Supp. 8-135c is hereby amended to read as follows: 8-135c. (a) The provisions of this section shall be a part of and supplemental to the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, and as used in this section, the words and phrases defined by K.S.A. 8-126, and amendments thereto, shall have the meanings respectively ascribed to them therein.

(b) As used in this section:

(1) “Nonrepairable vehicle” means any motor vehicle which: (A) Has been damaged, destroyed, wrecked, burned or submerged in water to the extent that such motor vehicle is incapable of safe operation for use on roads or highways and has no resale value except as a source of parts or scrap only; or (B) the owner irreversibly designates as a source of parts or scrap;

(2) “nonrepairable vehicle certificate” means a motor vehicle ownership document issued by the division designating that vehicle a non-repairable vehicle.

(c) (1) Except as otherwise provided by this section, the owner of a vehicle that meets the definition of a nonrepairable vehicle shall apply to the division for a nonrepairable vehicle certificate before the ownership of the motor vehicle is transferred. In no event shall such application be made more than ~~30~~ 60 days after the vehicle is determined to be a non-repairable vehicle.

(2) Every insurance company, which pursuant to a damage settlement, acquires ownership of a vehicle that has incurred damage requiring the vehicle to be designated a nonrepairable vehicle, shall apply to the division for a nonrepairable vehicle certificate within ~~30~~ 60 days after the title is assigned and delivered by the owner to the insurance company, with all liens released.

(3) Every insurance company which makes a damage settlement for a vehicle that has incurred damage requiring such vehicle to be designated a nonrepairable vehicle, but does not acquire ownership of the vehicle, shall notify the vehicle owner of the owner’s obligation to apply to the department for a nonrepairable vehicle certificate for the motor vehicle, and shall notify the division of this fact in accordance with procedures established by the division. The vehicle owner shall apply to the division for a nonrepairable vehicle certificate within ~~30~~ 60 days after being notified by the insurance company.

(4) The lessee of any vehicle which incurs damage requiring the vehicle to be designated a nonrepairable vehicle shall notify the lessor of

this fact within 30 days of the determination that the vehicle is a nonrepairable vehicle.

(5) The lessor of any motor vehicle which has incurred damage requiring the vehicle to be titled as a nonrepairable vehicle, shall apply to the division for a nonrepairable vehicle certificate within ~~30~~ 60 days after being notified of this fact by the lessee.

(6) Every person acquiring ownership of a motor vehicle that meets the definition of a nonrepairable vehicle, for which a nonrepairable vehicle certificate has not been issued, shall apply to the division for the required document prior to any further transfer of such vehicle, but in no event, more than ~~30~~ 60 days after ownership is acquired.

(7) Failure to apply for a nonrepairable vehicle certificate as provided by this subsection shall be a class C nonperson misdemeanor.

(d) (1) Upon notification of a vehicle's designation as a nonrepairable vehicle, the division shall issue a nonrepairable vehicle certificate.

(2) Each nonrepairable vehicle certificate shall contain the same identifying information and comply with format, size and security requirements applicable to certificates of title under K.S.A. 8-135, and amendments thereto, and shall be conspicuously labeled with this designation on the face of the certificate.

(3) Each application for a nonrepairable vehicle certificate shall be accompanied by the fee required for an original certificate of title under K.S.A. 8-135, and amendments thereto, and if the application is not made within the time prescribed by subsection (c), an additional fee of \$2.

(e) (1) No motor vehicle for which a nonrepairable vehicle certificate has been issued shall be titled or registered by the division for use on the roads or highways of this state.

(2) Ownership of the motor vehicle for which a nonrepairable vehicle certificate has been issued may only be transferred once.

(3) Any motor vehicle transferred through the use of a nonrepairable vehicle certificate shall be dismantled, disassembled or recycled and may not be sold as a unit at retail.

When the nonrepairable vehicle has been crushed, dismantled, disassembled or recycled and such vehicle is sold to a scrap processor for recycling after the salvageable parts have been removed, the owner shall surrender the nonrepairable vehicle certificate to the division with the word recycled written or stamped across its face and no certificate of title of any type shall be issued nor any registration allowed again for such vehicle.

(4) A nonrepairable vehicle certificate may be used to transfer ownership of a motor vehicle 10 or more model years of age, in accordance with this section, when the owner does not have a certificate of title in the owner's possession.

(f) The secretary of the department of revenue may adopt rules and

regulations as the secretary deems necessary to carry out the provisions of this section.

Sec. 4. K.S.A. 2011 Supp. 8-143 is hereby amended to read as follows: 8-143. (a) All applications for the registration of motorcycles, motorized bicycles and passenger vehicles other than trucks and truck tractors, except as otherwise provided, shall be accompanied by an annual license fee as follows:

- (1) For motorized bicycles, \$11;
- (2) for motorcycles, \$16;
- (3) for passenger vehicles, other than motorcycles, used solely for the carrying of persons for pleasure or business, and for hearses and ambulances a fee of:

- (A) For those having a gross weight of 4,500 pounds or less, \$30; and
- (B) for those having a gross weight of more than 4,500 pounds, \$40;
- (4) for each electrically propelled motor vehicle, except electrically propelled vehicles intended for the purpose of transporting any commodity, goods, merchandise, produce or freight, or passengers for hire, a fee of \$14.

- (5) Except for motor vehicles, trailers or semitrailers registered under the provisions of K.S.A. 8-1,134, and amendments thereto, the annual registration fee for each motor vehicle, trailer or semitrailer owned by any political or taxing subdivision of this state or by any agency or instrumentality of any one or more political or taxing subdivisions of this state and used exclusively for governmental purposes and not for any private or utility purposes, which is not otherwise exempt from registration, shall be \$2.

- (b) (1) As used in this subsection, the term “gross weight” shall mean and include the empty weight of the truck, or combination of the truck or truck tractor and any type trailer or semitrailer, plus the maximum weight of cargo which will be transported on or with the same, except when the empty weight of a truck plus the maximum weight of cargo which will be transported thereon is 12,000 pounds or less. The term gross weight shall not include: The weight of any travel trailer propelled thereby which is being used for private recreational purposes; or the weight of any vehicle or combination of vehicles for which wrecker or towing service, as defined in K.S.A. 66-1329, and amendments thereto, is to be provided by a wrecker or tow truck, as defined in K.S.A. 66-1329, and amendments thereto. Such wrecker or tow truck shall be registered for the empty weight of such vehicle fully equipped for the recovery or towing of vehicles. The gross weight license fees hereinafter prescribed shall only apply to the truck or truck tractor used as the propelling unit for the cargo and vehicle propelled, either as a single vehicle or combination of vehicles. On application for the registration of a truck or truck tractor, the owner thereof shall declare as a part of such application the

maximum gross weight the owner desires to be applicable to such vehicle, which declared gross weight in no event shall be in excess of the limitations described by K.S.A. 8-1908 and 8-1909, and amendments thereto, for such vehicle or combination of vehicles of which it will be a part. All applications for the registration of trucks or truck tractors, except as otherwise provided herein, shall be accompanied by an annual license fee as follows:

(A) Prior to January 1, 2013:	
For a gross weight of 12,000 lbs. or less.....	\$40
For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs.....	102
For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs.....	132
For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs.....	197
For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs.....	312
For a gross weight of more than 26,000 lbs. and not more than 30,000 lbs.....	312
For a gross weight of more than 30,000 lbs. and not more than 36,000 lbs.....	375
For a gross weight of more than 36,000 lbs. and not more than 42,000 lbs.....	475
For a gross weight of more than 42,000 lbs. and not more than 48,000 lbs.....	605
For a gross weight of more than 48,000 lbs. and not more than 54,000 lbs.....	805
For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs.....	1,010
For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs.....	1,210
For a gross weight of more than 66,000 lbs. and not more than 74,000 lbs.....	1,535
For a gross weight of more than 74,000 lbs. and not more than 80,000 lbs.....	1,735
For a gross weight of more than 80,000 lbs. and not more than 85,500 lbs.....	1,935
(B) On January 1, 2013, through December 31, 2013:	
For a gross weight of 12,000 lbs. or less.....	\$40
For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs.....	152
For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs.....	182

For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs.....	247
For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs.....	362
For a gross weight of more than 26,000 lbs. and not more than 30,000 lbs.....	362
For a gross weight of more than 30,000 lbs. and not more than 36,000 lbs.....	425
For a gross weight of more than 36,000 lbs. and not more than 42,000 lbs.....	525
For a gross weight of more than 42,000 lbs. and not more than 48,000 lbs.....	655
For a gross weight of more than 48,000 lbs. and not more than 54,000 lbs.....	855
For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs.....	1,095
For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs.....	1,295
For a gross weight of more than 66,000 lbs. and not more than 74,000 lbs.....	1,620
For a gross weight of more than 74,000 lbs. and not more than 80,000 lbs.....	1,820
For a gross weight of more than 80,000 lbs. and not more than 85,500 lbs.....	2,020
(C) On January 1, 2014:	
For a gross weight of 1,000 lbs. or less .....	\$40
For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs.....	202
For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs.....	232
For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs.....	297
For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs.....	412
For a gross weight of more than 26,000 lbs. and not more than 30,000 lbs.....	412
For a gross weight of more than 30,000 lbs. and not more than 36,000 lbs.....	475
For a gross weight of more than 36,000 lbs. and not more than 42,000 lbs.....	575
For a gross weight of more than 42,000 lbs. and not more than 48,000 lbs.....	705
For a gross weight of more than 48,000 lbs. and not more than 54,000 lbs.....	905

For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs.....	1,145
For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs.....	1,345
For a gross weight of more than 66,000 lbs. and not more than 74,000 lbs.....	1,670
For a gross weight of more than 74,000 lbs. and not more than 80,000 lbs.....	1,870
For a gross weight of more than 80,000 lbs. and not more than 85,500 lbs.....	2,070

(2) If the applicant for registration of any truck or truck tractor for a gross weight of more than 12,000 pounds is the state of Kansas or any political or taxing subdivision or agency of the state, except a city or county, whose truck or truck tractor is not otherwise entitled to the \$2 license fee or otherwise exempt from all fees, such vehicle may be licensed for a fee in accordance with the schedule hereinafter prescribed for local trucks or truck tractors.

(3) If the applicant for registration of any truck or truck tractor for a gross weight of more than 12,000 pounds shall under oath state in writing on a form prescribed and furnished by the director of vehicles that the applicant does not expect to operate it more than 6,000 miles in the calendar year for which the applicant seeks registration, and that if the applicant shall operate it more than 6,000 miles during such registration year such applicant will pay an additional fee equal to the fee required by the schedule under paragraph (1), less the amount of the fee paid at time of registration, such vehicle may be licensed for a fee in accordance with the schedule prescribed for local trucks or truck tractors. Whenever a truck or truck tractor is registered on a local truck or truck tractor fee basis a tab or marker shall be issued in connection with the regular license plate, which tab or marker shall be attached or affixed to and displayed with the regular license plate and the failure to have the same attached, affixed or displayed shall be subject to the same penalties as provided by law for the failure to display the regular license plate; and the secretary of revenue may adopt rules and regulations requiring the owners of trucks and truck tractors so registered on a local truck or truck tractor fee basis to keep such records and make such reports of mileage of such vehicles as the secretary of revenue shall deem proper.

(4) A transporter delivering vehicles not the transporter's own by the driveaway method where such vehicles are being driven, towed, or transported singly, or by the saddlemount, towbar, or fullmount methods, or by any lawful combination thereof, may apply for license plates which may be transferred from one such vehicle or combination to another for each delivery without further registration, and the annual license fee for such license plate shall be as follows:

(A) Prior to January 1, 2013:

For the first such set of license plates.....	\$44
For each additional such set of license plates.....	18

(B) On January 1, 2013, through December 31, 2013:

For the first such set of license plates.....	\$54
For each additional such set of license plates.....	28

(C) On January 1, 2014:

For the first such set of license plates.....	\$64
For each additional such set of license plates.....	38

(5) A truck or truck tractor registered for a gross weight of more than 12,000 pounds, which is operated wholly within the corporate limits of a city or village or within a radius of 25 miles beyond the corporate limits, shall be classified as a local truck except that in no event shall such vehicles operated as contract or common carriers outside a radius of three miles beyond the corporate limits of the city or village in which such vehicles were based when registered and licensed be considered local trucks or truck tractors. The secretary of revenue is hereby authorized and directed to adopt rules and regulations prescribing a procedure for the issuance of permits by the division of vehicles whereby owners of local trucks or truck tractors may operate any such vehicle, empty, beyond the radius hereinbefore prescribed, when such operation is solely for the purpose of having such vehicle repaired, painted or serviced or for adding additional equipment thereto. The annual license fee for a local truck or truck tractor, except as otherwise provided herein, shall be as follows:

(A) Prior to January 1, 2013:

For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs.....	\$62
For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs.....	102
For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs.....	132
For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs.....	177
For a gross weight of more than 26,000 lbs. and not more than 30,000 lbs.....	177
For a gross weight of more than 30,000 lbs. and not more than 36,000 lbs.....	215
For a gross weight of more than 36,000 lbs. and not more than 42,000 lbs.....	245
For a gross weight of more than 42,000 lbs. and not more than 48,000 lbs.....	315
For a gross weight of more than 48,000 lbs. and not more than 54,000 lbs.....	415

For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs..... 480

For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs..... 580

For a gross weight of more than 66,000 lbs. and not more than 74,000 lbs..... 760

For a gross weight of more than 74,000 lbs. and not more than 80,000 lbs..... 890

For a gross weight of more than 80,000 lbs. and not more than 85,500 lbs..... 1,010

(B) On January 1, 2013, through December 31, 2013:

For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs..... \$112

For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs..... 152

For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs..... 182

For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs..... 227

For a gross weight of more than 26,000 lbs. and not more than 30,000 lbs..... 227

For a gross weight of more than 30,000 lbs. and not more than 36,000 lbs..... 265

For a gross weight of more than 36,000 lbs. and not more than 42,000 lbs..... 295

For a gross weight of more than 42,000 lbs. and not more than 48,000 lbs..... 365

For a gross weight of more than 48,000 lbs. and not more than 54,000 lbs..... 465

For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs..... 565

For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs..... 665

For a gross weight of more than 66,000 lbs. and not more than 74,000 lbs..... 845

For a gross weight of more than 74,000 lbs. and not more than 80,000 lbs..... 975

For a gross weight of more than 80,000 lbs. and not more than 85,500 lbs..... 1,095

(C) On January 1, 2014:

For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs..... \$162

For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs..... 202

For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs.....	232
For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs.....	277
For a gross weight of more than 26,000 lbs. and not more than 30,000 lbs.....	277
For a gross weight of more than 30,000 lbs. and not more than 36,000 lbs.....	315
For a gross weight of more than 36,000 lbs. and not more than 42,000 lbs.....	345
For a gross weight of more than 42,000 lbs. and not more than 48,000 lbs.....	415
For a gross weight of more than 48,000 lbs. and not more than 54,000 lbs.....	515
For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs.....	615
For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs.....	715
For a gross weight of more than 66,000 lbs. and not more than 74,000 lbs.....	895
For a gross weight of more than 74,000 lbs. and not more than 80,000 lbs.....	1,025
For a gross weight of more than 80,000 lbs. and not more than 85,500 lbs.....	1,145

(6) A truck or truck tractor registered for a gross weight of more than 12,000 pounds, which is owned by a person engaged in farming and which truck or truck tractor is used by such owner to transport agricultural products produced by such owner or commodities purchased by such owner for use on the farm owned or rented by the owner of such farm truck or truck tractor, shall be classified as a farm truck or truck tractor and the annual license fee for such farm truck shall be as follows:

(A) Prior to January 1, 2013:

For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs.....	\$37
For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs.....	42
For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs.....	52
For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs.....	72
For a gross weight of more than 26,000 lbs. and not more than 36,000 lbs.....	72
For a gross weight of more than 36,000 lbs. and not more than 54,000 lbs.....	75

For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs..... 190

For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs..... 370

For a gross weight of more than 66,000 lbs. .... 610

(B) On January 1, 2013, through December 31, 2013:

For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs..... \$47

For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs..... 92

For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs..... 102

For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs..... 122

For a gross weight of more than 26,000 lbs. and not more than 36,000 lbs..... 122

For a gross weight of more than 36,000 lbs. and not more than 54,000 lbs..... 125

For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs..... 275

For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs..... 455

For a gross weight of more than 66,000 lbs. .... 695

(C) On January 1, 2014:

For a gross weight of more than 12,000 lbs. and not more than 16,000 lbs..... \$57

For a gross weight of more than 16,000 lbs. and not more than 20,000 lbs..... 142

For a gross weight of more than 20,000 lbs. and not more than 24,000 lbs..... 152

For a gross weight of more than 24,000 lbs. and not more than 26,000 lbs..... 172

For a gross weight of more than 26,000 lbs. and not more than 36,000 lbs..... 172

For a gross weight of more than 36,000 lbs. and not more than 54,000 lbs..... 175

For a gross weight of more than 54,000 lbs. and not more than 60,000 lbs..... 325

For a gross weight of more than 60,000 lbs. and not more than 66,000 lbs..... 505

For a gross weight of more than 66,000 lbs. .... 745

A vehicle licensed as a farm truck or truck tractor may be used by the owner thereof to transport, for charity and without compensation of any kind, commodities for religious or educational institutions. A truck which

is licensed as a farm truck may also be used for the transportation of sand, gravel, slag stone, limestone, crushed stone, cinders, black top, dirt or fill material to a township road maintenance or construction site of the township in which the owner of such truck resides. Any applicant for registration of any farm truck or farm truck tractor used in combination with a trailer or semitrailer shall register the farm truck or farm truck tractor for a gross weight which shall include the empty weight of the truck or truck tractor or of the combination of any truck or truck tractor and any type of trailer or semitrailer, plus the maximum weight of cargo which will be transported on or with the same. The applicant for registration of any farm truck or farm truck tractor used to transport a gross weight of more than 54,000 pounds shall durably letter on the side of the motor vehicle the words "farm vehicle—not for hire." If an applicant for registration of any farm truck or farm truck tractor operates such vehicle for any use or purpose not authorized for a farm truck or farm truck tractor, such applicant shall pay an additional fee equal to the fee required for the registration of all trucks or truck tractors not registered as local, 6,000-mile or farm truck or farm truck tractor motor vehicles, less the amount of the fee paid at time of registration. Nothing in this or the preceding paragraph shall authorize a gross weight of a vehicle or combination of vehicles on the national system of interstate and defense highways greater than permitted by laws of the United States congress.

(7) Except as hereinafter provided, the annual license fee for each local urban transit bus used in local urban transit operations exempted under the provisions of subsection (a) of K.S.A. 66-1,109, and amendments thereto, shall be based on the passenger seating capacity of the bus and shall be as follows:

(A) Prior to January 1, 2013:	
8 or more, but less than 31 passengers .....	\$15
31 or more, but less than 40 passengers.....	30
More than 39 passengers .....	60
(B) On January 1, 2013, through December 31, 2013:	
8 or more, but less than 31 passengers .....	\$25
31 or more, but less than 40 passengers.....	40
More than 39 passengers .....	70
(C) On January 1, 2014:	
8 or more, but less than 31 passengers .....	\$35
31 or more, but less than 40 passengers.....	50
More than 39 passengers .....	80

The annual license fee for each local urban transit bus which is owned by a metropolitan transit authority established pursuant to articles 25 and 28 of chapter 12 or pursuant to article 31 of chapter 13 of the Kansas Statutes Annotated shall be \$2.

(8) For licensing purposes, station wagons with a carrying capacity of less than 10 passengers shall be subject to registration fees based on the weight of the vehicles, as provided in subsection (a). Station wagons with a carrying capacity of 10 or more passengers shall be subject to the truck classifications and license fees as provided.

(9) For any trailer, semitrailer, travel trailer or pole trailer the annual license fee shall be as follows:

(A) (i) Until January 1, 2013, for any such vehicle with a gross weight of more than 12,000 pounds the annual fee shall be \$35;

(ii) On January 1, 2013, for any such vehicle with a gross weight of more than 12,000 pounds but less than 54,000 pounds the annual fee shall be \$45, on January 1, 2014, \$55;

(B) any such vehicle grossing more than 8,000 pounds but not over 12,000 pounds, the annual fee shall be \$25, on January 1, 2013, \$35, on January 1, 2014, \$45;

(C) for any such vehicle grossing more than 2,000 pounds but not over 8,000 pounds, the annual fee shall be \$15, on January 1, 2013, \$25, on January 1, 2014, \$35.

Any such vehicle having a gross weight of 2,000 pounds or less may, at the owner's option, be registered and the fee for such registration shall be as provided in paragraph (C).

Any trailer, semitrailer or travel trailer owned by a nonresident of this state and based in another state, which is properly registered and licensed in the state of residence of the owner or in the state where based, may be operated in this state without being registered or licensed in this state if the truck or truck tractor propelling the same is properly registered and licensed in this state, or is registered and licensed in some other state and is entitled to reciprocal privileges of operation in this state, but this provision shall not apply to any trailer or semitrailer owned by a nonresident of this state when such trailer or semitrailer is owned by a person who has proportionately registered and licensed a fleet of vehicles under the provisions of K.S.A. 8-1,101 to 8-1,123, inclusive, and amendments thereto, or under the terms of any reciprocal or proration agreement made pursuant thereto.

At the option of the owner, any trailer, semitrailer or pole trailer, with a gross weight of more than 12,000 pounds, may be issued a multi-year registration for a five-year period upon payment of the appropriate registration fee. The fee for a five-year registration of such trailer shall be five times the annual fee for such trailer. If the annual registration fee is increased during the multi-year registration period, the owner of the trailer with such multi-year registration shall be subject to the amount of the increase of the annual registration fee for the remaining calendar years of such multi-year registration. When the owner of any trailer, semitrailer or pole trailer registered under this multi-year provision transfers or assigns the title, or interest thereto, the registration of such trailer shall

expire. The owner shall remove the license plate from such trailer and forward the license plate to the division of vehicles or may have such license plate assigned to another trailer, semitrailer or pole trailer upon the payment of fees required by law. Any owner of a trailer, semitrailer or pole trailer where the multi-year registration fee has been paid and the trailer is sold, junked, repossessed, foreclosed by a mechanic's lien or title transferred by operation of law, and the registration thereon is not going to be transferred to another trailer, may secure a refund for the registration fee for the remaining calendar years by making application to the division of vehicles on a form and in the manner prescribed by the director of vehicles. The secretary of revenue may adopt such rules and regulations necessary to implement the multi-year registration of such trailers, semitrailers and pole trailers.

(c) Any truck or truck tractor having a gross weight of 4,000 pounds or over, using solid tires, shall pay a license fee of double the amount herein charged. The annual fees herein provided for trucks, truck tractors and trailers not subject to K.S.A. 8-134a, and amendments thereto, shall be due January 1 of each year and payable on or before the last day of February in each year. If the fee is not paid by such date a penalty of \$1 shall be added to the fee charged herein for each month or fraction thereof and until December 31 of each registration year. The annual registration fee for all passenger vehicles and vehicles subject to K.S.A. 8-134a, and amendments thereto, shall be due on or before the last day of the month in which the registration plate expires and shall be due for other vehicles as provided by K.S.A. 8-134, and amendments thereto. If the registration fee is not paid by such date a penalty of \$1 shall be added to the fee charged herein for each month or fraction thereof until such registration fee is paid. Members of the armed forces of the United States shall be permitted to apply for registration at any time and be subject to registration fee, less penalties, applicable at the time the application is made. If any motorcycle, motorized bicycle, trailer, semitrailer, travel trailer, or pole trailer is either purchased or acquired after the anniversary or renewal date in any registration year there shall immediately become due and payable a registration fee as follows: If purchased or acquired between the anniversary or renewal date of any registration year and the first six months of such registration year, the annual fee hereinbefore provided; if purchased or acquired during the last six months of any registration year, 50% of such annual fee. If any truck or truck tractor, except trucks subject to K.S.A. 8-134a, and amendments thereto, is purchased or acquired prior to April 1 of any year the fee shall be the annual fee hereinbefore provided, but if such truck or truck tractor is purchased or acquired after the end of March of any year, the license fee for such year shall be reduced  $\frac{1}{12}$  for each calendar month which has elapsed since the beginning of the year. If any truck registered for a gross weight of 12,000 pounds or less or passenger vehicle is purchased or acquired and less than

12 months remain in the registration period, the fee shall be  $\frac{1}{12}$  of the annual fee for each calendar month remaining in the registration period.

(d) The owner of any motorcycle, motorized bicycle, passenger vehicle, truck, truck tractor, trailer, semitrailer, or electrically propelled vehicle who fails to pay the registration fee or fees herein provided on the date when the same become due and payable shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a penalty in the sum of \$1 for each month or fraction thereof during which such fee has remained unpaid after it became due and payable; and in addition thereto shall be subject to such other punishment as is provided in this act. Upon the transfer of motorcycles, motorized bicycles, passenger vehicles, trailers, semitrailers, trucks or truck tractors, on which registration fees have been paid for the year in which the transfer is made, either (1) to a corporation by one or more persons, solely in exchange for stock or securities in such corporation, or (2) by one corporation to another corporation when all of the assets of such corporation are transferred to the other corporation, then in either case (1) or case (2) the corporation shall be exempt from the payment of registration fees on such vehicles for the year in which such transfer is made. Applications for transfer or registration shall be accompanied by a fee of \$1.50. When the registration of a vehicle has expired at midnight on the last day of any registration year, and such vehicle is not thereafter operated upon the highways, any application for renewal of registration made subsequent to the anniversary or renewal date of any registration year following the expiration of such registration and for succeeding registration years in which such vehicle has not been registered shall be accompanied by an affidavit of nonoperation and nonuse, and such application for renewal or registration shall be received by the division of vehicles upon payment of the proper fees for the current registration year and without penalty.

(e) Any nonresident of Kansas purchasing a vehicle from a Kansas resident and desiring to secure registration on the vehicle in the state of such person's residence may make application in the office of any county treasurer for a ~~thirty-day~~ *sixty-day* temporary registration. The county treasurer upon presentation of evidence of ownership in the applicant and evidence the sales tax has been paid, if due, shall charge and collect a fee of \$3 for each ~~thirty-day~~ *sixty-day* temporary license and issue a sticker or paper registration as may be determined by the director of vehicles, and the registration so issued shall be valid for a period of ~~30~~ *60* days from the date of issuance.

(f) Any owner of any motor vehicle which is subject to taxation under the provisions of article 51 of chapter 79 of the Kansas Statutes Annotated or any other truck or truck tractor where the annual registration fee has been paid and the vehicle is sold, junked, repossessed, foreclosed by a mechanic's lien or title transferred by operation of law, and the registration thereon is not going to be transferred to another vehicle may secure

a refund for the registration fee for the remaining portion of the year by making application to the division of vehicles on a form and in the manner prescribed by the director of vehicles, accompanied by all license plates and attachments issued in connection therewith. If the owner of the registration becomes deceased and the vehicle is not going to be used on the highway, and title is not being currently transferred, the proper representative of the estate shall be entitled to the refund. The refund shall be made only for the period of time remaining in the registration year from the date of completion and filing of the application with and delivery of the license plate and attachments to the division of vehicles. Where the registration is secured under a quarterly payment annual registration fee, as provided for in K.S.A. 8-143a, and amendments thereto, such refund shall be made on the quarterly fee paid and unused and all remaining quarterly payments shall be canceled. Any truck or truck tractor having the registration fee paid on quarterly payment basis, all quarterly payments due or a fraction of quarterly payment due shall be paid before title may be transferred, except that in case of death, the filing of the application and returning of the license plate and attachment shall cancel the remaining annual payments due. Whenever a truck or truck tractor, where the registration is secured on a quarterly payment of the annual registration, the one repossessing the truck or truck tractor, or foreclosing by a mechanic's lien, or securing title by court order, the mortgagor or the assigns of the mortgagor, or the one securing title may pay the balance due on date of application for title, but the payments for the remaining portion of the year shall not be canceled unless application is made and the license plate and attachments are surrendered. Nothing in this subsection shall apply when registration is secured under the provisions of K.S.A. 8-1,101 to 8-1,123, inclusive, and amendments thereto. Notwithstanding any of the foregoing provisions of this section, no refund shall be made under the provisions of this section where the amount thereof does not exceed \$5. The division of vehicles shall furnish such blank forms as may be required under the provisions of this subsection as it deems necessary to be completed by the applicant. Whenever a registration which has been secured on a quarterly basis shall be canceled as provided in this subsection, the division of vehicles shall notify the county treasurer issuing the original registration of such cancellation so that the county treasurer may, and the county treasurer shall cancel the registration of such vehicle in the county treasurer's office and release any lien issued in connection with such registration.

(g) Every owner of a travel trailer designed for or intended to be moved upon any highway in this state shall, before the same is so moved, apply for and obtain the proper registration thereof as provided in this act, except when such unit is permitted to be moved under the special provisions relating to secured parties, manufacturers, dealers and non-residents contained in this act. At the time of registering any travel trailer

for the purpose of moving any such vehicle upon any highway in this state, the owner thereof shall indicate on the registration form whether or not such vehicle is being moved permanently to a location outside of the county in which such vehicle is being registered. No such vehicle which the owner thereof intends to move to a permanent location outside the boundaries of such county shall be registered for movement on the highways of this state until all taxes levied against such vehicle have been paid. A copy of such registration form shall be sent to the county clerk or assessor of the county to which such vehicle is being moved. When such travel trailer is used for living quarters and not operated on the highways, the owner shall be exempt from the license fees as provided in subsection (b)(9) so long as such travel trailer is not operated on the highway.

Sec. 5. K.S.A. 2011 Supp. 8-198 is hereby amended to read as follows: 8-198. (a) A nonhighway or salvage vehicle shall not be required to be registered in this state, as provided in K.S.A. 8-135, and amendments thereto, but nothing in this section shall be construed as abrogating, limiting or otherwise affecting the provisions of K.S.A. 8-142, and amendments thereto, which make it unlawful for any person to operate or knowingly permit the operation in this state of a vehicle required to be registered in this state.

(b) Upon the sale or transfer of any nonhighway vehicle or salvage vehicle, the purchaser thereof shall obtain a nonhighway certificate of title or salvage title, whichever is applicable, in the following manner:

(1) If the transferor is a vehicle dealer, as defined in K.S.A. 8-2401, and amendments thereto, and a certificate of title has not been issued for such vehicle under this section or under the provisions of K.S.A. 8-135, and amendments thereto, such transferor shall make application for and assign a nonhighway certificate of title or a salvage title, whichever is applicable, to the purchaser of such nonhighway vehicle or salvage vehicle in the same manner and under the same conditions prescribed by K.S.A. 8-135, and amendments thereto, for the application for and assignment of a certificate of title thereunder. Upon the assignment thereof, the purchaser shall make application for a new nonhighway certificate of title or salvage title, as provided in subsection (c) or (d).

(2) Except as provided in subsection (b) of K.S.A. 8-199, and amendments thereto, if a certificate of title has been issued for any such vehicle under the provisions of K.S.A. 8-135, and amendments thereto, the owner of such nonhighway vehicle or salvage vehicle may surrender such certificate of title to the division of vehicles and make application to the division for a nonhighway certificate of title or salvage title, whichever is applicable, or the owner may obtain from the county treasurer's office a form prescribed by the division of vehicles and, upon proper execution thereof, may assign the nonhighway certificate of title, salvage title or the regular

certificate of title with such form attached to the purchaser of the non-highway vehicle or salvage vehicle. Upon receipt of the nonhighway certificate of title, salvage title or the regular certificate of title with such form attached, the purchaser shall make application for a new nonhighway certificate of title or salvage title, whichever is applicable, as provided in subsection (c) or (d).

(3) If the transferor is not a vehicle dealer, as defined in K.S.A. 8-2401, and amendments thereto, and a certificate of title has not been issued for the vehicle under this section or a certificate of title was not required under K.S.A. 8-135, and amendments thereto, the transferor shall make application to the division for a nonhighway certificate of title or salvage title, whichever is applicable, as provided in this section, except that in addition thereto, the division shall require a bill of sale or such transferor's affidavit, with at least one other corroborating affidavit, that such transferor is the owner of such nonhighway vehicle or salvage vehicle. If the division is satisfied that the transferor is the owner, the division shall issue a nonhighway certificate of title or salvage title, whichever is applicable, for such vehicle, and the transferor shall assign the same to the purchaser, who shall make application for a new nonhighway certificate of title or salvage title, whichever is applicable, as provided in subsection (c) or (d).

(c) Every purchaser of a nonhighway vehicle, whether assigned a non-highway certificate of title or a regular certificate of title with the form specified in paragraph (2) of subsection (b) attached, shall make application to the county treasurer of the county in which such person resides for a new nonhighway certificate of title in the same manner and under the same conditions as for an application for a certificate of title under K.S.A. 8-135, and amendments thereto. Such application shall be in the form prescribed by the director of vehicles and shall contain substantially the same provisions as required for an application under subsection (c)(1) of K.S.A. 8-135, and amendments thereto. In addition, such application shall provide a place for the applicant to certify that the vehicle for which the application for a nonhighway certificate of title is made is a nonhighway vehicle and other provisions the director deems necessary. Each application for a nonhighway certificate of title shall be accompanied by a fee of \$10, and if the application is not made to the county treasurer within the time prescribed by K.S.A. 8-135, and amendments thereto, for making application for a certificate of title thereunder, an additional fee of \$2.

(d) (1) Except as otherwise provided by this section, the owner of a vehicle that meets the definition of a salvage vehicle shall apply for a salvage title before the ownership of the motor vehicle is transferred. In no event shall such application be made more than ~~30~~ 60 days after the vehicle is determined to be a salvage vehicle.

(2) Every insurance company, which pursuant to a damage settle-

ment, acquires ownership of a vehicle that has incurred damage requiring the vehicle to be designated a salvage vehicle, shall apply for a salvage title within ~~30~~ 60 days after the title is assigned and delivered by the owner to the insurance company, with all liens released.

(3) Every insurance company which makes a damage settlement for a vehicle that has incurred damage requiring such vehicle to be designated a salvage vehicle, but does not acquire ownership of the vehicle, shall notify the vehicle owner of the owner's obligation to apply for a salvage title for the motor vehicle, and shall notify the division of this fact in accordance with procedures established by the division. The vehicle owner shall apply for a salvage title within ~~30~~ 60 days after being notified by the insurance company.

(4) The lessee of any vehicle which incurs damage requiring the vehicle to be designated a salvage vehicle shall notify the lessor of this fact within 30 days of the determination that the vehicle is a salvage vehicle.

(5) The lessor of any motor vehicle which has incurred damage requiring the vehicle to be titled as a salvage vehicle, shall apply for a salvage title within ~~30~~ 60 days after being notified of this fact by the lessee.

(6) Every person acquiring ownership of a motor vehicle that meets the definition of a salvage vehicle, for which a salvage title has not been issued, shall apply for the required document prior to any further transfer of such vehicle, but in no event, more than ~~30~~ 60 days after ownership is acquired.

(7) Every purchaser of a salvage vehicle, whether assigned a salvage title or a regular certificate of title with the form specified in paragraph (2) of subsection (b) attached, shall make application to the county treasurer of the county in which such person resides for a new salvage title, in the same manner and under the same condition as for an application for a certificate of title under K.S.A. 8-135, and amendments thereto. Such application shall be in the form prescribed by the director of vehicles and shall contain substantially the same provisions as required for an application under subsection (c)(1) of K.S.A. 8-135, and amendments thereto. In addition, such application shall provide a place for the applicant to certify that the vehicle for which the application for salvage title is made is a salvage vehicle, and other provisions the director deems necessary. Each application for a salvage title shall be accompanied by a fee of \$10 and if the application is not made to the county treasurer within the time prescribed by K.S.A. 8-135, and amendments thereto, for making application for a certificate of title thereunder, an additional fee of \$2.

(8) Failure to apply for a salvage title as provided by this subsection shall be a class C nonperson misdemeanor.

(e) A nonhighway certificate of title or salvage title shall be in form and color as prescribed by the director of vehicles. A nonhighway certificate of title or salvage title shall indicate clearly and distinctly on its face

that it is issued for a nonhighway vehicle or salvage vehicle, whichever is applicable. A nonhighway certificate of title or salvage title shall contain substantially the same information as required on a certificate of title issued under K.S.A. 8-135, and amendments thereto, and other information the director deems necessary.

(f) (1) A nonhighway certificate of title or salvage title may be transferred in the same manner and under the same conditions as prescribed by K.S.A. 8-135, and amendments thereto, for the transfer of a certificate of title, except as otherwise provided in this section. A nonhighway certificate of title or salvage title may be assigned and transferred only while the vehicle remains a nonhighway vehicle or salvage vehicle.

(2) Upon transfer or sale of a nonhighway vehicle in a condition which will allow the registration of such vehicle, the owner shall assign the nonhighway certificate of title to the purchaser, and the purchaser shall obtain a certificate of title and register such vehicle as provided in K.S.A. 8-135, and amendments thereto. No regular certificate of title shall be issued for a vehicle for which there has been issued a nonhighway certificate of title until there has been compliance with K.S.A. 8-116a, and amendments thereto.

(3) (A) Upon transfer or sale of a salvage vehicle which has been rebuilt or restored or is otherwise in a condition which will allow the registration of such vehicle, the owner shall assign the salvage title to the purchaser, and the purchaser shall obtain a rebuilt salvage title and register such vehicle as provided in K.S.A. 8-135, and amendments thereto. No rebuilt salvage title shall be issued for a vehicle for which there has been issued a salvage title until there has been compliance with K.S.A. 8-116a, and amendments thereto, and the notice required in paragraph (3)(B) of this subsection has been attached to such vehicle.

(B) As part of the inspection for a rebuilt salvage title conducted under K.S.A. 8-116a, and amendments thereto, the Kansas highway patrol shall attach a notice affixed to the left door frame of the rebuilt salvage vehicle indicating the vehicle identification number of such vehicle and that such vehicle is a rebuilt salvage vehicle. In addition to any fee allowed under K.S.A. 8-116a, and amendments thereto, a fee of \$5 shall be collected from the owner of such vehicle requesting the inspection for the notice required under this paragraph. All moneys received under this paragraph shall be remitted in accordance with subsection (e) of K.S.A. 8-116a, and amendments thereto.

(C) Failure to apply for a rebuilt salvage title as provided by this paragraph shall be a class C nonperson misdemeanor.

(g) The owner of a salvage vehicle which has been issued a salvage title and has been assembled, reconstructed, reconstituted or restored or otherwise placed in an operable condition may make application to the county treasurer for a permit to operate such vehicle on the highways of this state over the most direct route from the place such salvage vehicle

is located to a specified location named on the permit and to return to the original location. No such permit shall be issued for any vehicle unless the owner has motor vehicle liability insurance coverage or an approved self-insurance plan under K.S.A. 40-3104, and amendments thereto. Such permit shall be on a form furnished by the director of vehicles and shall state the date the vehicle is to be taken to the other location, the name of the insurer, as defined in K.S.A. 40-3103, and amendments thereto, and the policy number or a statement that the vehicle is included in a self-insurance plan approved by the commissioner of insurance, a statement attesting to the correctness of the information concerning financial security, the vehicle identification number and a description of the vehicle. Such permit shall be signed by the owner of the vehicle. Permits issued under this subsection (g) shall be prepared in triplicate. One copy shall be carried in the vehicle for which it is issued and shall be displayed so that it is visible from the rear of the vehicle. The second copy shall be retained by the county treasurer, and the third copy shall be forwarded by the county treasurer to the division of vehicles. The fee for such permit shall be \$1 which shall be retained by the county treasurer, who shall annually forward 25% of all such fees collected to the division of vehicles to reimburse the division for administrative expenses, and shall deposit the remainder in a special fund for expenses of issuing such permits.

(h) A nonhighway vehicle or salvage vehicle for which a nonhighway certificate of title or salvage title has been issued pursuant to this section shall not be deemed a motor vehicle for the purposes of K.S.A. 40-3101 to 40-3121, inclusive, and amendments thereto, except when such vehicle is being operated pursuant to subsection (g). Any person who knowingly makes a false statement concerning financial security in obtaining a permit pursuant to subsection (g), or who fails to obtain a permit when required by law to do so is guilty of a class C misdemeanor.

(i) Any person who, on July 1, 1996, is the owner of an all-terrain vehicle, as defined in K.S.A. 8-126, and amendments thereto, shall not be required to file an application for a nonhighway certificate of title under the provisions of this section for such all-terrain vehicle, unless the person transfers an interest in such all-terrain vehicle.

(j) Any person who, on July 1, 2006, is the owner of a work-site utility vehicle, as defined in K.S.A. 8-126, and amendments thereto, shall not be required to file an application for a nonhighway certificate of title under the provisions of this section for such work-site utility vehicle, unless the person transfers an interest in such work-site utility vehicle.

Sec. 6. K.S.A. 2011 Supp. 8-2409 is hereby amended to read as follows: 8-2409. (a) Any dealer may purchase from the division of vehicles ~~thirty-day~~<sup>sixty-day</sup> temporary registration permits, in multiples of five permits valid for ~~30-60~~ days at a cost of \$3 each. Such dealer shall have completed the application and permit as required by the division and mail

a copy of such application to the division within 24 hours from the date of issuance. Such registration shall not extend the date when registration fees are due, but shall be valid registration for a period of ~~30~~ 60 days from date of issuance. The dealer upon presentation of evidence of ownership in the applicant and evidence that the sales tax has been paid, if due, shall issue a sticker or paper registration as determined by the division. No dealer, or county treasurer, as authorized by K.S.A. 8-143, and amendments thereto, shall issue more than one ~~thirty-day~~ *sixty-day* temporary registration permit to the purchaser of a vehicle.

(b) The division of vehicles may deny any dealer the authority to purchase ~~thirty-day~~ *sixty-day* temporary permits if the vehicle dealer is delinquent in monthly sales reports to the division for two months or more or if the vehicle dealer is found to have issued more than one ~~thirty-day~~ *sixty-day* permit to the purchaser of a vehicle.

(c) The temporary registration authorized by this section shall entitle a truck, truck tractor or any combination of truck or truck tractor and any type of trailer or semitrailer to be operated under laden conditions.

New Sec. 7. (a) On and after January 1, 2013, any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one ducks unlimited license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and either the payment to the county treasurer of the logo use royalty payment established by ducks unlimited or the presentation of the annual logo use authorization statement provided for in subsection (b).

(b) The board of directors of ducks unlimited may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be used to support ducks unlimited. Any motor vehicle owner or lessee annually may apply to ducks unlimited for the use of such logo. Upon annual application and payment to either: (1) Ducks unlimited in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, ducks unlimited shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plate shall

either provide the annual logo use authorization statement provided for in subsection (b) or pay to the county treasurer the logo use royalty payment established by ducks unlimited. Application for registration of a passenger vehicle or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) The director of vehicles may transfer ducks unlimited license plates from a leased vehicle to a purchased vehicle.

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant either provides to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the logo use royalty payment as established by ducks unlimited. If such logo use authorization statement is not presented at the time of registration or faxed by ducks unlimited, or the annual logo use royalty payment is not made to the county treasurer at the time of registration, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

(g) Ducks unlimited shall:

(1) Pay the initial cost of silk-screening for license plates authorized by this section; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call ducks unlimited for information concerning the application process or the status of their license plate application.

(h) Ducks unlimited, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) As a condition of receiving the ducks unlimited license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, logo use royalty payment amount, plate number and vehicle type to ducks unlimited and the state treasurer.

(j) Annual logo use royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the ducks unlimited royalty fund, which is hereby created in the state treasury and shall be administered by the state treasurer. All expenditures from the ducks unlimited

royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the ducks unlimited royalty fund to the appropriate designee of ducks unlimited of Kansas shall be made on a monthly basis.

New Sec. 8. On and after January 1, 2013, any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one masonic lodge license plate for each such passenger vehicle or truck. In addition to the license plate, a person issued such license plate may request a decal of various masonic designations, such as previous offices held in the organization and organizational affiliations, as determined by the grand lodge of Kansas. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and either the payment to the county treasurer of the logo use royalty payment established by the grand lodge of ancient free and accepted masons of Kansas or the presentation of the annual logo use authorization statement provided for in subsection (b).

(b) The grand lodge of ancient free and accepted masons of Kansas may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be divided to support the Kansas masonic library and museum and other charities through Kansas freemasons charities, inc. Any motor vehicle owner or lessee annually may apply to the grand lodge of ancient free and accepted masons of Kansas for use of such logo. Upon annual application and payment to either: (1) The grand lodge of ancient free and accepted masons of Kansas in an amount of not less than \$25 or more than \$100 as a logo use royalty payment for each license plate to be issued, the grand lodge of ancient free and accepted masons of Kansas shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of the registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall either provide the annual logo use authorization statement provided for in subsection (b) or pay to the county treasurer the logo use royalty payment established by the grand lodge of ancient free and accepted masons of Kansas. Application for registration of a passenger vehicle or truck and

issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) The director of vehicles may transfer Masonic lodge license plates from a leased vehicle to a purchased vehicle.

(f) Renewals of registration under this section shall be annually, upon payment of the fee prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant either provides to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the logo use royalty payment as established by the grand lodge of ancient free and accepted masons of Kansas. If such logo use authorization statement is not presented at the time of registration or faxed by the masonic lodge, or the annual logo use royalty payment is not made to a county treasurer at the time of registration, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

(g) The grand lodge of ancient free and accepted masons of Kansas shall:

(1) Pay the initial cost of silk-screening plates authorized by this section; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the grand lodge of Kansas for information concerning the application process or the status of their license plate application.

(h) The grand lodge of ancient free and accepted masons of Kansas, with the approval of the director of vehicles and subject to availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) A fee of \$2 shall be paid for each decal issued under this section. Such decals shall be affixed to the license plate in the location required by the director of vehicles.

(j) As a condition of receiving the Masonic lodge license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, logo use royalty payment amount, plate number and vehicle type to the masonic lodge and the state treasurer.

(k) Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount

in the state treasury to the credit of the Masonic lodge royalty fund, which is hereby created in the state treasury and shall be administered by the state treasurer. All expenditures from the Masonic lodge royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the Masonic lodge royalty fund to the appropriate designee of the grand lodge of ancient and free accepted masons of Kansas shall be made on a monthly basis.

Sec. 9. On and after January 1, 2013, K.S.A. 2011 Supp. 8-1,141 is hereby amended to read as follows: 8-1,141. (a) Any new distinctive license plate authorized for issuance on and after July 1, 1994, shall be subject to the personalized license plate fee prescribed by subsection (c) of K.S.A. 8-132, and amendments thereto. This section shall not apply to any distinctive license plate authorized prior to July 1, 1994.

(b) The director of vehicles shall not issue any new distinctive license plate authorized for issuance on and after July 1, 1995, unless there is a guarantee of an initial issuance of at least 500 license plates.

(c) The provisions of this section shall not apply to distinctive license plates issued under the provisions of K.S.A. 8-1,145, or K.S.A. 2011 Supp. 8-177d, 8-1,163 or 8-1,166, and amendments thereto.

(d) The provisions of subsection (a), shall not apply to distinctive license plates issued under the provisions of K.S.A. 8-1,146 or 8-1,148, and amendments thereto, or K.S.A. 2011 Supp. 8-1,153, 8-1,158 or 8-1,161, and amendments thereto.

(e) The provisions of subsection (f) shall not apply to distinctive license plates issued under the provisions of K.S.A. 2011 Supp. 8-1,160, and amendments thereto, except that the division shall delay the manufacturing and issuance of such distinctive license plate until the division has received not less than 1,000 orders for such plate, including payment of the personalized license plate fee required under subsection (a). Upon certification by the director of vehicles to the director of accounts and reports that not less than 1,000 paid orders for such plate have been received, the director of accounts and reports shall transfer \$40,000 from the state highway fund to the distinctive license plate fund.

(f) (1) Any person or organization sponsoring any distinctive license plate authorized by the legislature on and after July 1, 2004, shall submit to the division of vehicles a nonrefundable amount not to exceed \$20,000, to defray the division's cost for developing such distinctive license plate.

(2) All moneys received under this subsection shall be remitted by the secretary of revenue to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the distinctive license plate fund

which is hereby created in the state treasury. All moneys credited to the distinctive license plate fund shall be used by the department of revenue only for the purpose associated with the development of distinctive license plates. All expenditures from the distinctive license plate application fee fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of revenue.

(g) (1) Except for educational institution license plates issued under K.S.A. 8-1,142, and amendments thereto, the director of vehicles shall discontinue the issuance of any distinctive license plate authorized prior to July 1, 2004, and which is subject to the provisions of subsection (b) if:

(A) Less than 500 license plates, including annual renewals, are issued for that distinctive license plate by July 1, 2006; and

(B) less than 250 license plates, including annual renewals, are issued for that distinctive license plate during any subsequent two-year period after July 1, 2006.

(2) The director of vehicles shall discontinue the issuance of any distinctive license plate authorized on and after July 1, 2004, if:

(A) Less than 500 plates, including annual renewals, are issued for that distinctive license plate by the end of the second year of sales; and

(B) less than 250 license plates, including annual renewals, are issued for that distinctive license plate during any subsequent two-year period.

(h) *An application for any distinctive license plate issued after December 31, 2012, and the corresponding royalty fee may be collected either by the county treasurer or the entity benefiting from the issuance of the distinctive license plate. Annual royalty payments collected by the county treasurers shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of a segregated royalty fund which shall be administered by the state treasurer. All expenditures from the royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the royalty fund shall be made to the entity benefiting from the issuance of the distinctive license plate on a monthly basis.*

Sec. 10. On and after January 1, 2013, K.S.A. 2011 Supp. 8-1,142 is hereby amended to read as follows: 8-1,142. (a) As used in this section, "educational institution" means:

(1) Any state educational institution under the control and supervision of the state board of regents;

(2) any municipal university;

(3) any not-for-profit independent institution of higher education

which is accredited by the north central association of colleges and secondary schools accrediting agency based on its requirements as of April 1, 1985, is operated independently and not controlled or administered by the state or any agency or subdivision thereof, maintains open enrollment and the main campus or principal place of operation of which is located in Kansas;

(4) any community college organized and operating under the laws of this state; and

(5) Haskell Indian Nations university.

(b) Any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of not more than 20,000 pounds who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one educational institution license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same period of time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, plus the payment of an additional fee of \$5 for each plate, and *either the payment to the county treasurer of the logo use royalty payment established by the alumni association or foundation or the presentation of the annual emblem use authorization statement provided for in subsection (c).*

(c) Any educational institution may authorize through its officially recognized alumni association or foundation the use of such institution's official emblems to be affixed on license plates as provided by this section. ~~Any royalty payment to such alumni association or foundation derived from this section, except reasonable administrative costs, shall be used for recognition of academic achievement or excellence subject to the approval of the chancellor or president of the educational institution. Any motor vehicle owner or lessee may annually apply to the alumni association or foundation for the use of the institution's emblems. Upon annual application and payment to either: (1) The alumni association or foundation in an amount of not less than \$25 nor more than \$100 as an emblem use royalty payment for each educational institution license plate to be issued, the alumni association or foundation shall issue to the motor vehicle owner or lessee, without further charge, an emblem use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.~~

(d) Any applicant for an educational institution license plate may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for the educational institution license plates shall provide *either the annual emblem use authorization statement provided for in subsection (c) or pay to the county treasurer the logo use royalty payment established by the alumni association or*

*foundation.* Application for registration of a passenger vehicle or truck and issuance of the license plates under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(e) No registration or educational institution license plate issued under this section shall be transferable to any other person.

(f) *The director of vehicles may transfer educational institution license plates from a leased vehicle to a purchased vehicle.*

(g) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (b), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides *to the county treasurer either the annual emblem use authorization statement provided for in subsection (c) or the payment of the annual emblem use royalty payment established by the alumni association or foundation.* If such emblem use authorization statement is not presented at the time of registration *or faxed by the alumni association or foundations, or the annual emblem use royalty payment is not made to the county treasurer,* the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the educational institution license plates to the county treasurer of such person's residence.

~~(g)~~(h) The director of vehicles shall not issue any educational institution license plates for any educational institution, unless such educational institution's alumni association or foundation guarantees the initial issuance of at least 500 license plates.

~~(h)~~(i) The director of vehicles shall discontinue the issuance of an educational institution's license plate authorized under this section if:

(1) Less than 500 educational institution license plates, including annual renewals, are issued for an educational institution by the end of the second year of sales; and

(2) less than 250 educational institution license plates, including annual renewals, are issued for an educational institution during any subsequent two-year period.

~~(i)~~(j) Each educational institution's alumni association or foundation shall:

(1) Pay the initial cost of silk-screening for such educational license plates; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the alumni association or foundation for information concerning the application process or the status of their license plate application.

~~(j)~~(k) Each educational institution's alumni association or foundation, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a license plate to be issued under the provisions of this section.

(l) *As a condition of receiving the educational institution license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, emblem use royalty payment amount, plate number and vehicle type to the relevant educational institution and the state treasurer.*

(m) *Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. In the case of an educational institution that is a state educational institution as defined by K.S.A. 76-711, and amendments thereto, upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the appropriate account of the restricted fees fund of such state educational institution. In the case of an educational institution which is not a state educational institution as defined by K.S.A. 76-711, and amendments thereto, upon receipt of each such remittance, the state treasurer shall remit the entire amount to the educational institutions emblem royalty fund, which is hereby created in the state treasury and shall be administered by the state treasurer. All expenditures from the educational institutions emblem royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the educational institutions emblem royalty fund to the respective educational institutions shall be made on a monthly basis.*

Sec. 11. On and after January 1, 2013, K.S.A. 8-1,148 is hereby amended to read as follows: 8-1,148. (a) ~~On and after July 1, 1999,~~ Any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of not more than 20,000 pounds who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one children's trust fund license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and *either the payment to the county treasurer of the logo use royalty payment established by the cabinet or the presentation of the annual logo use authorization statement provided for in subsection (b).*

(b) ~~The advisory committee on children and families~~ *Kansas children's cabinet* established in K.S.A. 38-1901, and amendments thereto, may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment ~~to such committee~~ derived from this section shall be credited to the family and children trust account of the family and children investment fund, established in K.S.A. 38-1808, and amendments thereto, and, shall be used in accordance with the pro-

visions of paragraph (2) of subsection (c) of K.S.A. 38-1808, and amendments thereto. Any motor vehicle owner or lessee may annually apply to the ~~committee cabinet~~ for the use of such logo. Upon annual application and payment to *either: (1) The ~~committee cabinet~~ in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each children's trust fund plate to be issued, the ~~committee cabinet~~ shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.*

(c) Any applicant for a children's trust fund license plate may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of motor vehicles, and any applicant for the children's trust fund license plates shall *either provide the annual logo use authorization statement provided for in subsection (b) or pay to the county treasurer the logo use royalty payment established by the cabinet.* Application for registration of a passenger or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or children's trust fund license plate issued under this section shall be transferable to any other person.

(e) *The director of vehicles may transfer children's trust fund license plates from a leased vehicle to a purchased vehicle.*

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides to *the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the annual logo use royalty payment established by the cabinet.* If such logo use authorization statement is not presented at the time of registration *or faxed by the cabinet, or the annual logo use royalty payment is not made to the county treasurer,* the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the children's trust fund license plate to the county treasurer of such person's residence.

~~(f)(g)~~ ~~The advisory committee on children and families~~ *Kansas children's cabinet* shall:

(1) Pay the initial cost of silk-screening for such children's trust fund license plates; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the children's trust fund for information concerning the application process or the status of their license plate application.

~~(g)(h)~~ ~~The advisory committee on children and families~~ *Kansas chil-*

*dren's cabinet*, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) *As a condition of receiving the children's trust fund license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, logo use royalty payment amount, plate number, school district and vehicle type to the Kansas children's cabinet.*

(j) *Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the family and children trust account of the family and children investment fund, established by K.S.A. 38-1808, and amendments thereto.*

Sec. 12. On and after January 1, 2013, K.S.A. 8-1,150 is hereby amended to read as follows: 8-1,150. (a) Any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one Kansas foundation for agriculture in the classroom license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and *either the payment to the county treasurer of the logo use royalty payment established by Kansas foundation for agriculture in the classroom or the presentation of the annual logo use authorization statement provided for in subsection (b).*

(b) The board of directors of the Kansas foundation for agriculture in the classroom may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be ~~paid to the foundation and shall be used~~ in accordance with the by-laws of the foundation to further the mission of the foundation. Any motor vehicle owner or lessee annually may apply to the board for the use of such logo. Upon annual application and payment to *either: (1) The board in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, the board shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.*

(c) Any applicant for a license plate authorized by this section may

make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall *either* provide the annual logo use authorization statement provided for in subsection (b) *or pay to the county treasurer the logo use royalty payment established by the board*. Application for registration of a passenger vehicle, truck or motorcycle and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) *The director of vehicles may transfer Kansas foundation for agriculture in the classroom license plates from a leased vehicle to a purchased vehicle.*

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides *to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the annual logo use royalty payment established by the board*. If such logo use authorization statement is not presented at the time of registration *or faxed by the board, or the annual logo use royalty payment is not made to the county treasurer*, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

~~(f)~~(g) The board of directors of the Kansas foundation for agriculture in the classroom shall:

(1) Pay the initial cost of silk-screening for license plates authorized by this section; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the board for information concerning the application process or the status of their license plate application.

~~(g)~~(h) The board of directors of the Kansas foundation for agriculture in the classroom, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) *As a condition of receiving the Kansas foundation for agriculture in the classroom license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, logo use royalty payment amount, plate number and vehicle type to the Kansas foundation for agriculture in the classroom.*

(j) *Annual royalty payments collected by county treasurers under this*

*section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the agriculture in the classroom royalty fund which is hereby created in the state treasury and shall be administered by the state treasurer. All expenditures from the agriculture in the classroom royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the agriculture in the classroom royalty fund to the Kansas foundation for agriculture in the classroom shall be made on a monthly basis.*

Sec. 13. On and after January 1, 2013, K.S.A. 8-1,151 is hereby amended to read as follows: 8-1,151. (a) ~~On and after January 1, 2002,~~ Any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one Ancient Arabic Order, Nobles of the Mystic Shrine of North America (Shriners) license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and *either the payment to the county treasurer of the logo use royalty payment established by the temple or the presentation of the annual logo use authorization statement provided for in subsection (b).*

(b) The shrine temple to which the person is a member in good standing may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be ~~paid to the shrine temple and shall be used to support the shriners hospitals for children.~~ Any motor vehicle owner or lessee annually may apply to the shrine temple for the use of such logo. Upon annual application and payment to *either: (1) The shrine temple in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, the shrine temple shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.*

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall *either provide the annual logo use authorization statement provided for in subsection (b) or pay to the county treasurer the logo use royalty pay-*

*ment established by the temple.* Application for registration of a passenger vehicle or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) *The director of vehicles may transfer shriners license plates from a leased vehicle to a purchased vehicle.*

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the annual logo use royalty payment established by the temple. If such logo use authorization statement is not presented at the time of registration or faxed by the temple, or the annual logo use royalty payment is not made to the county treasurer, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

~~(f)~~(g) The shrine temples of Kansas shall:

(1) Pay the initial cost of silk-screening for license plates authorized by this section; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the shrine temples for information concerning the application process or the status of their license plate application.

~~(g)~~(h) The shrine temples of Kansas, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) *As a condition of receiving the shriner's license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, logo use royalty payment amount, plate number and vehicle type to the designated shrine temple of Kansas and the state treasurer.*

(j) *Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the shriner's royalty fund which is hereby created in the state treasury and shall be administered by the state treasurer. All expenditures from the shriner's royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the shriner's*

*royalty fund to the appropriate designee of the designated shrine temples of Kansas shall be made on a monthly basis.*

Sec. 14. On and after January 1, 2013, K.S.A. 2011 Supp. 8-1,153 is hereby amended to read as follows: 8-1,153. (a) ~~On and after January 1, 2005,~~ Any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one helping schools license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and *either the payment to the county treasurer of the logo use royalty payment established by the board or the presentation of the annual logo use authorization statement provided for in subsection (b).*

(b) The state board of education may authorize the use of the logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the helping schools license plate program fund. Any motor vehicle owner or lessee annually may apply to the state board of education for the use of such logo. Upon annual application and payment to *either: (1) The board in an amount of \$40 as a logo use royalty payment for each license plate to be issued, the board shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.*

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall *either provide the annual logo use authorization statement provided for in subsection (b) or pay to the county treasurer the logo use royalty payment established by the board.* Application for registration of a passenger vehicle or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director. The school district to receive the royalty payment shall be designated by the applicant on such forms.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) *The director of vehicles may transfer helping schools license plates from a leased vehicle to a purchased vehicle.*

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides *to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the annual logo use royalty payment established by the board.* If such logo use authorization statement is not presented at the time of registration *or faxed by the board, or the annual logo use royalty payment is not made to the county treasurer,* the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

~~(f)~~(g) The helping schools license plate shall not be developed by the division until the state board of education has collected sufficient logo use royalty payments under subsection (b), to comply with the provisions of paragraph (1) of subsection (e) of K.S.A. 8-1,141, and amendments thereto.

~~(g)~~(h) The state board of education, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) *As a condition of receiving the helping schools license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, logo use royalty payment amount, plate number, school district and vehicle type to the state board of education and the state treasurer.*

(j) *Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the helping schools license plate program fund.*

Sec. 15. On and after January 1, 2013, K.S.A. 2011 Supp. 8-1,158 is hereby amended to read as follows: 8-1,158. (a) ~~On and after January 1, 2008,~~ Any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one breast cancer research and outreach license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and *either the payment to the county treasurer of the logo*

*use royalty payment established by the university of Kansas or the presentation of the annual logo use authorization statement provided for in subsection (b).*

(b) The university of Kansas cancer center may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be ~~paid to the university of Kansas cancer center and shall be used to support a statewide coordinator for the midwest cancer alliance that serves as a liaison between the university of Kansas cancer center, hospitals, physicians and clinics across the state of Kansas. This statewide coordination includes the provision of assistance to the university of Kansas cancer center statewide medical director in working to ensure that breast cancer patients in communities across Kansas are aware of what prevention and early detection protocols, treatment choices and clinical studies are available to them.~~ Any motor vehicle owner or lessee annually may apply to the university of Kansas cancer center for use of such logo. Upon annual application and payment to *either: (1) The university of Kansas cancer center in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each such license plate to be issued, the university of Kansas cancer center shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.*

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall *either provide the annual logo use authorization statement provided for in subsection (b) or pay to the county treasurer the logo use royalty payment established by the university of Kansas.* Application for registration of a passenger vehicle or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) *The director of vehicles may transfer breast cancer research and outreach license plates from a leased vehicle to a purchased vehicle.*

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides *to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the annual royalty payment established by the university of Kansas.* If

such statement is not presented at the time of registration *or faxed by the university of Kansas, or the annual royalty payment is not made to the county treasurer*, the applicant shall be required to comply with the provisions of K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

~~(f)~~(g) The university of Kansas cancer center shall provide to all county treasurers a toll-free telephone number where applicants can call the university of Kansas cancer center for information concerning the application process or the status of such applicant's license plate application.

(h) *As a condition of receiving the breast cancer research and outreach license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, royalty payment amount, plate number and vehicle type to the university of Kansas cancer center and the state treasurer.*

(i) *Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the breast cancer research royalty fund, which is hereby created in the state treasury and shall be administered by the university of Kansas medical center. All expenditures from the breast cancer research royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chancellor of the university of Kansas or the chancellor's designee.*

Sec. 16. On and after January 1, 2013, K.S.A. 2011 Supp. 8-1,161 is hereby amended to read as follows: 8-1,161. (a) ~~On and after January 1, 2010,~~ Any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of not more than 20,000 pounds who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one support Kansas arts license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and *either the payment to the county treasurer of the logo use royalty payment established by the commission or the presentation of the annual logo use authorization statement provided for in subsection (b).*

(b) The Kansas arts commission, created under K.S.A. 74-5202, and amendments thereto, may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment ~~to such commission~~ derived from this section shall be credited to the Kansas arts commission special gifts fund and, shall be used in accordance with the

provisions of K.S.A. 74-5204, and amendments thereto. Any motor vehicle owner or lessee may annually apply to the commission for the use of such logo. Upon annual application and payment to *either*: (1) The commission in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, the commission shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; *or* (2) *the county treasurer of the logo use royalty payment for each license plate to be issued.*

(c) Any applicant for a support Kansas arts license plate may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of motor vehicles, and any applicant for the support Kansas arts license plates shall *either* provide the annual logo use authorization statement provided for in subsection (b) *or pay to the county treasurer the logo use royalty payment established by the commission.* Application for registration of a passenger vehicle or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or support Kansas arts license plate issued under this section shall be transferable to any other person.

(e) *The director of vehicles may transfer support Kansas arts license plates from a leased vehicle to a purchased vehicle.*

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides *to the county treasurer either* the annual logo use authorization statement provided for in subsection (b) *or the payment of the annual logo use royalty payment established by the commission.* If such logo use authorization statement is not presented at the time of registration *or faxed by the commission, or the annual logo use royalty payment is not made to the county treasurer,* the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the support Kansas arts license plate to the county treasurer of such person's residence.

~~(f)~~(g) The Kansas arts commission shall:

(1) Pay the initial cost of silk-screening for such support Kansas arts license plates; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the Kansas arts commission for information concerning the application process or the status of their license plate application.

~~(g)~~(h) The Kansas arts commission, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) *As a condition of receiving the support Kansas arts license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, royalty payment amount, plate number and vehicle type to the Kansas arts commission.*

(j) *Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the Kansas arts commission special gifts fund.*

Sec. 17. On and after January 1, 2013, K.S.A. 2011 Supp. 8-1,162 is hereby amended to read as follows: 8-1,162. (a) ~~On and after January 1, 2012,~~ Any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one Boy Scouts of America license plate for each such passenger vehicle or truck. In addition to the license plate, a person issued such a license plate may request a decal for the order of the arrow, wood badge, God and country award and eagle scout for each license plate. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and *either the payment to the county treasurer of the logo use royalty payment established by the council or the presentation of the annual logo use authorization statement provided for in subsection (b).*

(b) A Boy Scouts of America council may authorize the use of their logo to be affixed on license plates or any decal as provided by this section. Any royalty payment received pursuant to this section ~~shall be paid to the Boy Scouts of America and~~ shall be used to support the Boy Scouts of America. Any motor vehicle owner or lessee annually may apply to the Boy Scouts of America for the use of such logo. Upon annual application and payment to *either: (1) The Boy Scouts of America in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate and decal to be issued, the Boy Scouts of America shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.*

(c) Any applicant for a license plate authorized by this section may

make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall *either* provide the annual logo use authorization statement provided for in subsection (b) *or pay to the county treasurer the logo use royalty payment established by the council*. Application for registration of a passenger vehicle or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) *The director of vehicles may transfer Boy Scouts of America license plates from a leased vehicle to a purchased vehicle.*

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides *to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the annual logo use royalty payment established by the council*. If such logo use authorization statement is not presented at the time of registration *or faxed by the Boy Scouts of America, or the annual use royalty payment is not made to the county treasurer*, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

~~(g)~~(g) The Boy Scouts of America councils shall:

(1) Pay the initial cost of silk-screening for license plates authorized by this section; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the Boy Scouts of America councils for information concerning the application process or the status of their license plate application.

~~(g)~~(h) The Boy Scouts of America councils, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate and decals to be issued under the provisions of this section.

~~(h)~~(i) A fee of \$2 shall be paid for each decal issued under this section. Such decals shall be affixed to the license plate in the location required by the director.

(j) *As a condition of receiving the Boy Scouts of America license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, royalty payment amount, decal types used, plate number and vehicle type to*

*the designated Kansas Boy Scouts of America council and the state treasurer.*

*(k) Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the Boy Scouts of America royalty fund, which is hereby created in the state treasury and shall be administered by the state treasurer. All expenditures from the Boy Scouts of America royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the Boy Scouts of America royalty fund to the designated Boy Scouts of America council shall be made on a monthly basis.*

Sec. 18. On and after January 1, 2013, K.S.A. 2011 Supp. 8-1,164 is hereby amended to read as follows: 8-1,164. (a) ~~On and after January 1, 2012,~~ Any owner or lessee of one or more passenger vehicles, trucks registered for a gross weight of 20,000 pounds or less or motorcycles, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one I'm pet friendly license plate for each such passenger vehicle, truck or motorcycle. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and *either the payment to the county treasurer of the logo use royalty payment established by the college of veterinary medicine at Kansas state university or the presentation of the annual logo use authorization statement provided for in subsection (b).*

(b) The college of veterinary medicine at Kansas state university may authorize the use of their I'm pet friendly logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be ~~paid to the college of veterinary medicine at Kansas state university and shall be~~ used to support education regarding the spaying and neutering of dogs and cats in Kansas and veterinary student externships at animal shelters in Kansas. Any motor vehicle owner or lessee annually may apply to the college of veterinary medicine at Kansas state university for the use of such logo. Upon annual application and payment to *either: (1) The college of veterinary medicine at Kansas state university in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, the college of veterinary medicine at Kansas state university shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.*

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall *either* provide the annual logo use authorization statement provided for in subsection (b) *or pay to the county treasurer the logo use royalty payment established by the college*. Application for registration of a passenger vehicle, truck or motorcycle and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) *The director of vehicles may transfer I'm pet friendly license plates from a leased vehicle to a purchased vehicle.*

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides *to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the annual logo use royalty payment established by the college*. If such logo use authorization statement is not presented at the time of registration *or faxed by the college, or the annual logo use royalty payment is not made to the county treasurer*, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

~~(f)~~(g) The college of veterinary medicine at Kansas state university shall:

(1) Pay the initial cost of silk-screening for license plates authorized by this section; and

(2) provide to all the county treasurers a toll-free number where applicants can call the college of veterinary medicine at Kansas state university for information concerning the application process or the status of their license plate application.

~~(g)~~(h) The college of veterinary medicine at Kansas state university, with approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) *As a condition of receiving the I'm pet friendly license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, royalty payment amount, plate number and vehicle type to the college of veterinary medicine at Kansas state university.*

(j) *Annual royalty payments collected by county treasurers under this*

*section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the appropriate account of the restricted fees fund of the Kansas state university veterinary medical center.*

Sec. 19. On and after January 1, 2013, K.S.A. 8-1,148, 8-1,150 and 8-1,151 and K.S.A. 2011 Supp. 8-1,141, 8-1-142, 8-1,153, 8-1,158, 8-1,161, 8-1,162 and 8-1,164 are hereby repealed.

Sec. 20. K.S.A. 8-127 and K.S.A. 2011 Supp. 8-135, 8-135c, 8-143, 8-198 and 8-2409 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 21, 2012.

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## CHAPTER 131

House Substitute for SENATE BILL No. 160

AN ACT concerning child support; relating to collection of support payments; amending K.S.A. 2011 Supp. 23-3103 and 75-6202 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 23-3103 is hereby amended to read as follows: 23-3103. (a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

(b) Except as otherwise provided in subsection (j), (k) or (l), all new or modified orders for support shall provide for immediate issuance of an income withholding order. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.

(c) Except as otherwise provided in this subsection or subsections (j) or (l), if no income withholding order is in effect to enforce the support order, an income withholding order shall be issued by the court upon request of the obligee or public office, provided that the obligor accrued an arrearage equal to or greater than the amount of support payable for one month and the requirements of subsections (d) and (h) have been met. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction

of this state can be identified at the time the income withholding order is issued.

(d) Not less than seven days after the obligee or public office has served a notice pursuant to subsection (h), the obligee or public office may initiate income withholding pursuant to paragraph (1) or (2).

(1) The obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (C) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; (D) whether the income withholding order is to include a medical withholding order; and (E) that the amount of the arrearage as of the date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a contempt.

Upon the filing of the affidavit, the income withholding order shall be issued without further notice to the obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(2) In a title IV-D case, the IV-D agency may issue an income withholding order as authorized by K.S.A. 39-7,147, and amendments thereto. Any such income withholding order shall be considered an income withholding order issued pursuant to this act.

(e) (1) An income withholding order shall be directed to any payor of the obligor. Notwithstanding any other requirement of this act as to form or content, any income withholding order prepared in a standard format prescribed by the secretary of social and rehabilitation services shall be deemed to be in compliance with this act.

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. 2011 Supp. 23-3104 and 23-3105, and amendments thereto.

(3) An income withholding order which consists only of a medical withholding order shall include notice of the medical child support order and shall conform to the requirements of K.S.A. 2011 Supp. 23-3116, and

amendments thereto. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. 2011 Supp. 23-3104, 23-3105, 23-3114 and 23-3117, and amendments thereto.

(4) An income withholding order which includes both a medical withholding order and an income withholding order for cash support shall meet the requirements of paragraphs (2) and (3).

(f) (1) Upon written request and without the requirement of further notice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor only by personal service or registered mail, return receipt requested.

(2) Without the requirement of further notice to the obligor, the *court trustee* or IV-D agency may cause a copy of any income withholding order to be served on the payor only by personal service or registered mail, return receipt requested or by any alternate method acceptable to the payor. No payor shall be liable to any person solely because of the method of service accepted by the payor.

(3) As used in this section, “copy of the income withholding order” means any document or notice, regardless of format, that advises the payor of the same general duties, requires the same amount to be withheld from income and requires medical withholding to the same extent as the original income withholding order.

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court or agency that issued the income withholding order. At any time following issuance of an income withholding order, a copy of the income withholding order may be served on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k) or (l), at any time following entry of an order for support the obligee or public office may serve upon the obligor a written notice of intent to initiate income withholding. If any notice in the court record indicates that title IV-D services are being provided in the case, whether or not the IV-D services include enforcement of current support, the person or public office requesting issuance of the income withholding order shall obtain the consent of the IV-D agency to the terms of the proposed income withholding order.

The notice of intent to initiate income withholding shall be served on the obligor only by personal service or registered mail, return receipt requested. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld, not including premiums to satisfy a medical withholding order; (3) whether a medical withholding order will be included; (4) that the provision for withholding applies to any current or subsequent payor; (5) the procedures available for contesting the withholding and that the only basis for contesting the

withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (6) the period within which the obligor must act to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (7) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) In a nontitle IV-D case, upon presentation to the court of a written agreement between the parties providing for an alternative arrangement, no income withholding order shall be issued pursuant to subsection (b). In any case, before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or (B) a written agreement among all interested parties provides for an alternative arrangement. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has determined that good cause has been shown that direct child support payments to the obligee may be made, then the court shall provide for direct maintenance payments to the obligee and no income withholding order shall be issued pursuant to subsection (b). In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

- (A) The agreement was not in writing;
- (B) the agreement was not approved by all interested parties;
- (C) the terms of the agreement or alternative arrangement are not being met;
- (D) the agreement or alternative arrangement is not in the best interests of the child; or
- (E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 2011 Supp. 23-3106, and amendments thereto, apply to any motion pursuant to paragraph (3) or (4) of this subsection-~~(j)~~.

(k) (1) An *ex parte* interlocutory order for support may be enforced pursuant to subsection (b) only if the obligor has consented to the income withholding in writing.

(2) An *ex parte* interlocutory order for support may be enforced pursuant to subsection (c) only if 14 or more days have elapsed since the order for support was served on the obligor.

(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

(l) All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

Sec. 2. K.S.A. 2011 Supp. 75-6202 is hereby amended to read as follows: 75-6202. As used in this act:

- (a) "Debtor" means any person who:
  - (1) Owes a debt to the state of Kansas or any state agency or any municipality;
  - (2) owes support to an individual, or an agency of another state, who

is receiving assistance in collecting that support under K.S.A. 39-756 or K.S.A. 2011 Supp. 20-378, and amendments thereto, or under part D of title IV of the federal social security act—(42 U.S.C. § 651 *et seq.*), as amended; or

(3) owes a debt to a foreign state agency.

(b) “Debt” means:

(1) Any liquidated sum due and owing to the state of Kansas, or any state agency, municipality or foreign state agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum. A debt shall not include special assessments except when the owner of the property assessed petitioned for the improvement and any successor in interest of such owner of property; or

(2) any amount of support due and owing an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 or K.S.A. 2011 Supp. 20-378, and amendments thereto, or under part D of title IV of the federal social security act—(42 U.S.C. § 651 *et seq.*), as amended, which amount shall be considered a debt due and owing the district court trustee or the department of social and rehabilitation services for the purposes of this act.

(c) “Refund” means any amount of Kansas income tax refund due to any person as a result of an overpayment of tax, and for this purpose, a refund due to a husband and wife resulting from a joint return shall be considered to be separately owned by each individual in the proportion of each such spouse’s contribution to income, as the term “contribution to income” is defined by rules and regulations of the secretary of revenue.

(d) “Net proceeds collected” means gross proceeds collected through final setoff against a debtor’s earnings, refund or other payment due from the state or any state agency minus any collection assistance fee charged by the director of accounts and reports of the department of administration.

(e) “State agency” means any state office, officer, department, board, commission, institution, bureau, agency or authority or any division or unit thereof and any judicial district of this state or the clerk or clerks thereof. “State agency” also shall include any district court utilizing collection services pursuant to K.S.A. 75-719, and amendments thereto, to collect debts owed to such court.

(f) “Person” means an individual, proprietorship, partnership, limited partnership, association, trust, estate, business trust, corporation, other entity or a governmental agency, unit or subdivision.

(g) “Director” means the director of accounts and reports of the department of administration.

(h) “Municipality” means any municipality as defined by K.S.A. 75-1117, and amendments thereto.

(i) “Payor agency” means any state agency which holds money for, or owes money to, a debtor.

(j) “Foreign state or foreign state agency” means the states of Colorado, Missouri, Nebraska or Oklahoma or any agency of such states which has entered into a reciprocal agreement pursuant to K.S.A. 75-6215, and amendments thereto.

Sec. 3. K.S.A. 2011 Supp. 23-3103 and 75-6202 are hereby repealed.

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

Approved May 21, 2012.

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## CHAPTER 132

### SENATE BILL No. 334

AN ACT concerning drivers' licenses; relating to commercial drivers' licenses, exempting drivers with military commercial driving experience from testing requirements; restricted licenses; amending K.S.A. 2011 Supp. 8-2,101 and 8-2,133 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 8-2,133 is hereby amended to read as follows: 8-2,133. (a) Except as provided in K.S.A. 8-2,146, and amendments thereto, or as provided in K.S.A. 8-2,148, and amendments thereto, no person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by 49 C.F.R. § 383, subparts E, G and H and has satisfied all other requirements of the commercial motor vehicle safety act in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the secretary, except that the secretary may accept the results of a person's knowledge test conducted in another state if such test complies with minimum federal standards;

(b) the secretary may authorize a person, including an agency of this or another state, an employer, a private driver training facility or other private institution, or a department, agency or instrumentality of local government, to administer the skills test specified by this section, if:

(1) The test is the same which would otherwise be administered by the state; and

(2) the third party has entered into an agreement with the state which complies with requirements of 49 C.F.R. § 383.75.

(c) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a

disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or canceled in any state; nor shall a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

(d) *The director may authorize the skills test required by subsection (a) to be waived for an applicant that provides evidence of military commercial vehicle driving experience. To qualify for such a waiver, the applicant must satisfy the criteria established by 49 C.F.R. § 383.77.*

Sec. 2. K.S.A. 2011 Supp. 8-2,101 is hereby amended to read as follows: 8-2,101. The division of vehicles may issue a restricted class C or M driver's license in accordance with the provisions of this section. A restricted class C license issued under this section shall entitle the licensee, while possessing the license, to operate any motor vehicle in class C, as designated in K.S.A. 8-234b, and amendments thereto. A restricted class M license shall entitle the licensee, while possessing such license, to operate a motorcycle.

(a) The division may issue a restricted class C or M driver's license to any person who:

- (1) Is at least 15 years of age;
- (2) has successfully completed an approved course in driver training;
- (3) has held an instructional permit issued under the provisions of ~~K.S.A. 8-239~~ 2011 Supp. 8-2,100, and amendments thereto, for a period of at least one year and has completed at least 25 hours of adult supervised driving *or has obtained an instructional permit from another state or the district of Columbia which has equivalent or greater requirements*; and
- (4) upon the written application of the person's parent or guardian, which shall be submitted to the division.

Any licensee issued a restricted license under this subsection, shall provide prior to reaching 16 years of age, a signed affidavit of either a parent or guardian, stating that the applicant has completed the required 25 hours prior to being issued a restricted license and 25 hours of additional adult supervised driving. Of the 50 hours required by this subsection, at least 10 of those hours shall be at night. The adult supervised driving shall be conducted by an adult who is at least 21 years of age and is the holder of a valid commercial driver's license, class A, B or C driver's license.

(b) (1) A restricted license issued under subsection (a) shall entitle a licensee who is at least 15 years of age but less than 16 years of age, to operate the appropriate motor vehicles at any time:

- (A) While going to or from or in connection with any job, employment or farm-related work;
- (B) on days while school is in session, over the most direct and ac-

cessible route between the licensee's residence and school of enrollment for the purposes of school attendance;

(C) when the licensee is operating a passenger car, at any time when accompanied by an adult, who is the holder of a valid commercial driver's license, class A, B or C driver's license and who is actually occupying a seat beside the driver; or

(D) when the licensee is operating a motorcycle, at any time when accompanied by an adult, who is the holder of a valid class M driver's license and who is either operating a motorcycle in the general proximity of the licensee or is riding as a passenger on the motorcycle being operated by the licensee.

(2) For a period of six months, a restricted license issued under subsection (a) shall entitle a licensee who is at least 16 years of age to operate the appropriate motor vehicles at any time:

(A) From ~~5:00~~ a.m. to ~~9:00~~ p.m.;

(B) while going to or from or in connection with any job, employment or farm-related work;

(C) while going to or from authorized school activities;

(D) while going directly to or from any religious worship service held by a religious organization;

(E) when the licensee is operating a passenger car, at any time when accompanied by an adult, who is the holder of a valid commercial driver's license, class A, B or C driver's license and who is actually occupying a seat beside the driver; or

(F) when the licensee is operating a motorcycle, at any time when accompanied by an adult, who is the holder of a valid class M driver's license and who is either operating a motorcycle in the general proximity of the licensee or is riding as a passenger on the motorcycle being operated by the licensee.

After such six-month period, if the licensee has complied with the provisions of this section, such restricted license shall entitle the licensee to operate the appropriate motor vehicles at any time without any of the restrictions required by this section.

(c) (1) The division may issue a restricted class C or M driver's license to any person who is under 17 years of age but at least 16 years of age, who:

(A) Has held an instructional permit issued under the provisions of K.S.A. ~~8-239~~ 2011 Supp. 8-2,100, and amendments thereto, for a period of at least one year; and

(B) has submitted a signed affidavit of either a parent or guardian, stating that the applicant has completed at least 50 hours of adult supervised driving with at least 10 of those hours being at night. The required adult supervised driving shall be conducted by an adult who is at least 21 years of age and is the holder of a valid commercial driver's license, class A, B or C driver's license.

(2) For a period of six months, a restricted license issued under subsection (c)(1) shall entitle a licensee to operate the appropriate motor vehicles at any time:

- (A) From ~~5:00~~ a.m. to ~~9:00~~ p.m.;
- (B) while going to or from or in connection with any job, employment or farm-related work;
- (C) while going to or from authorized school activities;
- (D) while going directly to or from any religious worship service held by a religious organization;
- (E) when the licensee is operating a passenger car, at any time when accompanied by an adult, who is the holder of a valid commercial driver's license, class A, B or C driver's license and who is actually occupying a seat beside the driver; or
- (F) when the licensee is operating a motorcycle, at any time when accompanied by an adult, who is the holder of a valid class M driver's license and who is either operating a motorcycle in the general proximity of the licensee or is riding as a passenger on the motorcycle being operated by the licensee.

After such six-month period, if the licensee has complied with the provisions of this section, such restricted license shall entitle the licensee to operate the appropriate motor vehicles at any time without any of the restrictions required by this section.

(d) (1) Any licensee issued a restricted license under subsection (a):

(A) Who is less than 16 years of age shall not operate any motor vehicle with nonsibling minor passengers; or

(B) who is at least 16 years of age, for a period of six months after reaching 16 years of age, shall not operate any motor vehicle with more than one passenger who is less than 18 years of age and who is not a member of the licensee's immediate family.

(2) Any licensee issued a restricted license under subsection (c), for a period of six months after such restricted license is issued, shall not operate any motor vehicle with more than one passenger who is less than 18 years of age and who is not a member of the licensee's immediate family.

(3) Any conviction for violating this subsection shall be construed as a moving traffic violation for the purpose of K.S.A. 8-255, and amendments thereto.

(e) Any licensee issued a restricted license under this section shall not operate a wireless communication device while driving a motor vehicle, except that a licensee may operate a wireless communication device while driving a motor vehicle to report illegal activity or to summons medical or other emergency help.

(f) (1) A restricted driver's license issued under this section is subject to suspension or revocation in the same manner as any other driver's license.

(2) A restricted driver's license shall be suspended in accordance with K.S.A. 8-291, and amendments thereto, for any violation of restrictions under this section.

(3) The division shall suspend the restricted driver's license upon receiving satisfactory evidence that the licensee has been involved in two or more accidents chargeable to the licensee and such suspended license shall not be reinstated for one year.

(g) Evidence of failure of any licensee who was required to complete the 50 hours of adult supervised driving under this section shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages.

(h) Any licensee issued a restricted license under:

(1) Subsection (a) who:

(A) Is under the age of 16 years and is convicted of two or more moving traffic violations committed on separate occasions shall not be eligible to receive a driver's license which is not restricted in accordance with the provisions of subsection (b)(1) until the person reaches 17 years of age;

(B) is under 17 years of age but at least 16 years of age and is convicted of two or more moving traffic violations committed on separate occasions shall not be eligible to receive a driver's license which is not restricted in accordance with the provisions of subsection (b)(2) until the person reaches 18 years of age; or

(C) fails to provide the affidavit required under subsection (a) shall not be eligible to receive a driver's license which is not restricted in accordance with the provisions of subsection (b)(1) until the person provides such affidavit to the division or the person reaches 17 years of age, whichever occurs first.

(2) Subsection (c) who is under the age of 17 years and is convicted of two or more moving traffic violations committed on separate occasions shall not be eligible to receive a driver's license which is not restricted in accordance with the provisions of subsection (c) until the person reaches 18 years of age.

(i) This section shall be a part of and supplemental to the motor vehicle driver's license act.

Sec. 3. K.S.A. 2011 Supp. 8-2,101 and 8-2,133 are hereby repealed.

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

Approved May 21, 2012.

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## CHAPTER 133

## House Substitute for Substitute SENATE BILL No. 148

AN ACT concerning water; relating to division of a water right; relating to project permits for sand and gravel operations; amending K.S.A. 2011 Supp. 82a-734 and repealing the existing section.

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

New Section 1. (a) Any owner of a water right that is not deemed abandoned may divide that water right into two or more distinct water rights without losing priority, if such owner:

(1) Notifies the chief engineer in writing of the proposed division with the written consent of all persons having an ownership interest in the water right;

(2) designates the relative priority of the divided water rights;

(3) demonstrates to the chief engineer that the division is reasonable and will not increase consumptive use; and

(4) demonstrates to the chief engineer that the request does not violate the provisions of the Kansas water appropriation act.

(b) Acceptance of the request to divide a water right pursuant to this section shall not authorize any change in the place of use, point of diversion or use made of water, as provided in K.S.A. 82a-708b, and amendments thereto.

(c) If the chief engineer finds the request complies with subsections (a) and (b), the chief engineer shall issue an order dividing the water right and describing the terms and conditions of each water right. If the chief engineer finds the request does not comply with subsections (a) and (b), the request shall be returned and no action taken.

(d) In the event of a judicial determination of ownership interests resulting in a partition of a water right that is not deemed abandoned, the chief engineer shall issue an order dividing such water right in a manner consistent with the terms of the judicial determination to the extent it does not violate the provisions of the Kansas water appropriation act.

(e) Each request to divide a water right, pursuant to this section, shall be made on a form prescribed by the chief engineer and shall be accompanied by a fee of \$300.

(f) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

(g) This section shall be part of and supplemental to the Kansas water appropriation act.

Sec. 2. K.S.A. 2011 Supp. 82a-734 is hereby amended to read as follows: 82a-734. (a) An operator ~~will~~ *shall* notify the chief engineer of the

location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

(b) The net evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall be construed to be a beneficial use or diversion of water for the purposes of the Kansas water appropriation act, K.S.A. 82a-701 *et seq.*, and amendments thereto, if the sand and gravel pit is opened or operated in a township where the average annual potential net evaporation is greater than 18 inches per year, as determined by the chief engineer.

(c) If the chief engineer determines that an existing or proposed sand and gravel pit operation is a beneficial use of water, the operator shall apply to the chief engineer for a permit to appropriate water in accordance with the Kansas water appropriation act or otherwise acquire ownership or control of sufficient water rights, or by other methods pursuant to rules and regulations adopted by the chief engineer, or both, to offset net evaporation for the operation. *The chief engineer may reduce this required offset based on the estimated use of groundwater by the existing vegetation.*

(d) (1) *The permit shall authorize net evaporation as the primary use, and hydraulic dredging and sand washing as secondary uses of water if such secondary uses are located within the same source of supply and are associated with the operation. Any secondary uses shall use water in a manner in which there is no significant net consumptive use. The permit shall not be subject to the installation of a water flow meter or administration of minimum desirable stream flow.*

(2) *The secondary uses shall be granted for the proposed life of the project or until the exhaustion of sand and gravel reserves. At the end of the industrial project, the owner shall file an application authorized by K.S.A. 82a-708b, and amendments thereto, to change the primary use made of water to recreational use to authorize the net evaporation use caused by the exposed groundwater.*

(3) *If a permit is denied, the chief engineer shall set forth all reasons for such denial.*

(4) *Any applicant who is denied a project permit by a final order of the chief engineer under this section may appeal such order in the manner provided by the Kansas judicial review act.*

(5) *Any application for a project permit shall be accompanied by a filing fee of \$500 and any request for modification shall be accompanied by a fee of \$250. Applicants for a project permit under this section shall not be required to pay fees pursuant to K.S.A. 82a-708a and 82a-708c, and amendments thereto, as part of such application.*

(e) (1) *The initial period of time allowed to complete construction of diversion works pursuant to an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be reasonable and consistent with the proposed use, but not less*

~~than five years~~. The chief engineer may allow extension of such period by not to exceed two ~~five-year-10-year~~ extensions if it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two ~~five-year-10-year~~ extensions may be granted at the same time, to run consecutively, if the applicant submits to the chief engineer a written development plan.

(2) The period of time allowed to perfect an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be not less than 20 years and, for good cause shown, the chief engineer may allow one or more 10-year extensions of such period. The chief engineer shall consider the time needed until exhaustion of proven reserves, closure in accordance with the surface land reclamation and mining act, K.S.A. 49-601 *et seq.*, and amendments thereto, and the availability of water for the proposed use, but in no case shall allow longer than ~~60~~ 80 years for perfection.

(3) Nothing herein shall require an extension of time to construct diversion works or to perfect a water right if there is demonstrable impairment of a use under an existing water right from the same source of supply, as determined pursuant to K.S.A. 82a-711, and amendments thereto.

(4) Upon examination of the diversion works for sand and gravel operations, the chief engineer or the chief engineer's duly authorized representative shall, within 90 days of the examination, notify the applicant if there was a failure to construct the diversion works at the authorized location or any deficiency of the terms and conditions of the permit. This notice will provide steps necessary to gain compliance with state law. If the chief engineer fails to examine the diversion works within two years of the notice of completion for any sand and gravel operation diversion works, the applicant shall not be required to forfeit priority date as a result of failure to construct a diversion works at the authorized location or any deficiency of the terms and conditions of the permit.

~~(e)~~(f) Net evaporation from sand and gravel pits, as calculated by the chief engineer, will be reported as an industrial use to the director of taxation for the purpose of assessing the water protection fee pursuant to K.S.A. 82a-954, and amendments thereto.

~~(f)~~(g) This section shall be part of and supplemental to the Kansas water appropriations act.

Sec. 3. K.S.A. 2011 Supp. 82a-734 is hereby repealed.

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

Approved May 21, 2012.

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## CHAPTER 134

## SENATE BILL No. 306

AN ACT concerning employers, labor organizations and certain contractors;  
amending K.S.A. 2011 Supp. 75-5743 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 75-5743 is hereby amended to read as follows: 75-5743. (a) All employers and labor organizations doing business in this state shall submit information concerning each new employee to the secretary of labor within 20 *business* days of the hiring, rehiring or return to work of the *newly hired* employee or within 20 *business* days from the date the *newly hired* employee first receives wages or other compensation from the employer. The information shall include the *newly hired* employee's name, address~~and~~, social security number *and the date services for remuneration were first performed by the newly hired employee* and the employer's name, address~~and~~, federal tax identification number *and any other information as may be required by section 453A of the social security act, 42 U.S.C. § 653a.*

(b) *For purposes of this section, the term "newly hired employee" means an employee who has not previously been employed by the employer, or was previously employed by the employer, but has been separated from such prior employment for at least 60 consecutive days.*

~~(b)~~(c) The department of social and rehabilitation services shall have access to such information to match the employee's social security number with title IV-D cases.

Sec. 2. K.S.A. 2011 Supp. 75-5743 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 21, 2012.

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## CHAPTER 135

Senate Substitute for HOUSE BILL No. 2117

AN ACT concerning taxation; relating to income tax, rate for individuals, credits, deductions and income determination; severance tax, exemptions; homestead property tax refunds; food sales tax refund; amending K.S.A. 39-7,132, 65-7107, 74-8206, 74-8304, 79-32,118, 79-32,128, 79-32,177, 79-32,190 and 79-32,200 and K.S.A. 2011 Supp. 40-2246, 74-50,173, 74-50,208, 74-8316, 74-8401, 79-32,110, 79-32,111, 79-32,117, 79-32,119, 79-32,138, 79-32,143, 79-32,143a, 79-32,182b, 79-32,201, 79-32,204, 79-32,207, 79-32,210, 79-32,212, 79-32,222, 79-32,266, 79-4217, 79-4501, 79-4502, 79-4508, 79-4509, 79-4511 and 79-4522 and repealing the existing sections; also repealing K.S.A. 79-32,176 and 79-32,182 and K.S.A. 2011 Supp. 79-32,111a, 79-32,202, 79-32,213, 79-32,242, 79-3633, 79-3634, 79-3635, 79-3636, 79-3637, 79-3638 and 79-3639.

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

Section 1. On and after January 1, 2013, K.S.A. 39-7,132 is hereby amended to read as follows: 39-7,132. (a) Any person who agrees to provide financial support to a person who would otherwise be eligible to receive aid to families with dependent children and who has entered into an agreement with the secretary of social and rehabilitation services for this purpose, in accordance with rules and regulations adopted by the secretary of social and rehabilitation services establishing the terms and conditions of such agreement, shall receive a credit against the tax liability imposed under the Kansas income tax act as provided under K.S.A. 79-32,200, and amendments thereto.

(b) Moneys received by the secretary under this section shall be used to match available federal moneys for providing aid to families with dependent children in the following manner: (1) The portion equal to 80% of such moneys shall be credited to the state general fund;; (2) the portion equal to 15% of such moneys shall be used by the secretary to match available federal moneys and shall be added by the secretary to the grant of the recipient family;; and (3) the remaining portion equal to 5% of such moneys shall be credited to the social welfare fund for administrative expenses and one-time grants.

(c) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 2. On and after January 1, 2013, K.S.A. 2011 Supp. 40-2246 is hereby amended to read as follows: 40-2246. (a) A credit against the taxes otherwise due under the Kansas income tax act shall be allowed to an employer for amounts paid during the taxable year for purposes of this act on behalf of an eligible employee as defined in K.S.A. 40-2239, and amendments thereto, to provide health insurance or care and amounts contributed to health savings accounts of eligible covered employees.

(b) (1) For employers that have established a small employer health

benefit plan after December 31, 1999, but prior to January 1, 2005, the amount of the credit allowed by subsection (a) shall be \$35 per month per eligible covered employee or 50% of the total amount paid by the employer during the taxable year, whichever is less, for the first two years of participation. In the third year, the credit shall be equal to 75% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fourth year, the credit shall be equal to 50% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fifth year, the credit shall be equal to 25% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. For the sixth and subsequent years, no credit shall be allowed.

(2) For employers that have established a small employer health benefit plan or made contributions to a health savings account of an eligible covered employee after December 31, 2004, the amount of credit allowed by subsection (a) shall be \$70 per month per eligible covered employee for the first 12 months of participation, \$50 per month per eligible covered employee for the next 12 months of participation and \$35 per eligible covered employee for the next 12 months of participation. After 36 months of participation, no credit shall be allowed.

(c) If the credit allowed by this section is claimed, the amount of any deduction allowable under the Kansas income tax act for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with law. If the credit allowed by this section exceeds the taxes imposed under the Kansas income tax act for the taxable year, that portion of the credit which exceeds those taxes shall be refunded to the taxpayer.

(d) Any amount of expenses paid by an employer under this act shall not be included as income to the employee for purposes of the Kansas income tax act. If such expenses have been included in federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Kansas income tax act.

(e) The secretary of revenue shall promulgate rules and regulations to carry out the provisions of this section.

(f) This section shall apply to all taxable years commencing after December 31, 1999.

(g) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 3. On and after January 1, 2013, K.S.A. 65-7107 is hereby

amended to read as follows: 65-7107. (a) Appropriate state agencies are hereby directed to amend their state plans to protect the benefits of those receiving such benefits by adding language consistent with the following: Any funds in an individual development account, including accrued interest, shall be disregarded when determining eligibility to receive the amount of any public assistance or benefits.

(b) A program contributor shall be allowed a credit against state income tax imposed under the Kansas income tax act in an amount equal to 25% of the contribution amount.

(c) The institute shall verify all tax credit claims by contributors. The administration of the community-based organization, with the cooperation of the participating financial institutions, shall submit the names of contributors and the total amount each contributor contributes to the individual development account reserve fund for the calendar year. The institute shall determine the date by which such information shall be submitted to the institute by the local administrator. The institute shall submit verification of qualified tax credits pursuant to K.S.A. 65-7101 through 65-7107, and amendments thereto, to the department of revenue.

(d) The total tax credits authorized pursuant to this section shall not exceed \$6,250 in any fiscal year.

(e) The provisions of this section shall be applicable to all taxable years commencing after December 31, 2002.

(f) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 4. On and after January 1, 2013, K.S.A. 2011 Supp. 74-50,173 is hereby amended to read as follows: 74-50,173. (a) For taxable years commencing on and after December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and December 31, 2007, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who operates an agritourism activity on the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(b) For the first five taxable years commencing after a taxpayer opens such taxpayer's business, after the effective date of this act, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who starts an agritourism activity after the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(c) The secretary of commerce shall adopt rules and regulations establishing criteria for determining those costs which qualify as costs of liability insurance for agritourism activities of a registered agritourism operator.

(d) On or before the 15th day of the regular legislative session in 2006, the secretary of commerce shall submit to the senate standing committee on commerce and the house standing committee on tourism and parks a report on the implementation and use of the tax credit provided by this section.

(e) As used in this section, terms have the meanings provided by K.S.A. 2011 Supp. 74-50,167, and amendments thereto.

*(f) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 5. On and after January 1, 2013, K.S.A. 2011 Supp. 74-50,208 is hereby amended to read as follows: 74-50,208. (a) A program contributor shall be allowed a credit against state income tax imposed under the Kansas income tax act in an amount not to exceed 75% of the contribution amount. If the amount of the credit allowed by this section exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount shall be refunded to the taxpayer. No credit pursuant to this section shall be allowed for any contribution made by a program contributor which also qualified for a community services tax credit pursuant to the provisions of K.S.A. 79-32,195 *et seq.*, and amendments thereto.

(b) The administration of the community-based organization, with the cooperation of the participating financial institutions, shall submit the names of contributors and the total amount each contributor contributes

to the individual development account reserve fund for the calendar year. The secretary of revenue shall determine the date by which such information shall be submitted to the department of revenue by the local administrator.

(c) The total tax credits authorized pursuant to this section shall not exceed \$500,000 in any fiscal year.

(d) The provisions of this section shall be applicable to all taxable years commencing after December 31, 2010.

(e) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 6. On and after January 1, 2013, K.S.A. 74-8206 is hereby amended to read as follows: 74-8206. (a) Except as otherwise provided in K.S.A. 74-8207, and amendments thereto, every taxpayer investing in stock issued by Kansas Venture Capital, Inc. shall be entitled to a credit in an amount equal to 25% of the total amount of cash investment in such stock against the income tax liability imposed against such taxpayer pursuant to article 32 of chapter 79 of the Kansas Statutes Annotated. The amount by which that portion of the credit allowed by this section exceeds the taxpayer's tax liability in any one taxable year may be carried forward until the total amount of the credit is used. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of such corporation or the partners of such partnership in the same manner as such shareholders or partners account for their proportionate shares of the income or loss of the corporation or partnership.

(b) No taxpayer claiming a credit under this section for cash investment in stock issued by Kansas Venture Capital, Inc. shall be eligible to claim a credit for the same investment under the provisions of K.S.A. 74-8301 to 74-8311, inclusive, and amendments thereto.

(c) The provisions of this section, and amendments thereto, shall be applicable to all taxable years commencing after December 31, 1997, until all allowed credits are exhausted.

(d) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 7. On and after January 1, 2013, K.S.A. 74-8304 is hereby amended to read as follows: 74-8304. (a) There shall be allowed as a credit against the tax imposed by the Kansas income tax act on the Kansas tax-

able income of a taxpayer and against the tax imposed by K.S.A. 40-252, and amendments thereto, on insurance companies for a cash investment in a certified Kansas venture capital company in an amount equal to 25% of such taxpayer's cash investment in any such company in the taxable year in which such investment is made and the taxable years following such taxable year until the total amount of the credit is used. The amount by which that portion of the credit allowed by this section exceeds the taxpayer's liability in any one taxable year may be carried forward until the total amount of the credit is used. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of such corporation or the partners of such partnership in the same manner as such shareholders or partners account for their proportionate shares of the income or loss of the corporation or partnership.

(b) The secretary of revenue shall allow credits that are attributable to not more than \$50,000,000 of cash investments in certified Kansas venture capital companies and certified local seed capital pools allowable pursuant to K.S.A. 74-8401, and amendments thereto, which shall include not more than \$10,000,000 for Kansas Venture Capital, Inc. The credits shall be allocated by the secretary for cash investments in certified Kansas venture capital companies in the order that completed applications for designation as Kansas venture capital companies are received by the secretary. Any certified Kansas venture capital company may apply to the secretary at any time for additional allocation of such credit based upon then committed cash investments, but priority as to such additional allocation shall be determined at the time of such subsequent application. Notwithstanding the provisions of subsection (c), investors in Kansas venture capital companies established after July 1, 1984, which otherwise meet the requirements specified in this act, shall be, upon certification of the Kansas venture capital company, entitled to the tax credit provided in subsection (a) in the calendar year in which the investment was made.

(c) No taxpayer shall claim a credit under this section for cash investment in Kansas Venture Capital, Inc. No Kansas venture capital company shall qualify for the tax credit allowed by Chapter 332 of the 1986 Session Laws of Kansas for investment in stock of Kansas Venture Capital, Inc.

(d) The provisions of this section, and amendments thereto, shall be applicable to cash investments made in any taxable year commencing after December 31, 1985, and prior to January 1, 1998.

(e) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 8. On and after January 1, 2013, K.S.A. 2011 Supp. 74-8316 is hereby amended to read as follows: 74-8316. (a) The secretary is hereby authorized to facilitate the establishment of a technology-based venture-capital fund in which the department may invest only moneys from the economic development initiatives fund specifically so allocated. The department may also credit the fund with gifts, donations or grants received from any source other than state government and with proceeds from the fund. Investments in the fund shall qualify for the income tax credit allowed pursuant to K.S.A. 74-8304, and amendments thereto.

(b) The technology-based venture-capital fund may invest the assets as follows:

(1) To carry out the purposes of this act through investments in qualified securities and through the forms of financial assistance authorized by this act, including:

- (A) Loans, loans convertible to equity, and equity;
- (B) leaseholds;
- (C) management or consultant service agreements;
- (D) loans with warrants attached that are beneficially owned by the fund;
- (E) loans with warrants attached that are beneficially owned by a party other than the fund; and

(F) the fund, in connection with the provision of any form of financial assistance, may enter into royalty agreements with an enterprise.

(2) To invest in such other investments as are lawful for Kansas fiduciaries pursuant to K.S.A. 58-24a02, and amendments thereto.

(c) Distributions received by the corporation may be reinvested in any fund consistent with the purposes of this act.

(d) The secretary may invest only in a fund whose investment guidelines permit the fund's purchase of qualified securities issued by an enterprise as a part of a resource and technology project subject to the following:

- (1) Receipt of an application from the enterprise which contains:
  - (A) A business plan including a description of the enterprise and its management, product and market;
  - (B) a statement of the amount, timing and projected use of the capital required;
  - (C) a statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created; and
  - (D) such other information as the fund manager or the fund's board of directors shall request.
- (2) Approval of the investment by the fund may be made after the fund manager or the fund's board of directors finds, based upon the application submitted by the enterprise and such additional investigation

as the fund manager or the fund's board of directors shall make and incorporate in its minutes, that:

(A) The proceeds of the investment will be used only to cover the venture-capital needs of the enterprise except as authorized by this section;

(B) the enterprise has a reasonable possibility of success;

(C) the fund's participation is instrumental to the success of the enterprise because funding otherwise available for the enterprise is not available on commercially feasible terms;

(D) the enterprise has the reasonable potential to create a substantial amount of employment within the state;

(E) the entrepreneur and other founders of the enterprise have already made or are contractually committed to make a substantial financial and time commitment to the enterprise;

(F) the securities to be purchased are qualified securities;

(G) there is a reasonable possibility that the fund will recoup at least its initial investment; and

(H) binding commitments have been made to the fund by the enterprise for adequate reporting of financial data to the fund, which shall include a requirement for an annual report, or if required by the fund manager, an annual audit of the financial and operational records of the enterprise, and for such control on the part of the fund as the fund manager shall consider prudent over the management of the enterprise, so as to protect the investment of the fund, including in the discretion of the fund manager and without limitation, the right of access to financial and other records of the enterprise.

(e) All investments made pursuant to this section shall be evaluated by the fund's investment committee and the fund shall be audited annually by an independent auditing firm.

(f) The fund shall not make investments in qualified securities issued by enterprises in excess of the amount necessary to own more than 49% of the qualified securities in any one enterprise at the time of the purchase by the fund, after giving effect to the conversion of all outstanding convertible qualified securities of the enterprise, except that in the event of severe financial difficulty of the enterprise, threatening, in the judgment of the fund manager, the investment of the fund therein, a greater percentage of such securities may be owned by the fund.

(g) At least 75% of the total investment of the fund must be in Kansas businesses.

(h) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 9. On and after January 1, 2013, K.S.A. 2011 Supp. 74-8401 is hereby amended to read as follows: 74-8401. (a) There shall be allowed as a credit against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer and against the tax imposed by K.S.A. 40-252, and amendments thereto, on insurance companies for cash investment in a certified local seed capital pool an amount equal to 25% of such taxpayer's cash investment in any such pool in the taxable year in which such investment is made and the taxable years following such taxable year until the total amount of the credit is used. The amount by which that portion of the credit allowed by this section exceeds the taxpayer's liability in any one taxable year may be carried forward until the total amount of the credit is used. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of such corporation or the partners of such partnership in the same manner as such shareholders or partners account for their proportionate shares of the income or loss of the corporation or partnership.

(b) The total amount of credits allowable pursuant to this section and credits allowable pursuant to K.S.A. 74-8205, 74-8206 and 74-8304, and amendments thereto, shall be attributable to not more than \$50,000,000 of cash investments in Kansas venture capital companies, Kansas Venture Capital, Inc. and local seed capital pools. With respect to the additional amount of cash investments made eligible for tax credits by this act, \$10,000,000 of such amount shall be dedicated and reserved until December 31, 1990, for cash investments in a seed capital fund or funds in which the department of commerce is an investor. The \$50,000,000 amount of cash investments now eligible for the tax credits allowed pursuant to this section and K.S.A. 74-8205, 74-8206 and 74-8304, and amendments thereto, shall be reduced to the extent that the total amount of cash investments received by such seed capital fund or funds before January 1, 1991, is less than \$10,000,000. However, any such credits which were not claimed for investments made prior to January 1, 1991, may be allowed to a taxpayer for cash investment made in Kansas Venture Capital, Inc. pursuant to K.S.A. 74-8205 and 74-8206, and amendments thereto, not to exceed \$2,595,236 of the \$10,000,000 reserved under this subsection for investment in seed capital funds in which the department of commerce was an investor. A taxpayer may also be allowed a credit for cash investment made pursuant to K.S.A. 74-8304, and amendments thereto, not to exceed \$6,012,345 of the \$10,000,000 reserved under this subsection if such taxpayer first purchases the entire interest of the department of commerce in Kansas venture capital companies established prior to January 1, 1991. However, no credit shall be allowed for cash investment which results in the purchase of the interest of the Kansas

technology enterprise corporation or its subsidiaries in Kansas venture capital companies established prior to January 1, 1991.

(c) As used in this section, (1) "local seed capital pool" means money invested in a fund established to provide funding for use by small businesses for any one or more of the following purposes: (A) Development of a prototype product or process; (B) a marketing study to determine the feasibility of a new product or process; or (C) a business plan for the development and production of a new product or process; and

(2) "Kansas business" means any small business owned by an individual, any partnership, association or corporation domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that does business primarily in Kansas or does substantially all of its production in Kansas.

(d) No credit from income tax liability shall be allowed for cash investment in a local seed capital pool unless: (1) The amount of private cash investment therein is \$200,000 or more; (2) the moneys necessary to administer and operate the pool are funded from sources other than the private and public cash investments; and (3) funds invested by the local seed capital pool shall be invested at 100% in Kansas businesses.

(e) Public funds may be invested in a local seed capital pool except that each dollar of public funds, other than that which may be used to administer and operate a pool, shall be matched by not less than \$2 of private cash investment. Public funds shall have a senior position to any private cash investment and may receive a lower rate of return than that allowable for a private cash investment.

(f) The provisions of this section, and amendments thereto, shall be applicable to all taxable years commencing after December 31, 1986.

(g) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 10. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,110 is hereby amended to read as follows: 79-32,110. (a) *Resident Individuals.* Except as otherwise provided by subsection (a) of K.S.A. 79-3220, and amendments thereto, a tax is hereby imposed upon the Kansas taxable income of every resident individual, which tax shall be computed in accordance with the following tax schedules:

(1) *Married individuals filing joint returns.*

(A) *For tax year 2012:*

If the taxable income is:	The tax is:
Not over \$30,000 .....	3.5% of Kansas taxable income
Over \$30,000 but not over \$60,000 ....	\$1,050 plus 6.25% of excess over \$30,000
Over \$60,000 .....	\$2,925 plus 6.45% of excess over \$60,000

(B) For tax year 2013, and all tax years thereafter:

<i>If the taxable income is:</i>	<i>The tax is:</i>
Not over \$30,000 .....	3.0% of Kansas taxable income
Over \$30,000 .....	\$900 plus 4.9% of excess over \$30,000

(2) All other individuals.

~~(A) For tax year 1997:~~

<i>If the taxable income is:</i>	<i>The tax is:</i>
Not over \$20,000 .....	4.1% of Kansas taxable income
Over \$20,000 but not over \$30,000 .....	\$820 plus 7.5% of excess over \$20,000
Over \$30,000 .....	\$1,570 plus 7.75% of excess over \$30,000

~~(B)(A) For tax year 1998, and all tax years thereafter 2012:~~

<i>If the taxable income is:</i>	<i>The tax is:</i>
Not over \$15,000 .....	3.5% of Kansas taxable income
Over \$15,000 but not over \$30,000 .....	\$525 plus 6.25% of excess over \$15,000
Over \$30,000 .....	\$1,462.50 plus 6.45% of excess over \$30,000

(B) For tax year 2013, and all tax years thereafter:

<i>If the taxable income is:</i>	<i>The tax is:</i>
Not over \$15,000 .....	3.0 % of Kansas taxable income
Over \$15,000 .....	\$450 plus 4.9% of excess over \$15,000

(b) *Nonresident Individuals.* A tax is hereby imposed upon the Kansas taxable income of every nonresident individual, which tax shall be an amount equal to the tax computed under subsection (a) as if the nonresident were a resident multiplied by the ratio of modified Kansas source income to Kansas adjusted gross income.

(c) *Corporations.* A tax is hereby imposed upon the Kansas taxable income of every corporation doing business within this state or deriving income from sources within this state. Such tax shall consist of a normal tax and a surtax and shall be computed as follows:

(1) The normal tax shall be in an amount equal to 4% of the Kansas taxable income of such corporation; and

(2) (A) for tax year 2008, the surtax shall be in an amount equal to 3.1% of the Kansas taxable income of such corporation in excess of \$50,000;

(B) for tax years 2009 and 2010, the surtax shall be in an amount equal to 3.05% of the Kansas taxable income of such corporation in excess of \$50,000; and

(C) for tax year 2011, and all tax years thereafter, the surtax shall be in an amount equal to 3% of the Kansas taxable income of such corporation in excess of \$50,000.

(d) *Fiduciaries.* A tax is hereby imposed upon the Kansas taxable income of estates and trusts at the rates provided in paragraph (2) of subsection (a) hereof.

Sec. 11. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,111 is hereby amended to read as follows: 79-32,111. (a) The amount of income tax paid to another state by a resident individual, resident estate or

resident trust on income derived from sources in another state, *and included in Kansas adjusted gross income*, shall be allowed as a credit against the tax computed under the provisions of this act. Such credit shall not be greater in proportion to the tax computed under this act than the *Kansas adjusted gross income* for such year derived in another state while such taxpayer is a resident of this state is to the total Kansas adjusted gross income of the taxpayer. As used in this subsection, "state" shall have the meaning ascribed thereto by subsection (h) of K.S.A. 79-3271, and amendments thereto. The credit allowable hereunder for income tax paid to a foreign country or political subdivision thereof shall not exceed the difference of such income tax paid less the credit allowable for such income tax paid by the federal internal revenue code. No redetermination of income tax paid for the purposes of determining the credit allowed by this subsection shall be required for the taxable year for which an income tax refund pursuant to the provisions of section 18 of article 10 of the Missouri constitution is made, but the income tax paid allowable for credit in the next following taxable year shall be reduced by the amount of such refund amount, except that, for tax year 1998, the income tax paid allowable for credit shall be reduced by the amount of such refunds made for all taxable years prior to tax year 1998.

(b) There shall be allowed as a credit against the tax computed under the provisions of the Kansas income tax act, and ~~acts amendatory thereof and supplemental amendments~~ thereto, on the Kansas taxable income of an individual, corporation or fiduciary the amount determined under the provisions of K.S.A. 79-32,153 to 79-32,158, and amendments thereto.

Sec. 12. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,117 is hereby amended to read as follows: 79-32,117. (a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of

income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments ~~to such sections~~ thereto.

(vii) The amount of any charitable contribution made to the extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2011 Supp. 79-32,204, and amendments thereto.

(ix) The amount of any *ad valorem* taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203, and amendments thereto.

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2011 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such

amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

(xi) The amount of any contribution made to the same extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 2011 Supp. 74-50,154, and amendments thereto.

(xii) For taxable years commencing after December 31, 2004, amounts received as withdrawals not in accordance with the provisions of K.S.A. 2011 Supp. 74-50,204, and amendments thereto, if, at the time of contribution to an individual development account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xiii) of subsection (c), or if such amounts are not already included in the federal adjusted gross income.

(xiii) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2011 Supp. 79-32,217 through 79-32,220 or 79-32,222, and amendments thereto.

(xiv) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2011 Supp. 79-32,221, and amendments thereto.

(xv) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2011 Supp. 79-32,223 through 79-32,226, 79-32,228 through 79-32,231, 79-32,233 through 79-32,236, 79-32,238 through 79-32,241, 79-32,245 through 79-32,248 or 79-32,251 through 79-32,254, and amendments thereto.

(xvi) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2011 Supp. 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250 or 79-32,255, and amendments thereto.

(xvii) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2011 Supp. 79-32,256, and amendments thereto.

(xviii) For taxable years commencing after December 31, 2006, the amount of any *ad valorem* or property taxes and assessments paid to a state other than Kansas or local government located in a state other than Kansas by a taxpayer who resides in a state other than Kansas, when the law of such state does not allow a resident of Kansas who earns income in such other state to claim a deduction for *ad valorem* or property taxes or assessments paid to a political subdivision of the state of Kansas in determining taxable income for income tax purposes in such other state,

to the extent that such taxes and assessments are claimed as an itemized deduction for federal income tax purposes.

(xix) *For all taxable years beginning after December 31, 2012, the amount of any: (1) Loss from business as determined under the federal internal revenue code and reported from schedule C and on line 12 of the taxpayer's form 1040 federal individual income tax return; (2) loss from rental real estate, royalties, partnerships, S corporations, estates, trusts, residual interest in real estate mortgage investment conduits and net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual income tax return; and (3) farm loss as determined under the federal internal revenue code and reported from schedule F and on line 18 of the taxpayer's form 1040 federal income tax return; all to the extent deducted or subtracted in determining the taxpayer's federal adjusted gross income. For purposes of this subsection, references to the federal form 1040 and federal schedule C, schedule E, and schedule F, shall be to such form and schedules as they existed for tax year 2011, and as revised thereafter by the internal revenue service.*

(xx) *For all taxable years beginning after December 31, 2012, the amount of any deduction for self-employment taxes under section 164(f) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.*

(xxi) *For all taxable years beginning after December 31, 2012, the amount of any deduction for pension, profit sharing, and annuity plans of self-employed individuals under section 62(a)(6) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.*

(xxii) *For all taxable years beginning after December 31, 2012, the amount of any deduction for health insurance under section 162(l) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.*

(xxiii) *For all taxable years beginning after December 31, 2012, the amount of any deduction for domestic production activities under section 199 of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.*

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted

gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. §§ 228b (a) and 228c (a)(1) *et seq.*

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. § 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. § 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249, and amendments thereto.

(xiii) For taxable years beginning after December 31, 2004, amounts contributed to and the amount of income earned on contributions deposited to an individual development account under K.S.A. 2011 Supp. 74-50,201, *et seq.*, and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation. *For all taxable years beginning after December 31, 2012, the amount of modification under this subsection shall exclude the portion of income or loss reported on schedule E and included on line 17 of the taxpayer's form 1040 federal individual income tax return.*

(xv) For all taxable years beginning after December 31, 2006, amounts not exceeding \$3,000, or \$6,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program or a qualified tuition program established and maintained by another state or agency or instrumentality thereof pursuant to section 529 of the internal revenue code of 1986, as amended, for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of K.S.A. 2011 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

~~(xvi) For the tax year beginning after December 31, 2004, an amount not exceeding \$500, for the tax year beginning after December 31, 2005, an amount not exceeding \$600, for the tax year beginning after December 31, 2006, an amount not exceeding \$700, for the tax year beginning after December 31, 2007, an amount not exceeding \$800, for the tax year beginning December 31, 2008, an amount not exceeding \$900, and for all taxable years commencing after December 31, 2009, an amount not exceeding \$1,000 of the premium costs for qualified long-term care in-~~

insurance contracts, as defined by subsection (b) of section 7702B of public law 104-191.

~~(xvii)~~(xvi) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are or were members of the armed forces of the United States, including service in the Kansas army and air national guard, as a recruitment, sign up or retention bonus received by such taxpayer as an incentive to join, enlist or remain in the armed services of the United States, including service in the Kansas army and air national guard, and amounts received for repayment of educational or student loans incurred by or obligated to such taxpayer and received by such taxpayer as a result of such taxpayer's service in the armed forces of the United States, including service in the Kansas army and air national guard.

~~(xviii)~~(xvii) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are eligible members of the Kansas army and air national guard as a reimbursement pursuant to K.S.A. 48-281, and amendments thereto, and amounts received for death benefits pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to section 1 or section 2 of chapter 207 of the 2005 session laws of Kansas, and amendments thereto, to the extent that such death benefits are included in federal adjusted gross income of the taxpayer.

~~(xix)~~(xviii) For the taxable year beginning after December 31, 2006, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$50,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly; and for all taxable years beginning after December 31, 2007, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$75,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly.

~~(xx)~~(xix) Amounts received by retired employees of Washburn university as retirement and pension benefits under the university's retirement plan.

(xx) *For all taxable years beginning after December 31, 2012, the amount of any: (1) Net profit from business as determined under the federal internal revenue code and reported from schedule C and on line 12 of the taxpayer's form 1040 federal individual income tax return; (2) net income from rental real estate, royalties, partnerships, S corporations, estates, trusts, residual interest in real estate mortgage investment conduits and net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual income tax return; and (3) net farm profit as determined under the federal internal revenue code and reported from schedule F and on line 18 of the taxpayer's form 1040 federal income tax*

*return; all to the extent included in the taxpayer's federal adjusted gross income. For purposes of this subsection, references to the federal form 1040 and federal schedule C, schedule E, and schedule F, shall be to such form and schedules as they existed for tax year 2011 and as revised thereafter by the internal revenue service.*

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

Sec. 13. On and after January 1, 2013, K.S.A. 79-32,118 is hereby amended to read as follows: 79-32,118. *Commencing in tax year 2013, the Kansas deduction of an individual shall be his or her such individual's Kansas standard deduction unless he or she elects to deduct his or her Kansas itemized deductions under the conditions set forth in K.S.A. 79-32,120.*

Sec. 14. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,119 is hereby amended to read as follows: 79-32,119. The Kansas standard deduction of an individual, including a husband and wife who are either both residents or who file a joint return as if both were residents, shall be equal to the sum of the standard deduction amount allowed pursuant to this section, and the additional standard deduction amount allowed pursuant to this section for each such deduction allowable to such individual or to such husband and wife under the federal internal revenue code. For tax year 1998, and all tax years thereafter through tax year 2012, the standard deduction amount shall be as follows: Single individual filing status, \$3,000; married filing status, \$6,000; and head of household filing status, \$4,500. For tax year 1998, and all tax years thereafter, the additional standard deduction amount shall be as follows: Single individual and head of household filing status, \$850; and married filing status, \$700. *For tax year 2013, and all tax years thereafter, the standard deduction amount of an individual, including husband and wife who are either both residents or who file a joint return as if both were residents, shall be as follows: Single individual filing status, \$3,000; married filing status, \$9,000; and head of household filing status, \$9,000.* For purposes of the foregoing, the federal standard deduction allowable to a husband and wife filing separate Kansas income tax returns shall be determined on the basis that separate federal returns were filed, and the federal standard deduction of a husband and wife filing a joint Kansas income tax

return shall be determined on the basis that a joint federal income tax return was filed.

Sec. 15. On and after January 1, 2013, K.S.A. 79-32,128 is hereby amended to read as follows: 79-32,128. An individual who is a resident of Kansas for part of a year shall have the election to:

(a) Report and compute ~~his or her~~ *such individual's* Kansas tax as if ~~he or she were~~ *such individual was* a resident for the entire year and take the applicable credit as provided in K.S.A. 79-32,111, *and amendments thereto*; or

(b) report and compute ~~his or her~~ *such individual's* Kansas tax as if ~~he or she were~~ *such individual was* a nonresident for the entire year, except, however, that for purposes of this computation the following modifications shall be made: (i) Modified Kansas source income for that period during which such individual was a resident shall include all items of income, gain, loss or deductions *as set forth in K.S.A. 79-32,117, and amendments thereto*, whether or not derived from sources within Kansas; and (ii) the credit provided by K.S.A. 79-32,111, *and amendments thereto*, shall be allowed. For purposes of computing such credit, the amount of income taxes paid to another state shall be deemed to be limited by an amount which bears the same proportion to the total taxes paid to such other state for such year as the amount of *Kansas* adjusted gross income derived from sources within that state while such individual was a resident bears to the total *Kansas* adjusted gross income derived from sources within such state for such year.

Sec. 16. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,138 is hereby amended to read as follows: 79-32,138. (a) Kansas taxable income of a corporation taxable under this act shall be the corporation's federal taxable income for the taxable year with the modifications specified in this section.

(b) There shall be added to federal taxable income: (i) The same modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals, *except subsections (b)(xix), (b)(xx), (b)(xxi), (b)(xxii) and (b)(xxiii)*.

(ii) The amount of all depreciation deductions claimed for any property upon which the deduction allowed by K.S.A. 2011 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto, is claimed.

(iii) The amount of any charitable contribution deduction claimed for any contribution or gift to or for the use of any racially segregated educational institution.

(c) There shall be subtracted from federal taxable income: (i) The same modifications as are set forth in subsection (c) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals, *except subsection (c)(xx)*.

(ii) The federal income tax liability for any taxable year commencing prior to December 31, 1971, for which a Kansas return was filed after reduction for all credits thereon, except credits for payments on estimates of federal income tax, credits for gasoline and lubricating oil tax, and for foreign tax credits if, on the Kansas income tax return for such prior year, the federal income tax deduction was computed on the basis of the federal income tax paid in such prior year, rather than as accrued. Notwithstanding the foregoing, the deduction for federal income tax liability for any year shall not exceed that portion of the total federal income tax liability for such year which bears the same ratio to the total federal income tax liability for such year as the Kansas taxable income, as computed before any deductions for federal income taxes and after application of subsections (d) and (e) of this section as existing for such year, bears to the federal taxable income for the same year.

(iii) An amount for the amortization deduction allowed pursuant to K.S.A. 2011 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

(iv) For all taxable years commencing after December 31, 1987, the amount included in federal taxable income pursuant to the provisions of section 78 of the internal revenue code.

(v) For all taxable years commencing after December 31, 1987, 80% of dividends from corporations incorporated outside of the United States or the District of Columbia which are included in federal taxable income.

(d) If any corporation derives all of its income from sources within Kansas in any taxable year commencing after December 31, 1979, its Kansas taxable income shall be the sum resulting after application of subsections (a) through (c) hereof. Otherwise, such corporation's Kansas taxable income in any such taxable year, after excluding any refunds of federal income tax and before the deduction of federal income taxes provided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-3271 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any refund of federal income tax as determined under paragraph (iv) of subsection (b) of K.S.A. 79-32,117, and amendments thereto, and minus the deduction for federal income taxes as provided by subsection (c)(ii) shall be such corporation's Kansas taxable income.

(e) A corporation may make an election with respect to its first taxable year commencing after December 31, 1982, whereby no addition modifications as provided for in subsection (b)(ii) of K.S.A. 79-32,138, *and amendments thereto*, and subtraction modifications as provided for in subsection (c)(iii) of K.S.A. 79-32,138, *and amendments thereto*, as those subsections existed prior to their amendment by this act, shall be required to be made for such taxable year.

Sec. 17. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,143 is hereby amended to read as follows: 79-32,143. (a) For net operating

losses incurred in taxable years beginning after December 31, 1987, a net operating loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code except that such net operating loss may only be carried forward to each of the 10 taxable years following the taxable year of the net operating loss. For net operating farm losses, as defined by subsection (i) of section 172 of the federal internal revenue code, incurred in taxable years beginning after December 31, 1999, a net operating loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code except that such net operating loss may be carried forward to each of the 10 taxable years following the taxable year of the net operating loss. The amount of the net operating loss that may be carried back or forward for Kansas income tax purposes shall be that portion of the federal net operating loss allocated to Kansas under this act in the taxable year that the net operating loss is sustained.

(b) The amount of the loss to be carried back or forward will be the federal net operating loss after: (1) All modifications required under this act applicable to the net loss in the year the loss was incurred; and (2) after apportionment as to source in the case of corporations, nonresident individuals for losses incurred in taxable years beginning prior to January 1, 1978, and nonresident estates and trusts in the same manner that income for such corporations, nonresident individuals, estates and trusts is required to be apportioned.

(c) If a net operating loss was incurred in a taxable year beginning prior to January 1, 1988, the amount of the net operating loss that may be carried back and carried forward and the period for which it may be carried back and carried forward shall be determined under the provisions of the Kansas income tax laws which were in effect during the year that such net operating loss was incurred.

(d) If any portion of a net operating loss described in subsections (a) and (b) is not utilized prior to the final year of the carryforward period provided in subsection (a), a refund shall be allowable in such final year in an amount equal to the refund which would have been allowable in the taxable year the loss was incurred by utilizing the three year carryback provided under K.S.A. 79-32,143, as in effect on December 31, 1987, multiplied by a fraction, the numerator of which is the unused portion of such net operating loss in the final year, and the denominator of which is the amount of such net operating loss which could have been carried back to the three years immediately preceding the year in which the loss was incurred. In no event may such fraction exceed 1.

(e) Notwithstanding any other provisions of the Kansas income tax act, the net operating loss as computed under subsections (a), (b) and (c) of this section shall be allowed in full in determining Kansas taxable income or at the option of the taxpayer allowed in full in determining Kansas adjusted gross income.

(f) No refund of income tax which results from a net operating farm loss carry back shall be allowed in an amount exceeding \$1,500 in any year. Any overpayment in excess of \$1,500 may be carried forward to any year or years after the year of the loss and may be claimed as a credit against the tax. The refundable portion of such credit shall not exceed \$1,500 in any year.

(g) *For tax year 2013, and all tax years thereafter, a net operating loss allowed by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and used only to determine such taxpayer's corporate income tax liability.*

Sec. 18. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,143a is hereby amended to read as follows: 79-32,143a. (a) For taxable years beginning after December 31, 2011, a taxpayer may elect to take an expense deduction from Kansas net income before expensing or recapture allocated or apportioned to this state for the cost of the following property placed in service in this state during the taxable year: (1) Tangible property eligible for depreciation under the modified accelerated cost recovery system in section 168 of the internal revenue code, as amended, but not including residential rental property, nonresidential real property, any railroad grading or tunnel bore or any other property with an applicable recovery period in excess of 25 years as defined under section 168(c) or (g) of the internal revenue code, as amended; and (2) computer software as defined in section 197(e)(3)(B) of the internal revenue code, as amended, and as described in section 197(e)(3)(A)(i) of the internal revenue code, as amended, to which section 167 of the internal revenue code, as amended, applies. If such election is made, the amount of expense deduction for such cost shall equal the difference between the depreciable cost of such property for federal income tax purposes and the amount of bonus depreciation being claimed for such property pursuant to section 168(k) of the internal revenue code, as amended, for federal income tax purposes in such tax year, but without regard to any expense deduction being claimed for such property under section 179 of the internal revenue code, as amended, multiplied by the applicable factor, determined by using, the table provided in subsection (f), based on the method of depreciation selected pursuant to section 168(b)(1), (2), or (3) or (g) of the internal revenue code, as amended, and the applicable recovery period for such property as defined under section 168(c) or (g) of the internal revenue code, as amended. This election shall be made by the due date of the original return, including any extensions, and may be made only for the taxable year in which the property is placed in service, and once made, shall be irrevocable. If the section 179 expense deduction election has been made for federal income tax purposes for any asset, the applicable factor to be utilized is in the IRC § 168 (b)(1) column of the

table provided in subsection (f) for the applicable recovery period of the respective assets.

(b) If the amount of expense deduction calculated pursuant to subsection (a) exceeds the taxpayer's Kansas net income before expensing or recapture allocated or apportioned to this state, such excess amount shall be treated as a Kansas net operating loss as provided in K.S.A. 79-32,143, and amendments thereto.

(c) If the property for which an expense deduction is taken pursuant to subsection (a) is subsequently sold during the applicable recovery period for such property as defined under section 168(c) of the internal revenue code, as amended, and in a manner that would cause recapture of any previously taken expense or depreciation deductions for federal income tax purposes, or if the situs of such property is otherwise changed such that the property is relocated outside the state of Kansas during such applicable recovery period, then the expense deduction determined pursuant to subsection (a) shall be subject to recapture and treated as Kansas taxable income allocated to this state. The amount of recapture shall be the Kansas expense deduction determined pursuant to subsection (a) multiplied by a fraction, the numerator of which is the number of years remaining in the applicable recovery period for such property as defined under section 168(c) or (g) of the internal revenue code, as amended, after such property is sold or removed from the state including the year of such disposition, and the denominator of which is the total number of years in such applicable recovery period.

(d) The situs of tangible property for purposes of claiming and recapture of the expense deduction shall be the physical location of such property. If such property is mobile, the situs shall be the physical location of the business operations from where such property is used or based. The situs of computer software shall be apportioned to Kansas based on the fraction, the numerator of which is the number of the taxpayer's users located in Kansas of licenses for such computer software used in the active conduct of the taxpayer's business operations, and the denominator of which is the total number of the taxpayer's users of the licenses for such computer software used in the active conduct of the taxpayer's business operations everywhere.

(e) Any member of a unitary group filing a combined report may elect to take an expense deduction pursuant to subsection (a) for an investment in property made by any member of the combined group, provided that the amount calculated pursuant to subsection (a) may only be deducted from the Kansas net income before expensing or recapture allocated to or apportioned to this state by such member making the election.

(f) The following table shall be used in determining the expense deduction calculated pursuant to subsection (a):

IRC§168 Recover Period (year)	Factors		
	IRC§168(b)(1) Depreciation Method	IRC§168(b)(2) Depreciation Method	IRC§168(b)(3) or (g) Depreciation Method
2.5	°	.077	.092
3	.075	.091	.106
3.5	°	.102	.116
4	°	.114	.129
5	.116	.135	.150
6	°	.154	.170
6.5	°	.163	.179
7	.151	.173	.190
7.5	°	.181	.199
8	°	.191	.208
8.5	°	.199	.217
9	°	.208	.226
9.5	°	.216	.235
10	.198	.224	.244
10.5	°	.232	.252
11	°	.240	.261
11.5	°	.248	.269
12	°	.256	.277
12.5	°	.263	.285
13	°	.271	.293
13.5	°	.278	.300
14	°	.285	.308
15	°	.299	.323
16	°	.313	.337
16.5	°	.319	.344
17	°	.326	.351
18	°	.339	.365
19	°	.351	.378
20	°	.363	.391
22	°	.386	.415
24	°	.408	.438
25	°	.419	.449

\*Not Applicable

(g) If a taxpayer elects to expense any investment pursuant to subsection (a), such taxpayer shall not be eligible for any tax credit, accelerated depreciation, or deduction for such investment allowed pursuant to K.S.A. 2011 Supp. 79-32,160a(e), 79-32,182b, 79-32,201, 79-32,204, 79-32,211, 79-32,218, 79-32,221, 79-32,222, 79-32,224, 79-32,227, 79-32,229, 79-32,232, 79-32,234, 79-32,237, 79-32,239, 79-32,246, 79-32,249, 79-32,252, 79-32,255, 79-32,256 and 79-32,258, and amendments thereto.

(h) For tax 2013, and all tax years thereafter, the deduction allowed by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and used only to determine such taxpayer's corporate income tax liability.

Sec. 19. On and after January 1, 2013, K.S.A. 79-32,177 is hereby amended to read as follows: 79-32,177. (a) Any taxpayer who makes expenditures for the purpose of making all or any portion of an existing facility accessible to individuals with a disability, or who makes expenditures for the purpose of making all or any portion of a facility or of equipment usable for the employment of individuals with a disability, which facility or equipment is on real property located in this state and used in a trade or business or held for the production of income, shall be entitled to claim an income tax credit in an amount equal to 50% of such expenditures or, the amount of \$10,000, whichever is less, against the income tax liability imposed against such taxpayer pursuant to article 32 of chapter 79 of the Kansas Statutes Annotated. Such tax credit shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the taxable year in which the expenditures are made.

(b) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 20. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,182b is hereby amended to read as follows: 79-32,182b. (a) For all taxable years commencing after December 31, 2000, a credit shall be allowed against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer for expenditures in research and development activities conducted within this state in an amount equal to 6½% of the amount by which the amount expended for such activities in the taxable year of the taxpayer exceeds the taxpayer's average of the actual expenditures for such purposes made in such taxable year and the next preceding two taxable years.

(b) In any one taxable year, the amount of such credit allowable for deduction from the taxpayer's tax liability shall not exceed 25% of the total amount of such credit plus any applicable carry forward amount. The amount by which that portion of the credit allowed by subsections (a) and (b) to be claimed in any one taxable year exceeds the taxpayer's tax liability in such year may be carried forward until the total amount of the credit is used.

(c) As used in this section, the term "expenditures in research and

development activities” means expenditures made for such purposes, other than expenditures of moneys made available to the taxpayer pursuant to federal or state law, which are treated as expenses allowable for deduction under the provisions of the federal internal revenue code of 1986, and amendments thereto.

*(d) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer’s corporate income tax liability.*

Sec. 21. On and after January 1, 2013, K.S.A. 79-32,190 is hereby amended to read as follows: 79-32,190. (a) Any taxpayer that pays for or provides child day care services, including the provision of the service of locating such services, to its employees or that provides facilities and necessary equipment for child day care services shall be allowed a credit against the privilege or income tax imposed by articles 11 and 32 of chapter 79 of the Kansas Statutes Annotated as follows:

(1) Thirty percent of the total amount expended in the state during the taxable year by a taxpayer for child day care services purchased to provide care for the dependent children of the taxpayer’s employees or for the provision of the service of locating such services for such children;

(2) (A) in the taxable year in which a facility providing child day care services in the state for use primarily by the dependent children of the taxpayer’s employees is established, 50% of the total amount expended during such year by a taxpayer in the establishment and operation of such facility;

(B) in the taxable years other than the taxable year to which paragraph (2)(A) applies, 30% of the amount equal to the total amount expended during the taxable year by a taxpayer for the operation of a facility described in paragraph (2)(A) less the amount of moneys received by the taxpayer for use of such facility for child day care services;

(3) (A) in the taxable year in which a facility providing child day care services in the state for use primarily by the dependent children of the taxpayers’ employees is established in conjunction with one or more other taxpayers, 50% of the total amount expended during such year by a taxpayer in the establishment and operation of such facility;

(B) in the taxable years other than the taxable year to which paragraph (3)(A) applies, 30% of the amount equal to the total amount expended during the taxable year by a taxpayer for the operation of a facility described in paragraph (3)(A) less the amount of moneys received by the taxpayer for use of such facility for child day care services.

(b) No credit shall be allowed under this section unless the child day care facility or provider is licensed or registered pursuant to Kansas law.

(c) The credit allowed by paragraphs (1), (2)(B) and (3)(B) of sub-

section (a) shall not exceed \$30,000 for any taxpayer during any taxable year. The credit allowed by paragraphs (2)(A) and (3)(A) of subsection (a) shall not exceed \$45,000 for any taxpayer during any taxable year. The amount of the credit which exceeds the tax liability for a taxable year shall be refunded to the taxpayer. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of such corporation or the partners of such partnership in the same manner as such shareholders or partners account for their proportionate shares of the income or loss of the corporation or partnership.

(d) The aggregate amount of credits claimed under this act for any fiscal year shall not exceed \$3,000,000.

(e) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 22. On and after January 1, 2013, K.S.A. 79-32,200 is hereby amended to read as follows: 79-32,200. (a) There shall be allowed as a credit against the tax liability imposed under the Kansas income tax act of a person who has entered into an agreement with the secretary of social and rehabilitation services under K.S.A. ~~1997-Supp.-39-7,132~~, and amendments thereto, an amount equal to 70% of the amount of financial assistance paid by such person under K.S.A. ~~1997-Supp.-39-7,132~~, and amendments thereto, as certified by the secretary of social and rehabilitation services, of not to exceed the amount of financial assistance which would have been paid under the aid to families with dependent children program from state matching contributions, as certified by the secretary of social and rehabilitation services, if such person had not agreed to assume some financial support.

(b) An individual may not claim a tax credit under this section if a credit for child care and dependent care expenses was claimed on either the state or federal tax return, or if the individual receives payment for care of the person provided financial assistance.

(c) The credit allowed by this section shall not exceed the amount of tax imposed under the Kansas income tax act reduced by the sum of any other credits allowable pursuant to law.

(d) The provisions of this section shall be applicable to all taxable years commencing after December 31, 1993.

(e) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A.*

79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

Sec. 23. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,201 is hereby amended to read as follows: 79-32,201. (a) Any taxpayer who makes expenditures for a qualified alternative-fueled motor vehicle or alternative-fuel fueling station shall be allowed a credit against the income tax imposed by article 32 of chapter 79 of the Kansas Statutes Annotated, as follows:

(1) For any qualified alternative-fueled motor vehicle placed in service on or after January 1, 1996, and before January 1, 2005, an amount equal to 50% of the incremental cost or conversion cost for each qualified alternative-fueled motor vehicle but not to exceed \$3,000 for each such motor vehicle with a gross vehicle weight of less than 10,000 lbs.; \$5,000 for a heavy duty motor vehicle with a gross vehicle weight of greater than 10,000 lbs. but less than 26,000 lbs.; and \$50,000 for motor vehicles having a gross vehicle weight of greater than 26,000 lbs.;

(2) for any qualified alternative-fueled motor vehicle placed in service on or after January 1, 2005, an amount equal to 40% of the incremental cost or conversion cost for each qualified alternative-fueled motor vehicle, but not to exceed \$2,400 for each such motor vehicle with a gross vehicle weight of less than 10,000 lbs.; \$4,000 for a heavy duty motor vehicle with a gross vehicle weight of greater than 10,000 lbs. but less than 26,000 lbs.; and \$40,000 for motor vehicles having a gross vehicle weight of greater than 26,000 lbs.;

(3) for any qualified alternative-fuel fueling station placed in service on or after January 1, 1996, and before January 1, 2005, an amount equal to 50% of the total amount expended for each qualified alternative-fuel fueling station but not to exceed \$200,000 for each fueling station;

(4) for any qualified alternative-fuel fueling station placed in service on or after January 1, 2005, and before January 1, 2009, an amount equal to 40% of the total amount expended for each qualified alternative-fuel fueling station, but not to exceed \$160,000 for each fueling station;

(5) for any qualified alternative-fuel fueling station placed in service on or after January 1, 2009, an amount equal to 40% of the total amount expended for each qualified alternative-fuel fueling station, but not to exceed \$100,000 for each fueling station.

(b) If no credit has been claimed pursuant to subsection (a), a credit in an amount not exceeding the lesser of 5% of the cost of the vehicle or \$750 shall be allowed to a taxpayer who purchases a motor vehicle equipped by the vehicle manufacturer with an alternative fuel system and who is unable or elects not to determine the exact basis attributable to such property. The credit under this subsection shall be allowed only to the first individual to take title to such motor vehicle, other than for resale. The credit under this subsection for motor vehicles which are capable of

operating on a blend of 85% ethanol and 15% gasoline shall be allowed for taxable years commencing after December 31, 1999, only if the individual claiming the credit furnishes evidence of the purchase, during the period of time beginning with the date of purchase of such vehicle and ending on December 31 of the next succeeding calendar year, of 500 gallons of such ethanol and gasoline blend as may be required or is satisfactory to the secretary of revenue.

(c) The tax credit under subsection (a)(1) through (a)(4) or (b) shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the third taxable year succeeding the taxable year in which the expenditures are made.

(d) The tax credit under subsection (a)(5) shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year in which the expenditures are made.

(e) As used in this section:

(1) "Alternative fuel" means a combustible liquid derived from grain starch, oil seed, animal fat or other biomass; or produced from biogas source, including any nonfossilized, decaying, organic matter.

(2) "Qualified alternative-fueled motor vehicle" means a motor vehicle that operates on an alternative fuel, meets or exceeds the clean fuel vehicle standards in the federal clean air act amendments of 1990, Title II and meets one of the following categories:

(A) Bi-fuel motor vehicle: A motor vehicle with two separate fuel systems designed to run on either an alternative fuel or conventional fuel, using only one fuel at a time;

(B) dedicated motor vehicle: A motor vehicle with an engine designed to operate on a single alternative fuel only; or

(C) flexible fuel motor vehicle: A motor vehicle that may operate on a blend of an alternative fuel with a conventional fuel, such as E-85 (85% ethanol and 15% gasoline) or M-85 (85% methanol and 15% gasoline), as long as such motor vehicle is capable of operating on at least an 85% alternative fuel blend.

(3) "Qualified alternative-fuel fueling station" means the property

which is directly related to the delivery of alternative fuel into the fuel tank of a motor vehicle propelled by such fuel, including the compression equipment, storage vessels and dispensers for such fuel at the point where such fuel is delivered but only if such property is primarily used to deliver such fuel for use in a qualified alternative-fueled motor vehicle.

(4) “Incremental cost” means the cost that results from subtracting the manufacturer’s list price of the motor vehicle operating on conventional gasoline or diesel fuel from the manufacturer’s list price of the same model motor vehicle designed to operate on an alternative fuel.

(5) “Conversion cost” means the cost that results from modifying a motor vehicle which is propelled by gasoline or diesel to be propelled by an alternative fuel.

(6) “Taxpayer” means any person who owns and operates a qualified alternative-fueled vehicle licensed in the state of Kansas or who makes an expenditure for a qualified alternative-fuel fueling station.

(7) “Person” means every natural person, association, partnership, limited liability company, limited partnership or corporation.

(f) Except as otherwise more specifically provided, the provisions of this section shall apply to all taxable years commencing after December 31, 1995.

(g) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer’s corporate income tax liability.*

Sec. 24. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,204 is hereby amended to read as follows: 79-32,204. (a) As used in this section:

(1) Terms have the meanings provided by K.S.A. 65-1,178, and amendments thereto;

(2) “qualified swine facility” means a swine facility that: (A) Is owned and operated by a sole proprietorship or partnership or by a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust, as defined by K.S.A. 17-5903, and amendments thereto; and (B) is utilizing its swine waste management system on January 1, 1998; *and*

(3) “required improvements to a qualified swine facility” means capital improvements that the secretary of health and environment certifies to the director of taxation: (A) Are required for a qualified swine facility to comply with the standards and requirements established pursuant to K.S.A. 65-1,178 through 65-1,198, *and amendments thereto*, or pursuant to the amendments made by this act to K.S.A. 65-171d, *and amendments*

*thereto*; and (B) are not required because of expansion for which a permit has not been issued or applied for before the effective date of this act.

(b) There shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act an amount equal to not more than 50% of the costs incurred by the taxpayer for required improvements to a qualified swine facility. The tax credit allowed by this subsection shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the taxpayer may carry over the amount thereof that exceeds such tax liability for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the year in which the costs are incurred.

(c) The provisions of this section shall be applicable to all taxable years commencing after December 31, 1997.

~~(d) On or before the first day of the 1999, 2000 and 2001 regular legislative sessions, the secretary of revenue shall submit to the senate standing committee on energy and natural resources, the house standing committee on environment, the senate standing committee on assessment and taxation and the house standing committee on taxation a report of the number of taxpayers claiming the credit allowed by this section and the total amount of such credits claimed by all taxpayers. For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.~~

Sec. 25. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,207 is hereby amended to read as follows: 79-32,207. (a) As used in this section, "abandoned oil or gas well" means an abandoned well, as defined by K.S.A. 55-191, and amendments thereto:

(1) The drilling of which was commenced before January 1, 1970; and

(2) which is located on land owned by the taxpayer claiming the tax credit allowed by this section.

(b) For any taxable year commencing after December 31, 2000, a credit shall be allowed against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer for expenditures made for the purpose of plugging any abandoned oil or gas well in accordance with rules and regulations of the state corporation commission applicable thereto, in an amount equal to 50% of such expenditures made in the taxable year.

(c) If the amount of the tax credit allowed by this section exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability.

(d) The total amount of credits allowed taxpayers pursuant to this section, including the amount of credits carried over under subsection (c), shall not exceed \$250,000 for any one fiscal year.

(e) The secretary of revenue shall adopt such rules and regulations as necessary to carry out the purposes of this section.

*(f) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 26. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,210 is hereby amended to read as follows: 79-32,210. (a) For all taxable years commencing after December 31, 2000, and with respect to property initially acquired and first placed into service in this state on and after January 1, 2001, there shall be allowed as a credit against the tax liability imposed by the Kansas income tax act of a telecommunications company, as defined in K.S.A. 79-3271, and amendments thereto, an amount equal to the difference between the property tax levied for property tax year 2001, and all such years thereafter, and actually and timely paid during the appropriate income taxable year upon property assessed at the 33% assessment rate and the property tax which would be levied and paid on such property if assessed at a 25% assessment rate.

(b) If the amount of the tax credit determined under subsection (a) exceeds the tax liability for the telecommunications company for any taxable year, the amount thereof which exceeds such tax liability shall be refunded to the telecommunications company. If the telecommunications company is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of income or loss of the corporation, partnership or limited liability company.

(c) As used in this section, the term "acquired" shall not include the transfer of property pursuant to an exchange for stock securities, or the transfer of assets of one business entity to another due to a merger or other consolidation.

*(d) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 27. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,212 is hereby amended to read as follows: 79-32,212. (a) For taxable years 2002 through 2021, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 100% of the amount attributable to the retirement of indebtedness authorized by a single city port authority established before January 1, 2002. In no event shall the total amount of the credits allowed under this section exceed \$500,000 for any one fiscal year.

(b) Upon certification by the secretary of revenue of the amount of any such credit, the director of accounts and reports shall issue to such taxpayer a warrant for such amount which shall be deemed to be a capital contribution.

*(c) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 28. On and after January 1, 2013, K.S.A. 2011 Supp. 79-32,222 is hereby amended to read as follows: 79-32,222. (a) As used in this section:

(1) "Refinery" has the meaning provided by K.S.A. 2011 Supp. 79-32,217, and amendments thereto.

(2) "Qualified expenditures" means expenditures which the secretary of health and environment certifies to the director of taxation are required for an existing refinery to comply with environmental standards or requirements established pursuant to federal statute or regulation, or state statute or rules and regulation, adopted after December 31, 2006.

(b) There shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act an amount equal to the taxpayer's qualified expenditures. The tax credit allowed by this subsection shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the taxpayer may carry over the amount thereof that exceeds such tax liability for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the year in which the costs are incurred.

(c) (1) To qualify the expenditures of the tax credit allowed by this section, a taxpayer shall apply to the secretary of health and environment for a certification that the costs were incurred to comply with environmental standards or requirements as specified in subsection (a). The secretary shall prescribe the form of the application, which shall include, but not be limited to, the following information: (A) A detailed description of the refinery project that is the subject of the expenditure; (B) a citation to the applicable federal or state statutes, regulations or rules and regulations which require the environmental compliance; (C) a detailed accounting of the costs incurred for the environmental compliance; and (D) a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate and complete.

(2) If the secretary of health and environment determines that the expenditures were incurred to comply with environmental standards or requirements as specified in subsection (a), the secretary shall issue a certificate of compliance to the director of taxation.

(3) The secretary of health and environment may adopt rules and regulations to administer the provisions of this subsection, including rules and regulations to fix, charge and collect an application fee to cover all or any part of the department of health and environment's cost of certifying the taxpayer's qualified expenditures under this subsection.

(d) The provisions of this section shall be applicable to all taxable years commencing after December 31, 2006.

(e) *For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.*

Sec. 29. K.S.A. 2011 Supp. 79-4217 is hereby amended to read as follows: 79-4217. (a) There is hereby imposed an excise tax upon the severance and production of coal, oil or gas from the earth or water in this state for sale, transport, storage, profit or commercial use, subject to the following provisions of this section. Such tax shall be borne ratably by all persons within the term "producer" as such term is defined in K.S.A. 79-4216, and amendments thereto, in proportion to their respective beneficial interest in the coal, oil or gas severed. Such tax shall be applied equally to all portions of the gross value of each barrel of oil severed and subject to such tax and to the gross value of the gas severed and subject to such tax. The rate of such tax shall be 8% of the gross value of all oil or gas severed from the earth or water in this state and subject to the tax imposed under this act. The rate of such tax with respect to coal shall be \$1 per ton. For the purposes of the tax imposed hereunder the amount of oil or gas produced shall be measured or determined: (1) In the case

of oil, by tank tables compiled to show 100% of the full capacity of tanks without deduction for overage or losses in handling; allowance for any reasonable and *bona fide* deduction for basic sediment and water, and for correction of temperature to 60 degrees Fahrenheit will be allowed; and if the amount of oil severed has been measured or determined by tank tables compiled to show less than 100% of the full capacity of tanks, such amount shall be raised to a basis of 100% for the purpose of the tax imposed by this act; and (2) in the case of gas, by meter readings showing 100% of the full volume expressed in cubic feet at a standard base and flowing temperature of 60 degrees Fahrenheit, and at the absolute pressure at which the gas is sold and purchased; correction to be made for pressure according to Boyle's law, and used for specific gravity according to the gravity at which the gas is sold and purchased, or if not so specified, according to the test made by the balance method.

(b) The following shall be exempt from the tax imposed under this section:

(1) The severance and production of gas which is: (A) Injected into the earth for the purpose of lifting oil, recycling or repressuring; (B) used for fuel in connection with the operation and development for, or production of, oil or gas in the lease or production unit where severed; (C) lawfully vented or flared; (D) severed from a well having an average daily production during a calendar month having a gross value of not more than \$87 per day, which well has not been significantly curtailed by reason of mechanical failure or other disruption of production; in the event that the production of gas from more than one well is gauged by a common meter, eligibility for exemption hereunder shall be determined by computing the gross value of the average daily combined production from all such wells and dividing the same by the number of wells gauged by such meter; (E) inadvertently lost on the lease or production unit by reason of leaks, blowouts or other accidental losses; (F) used or consumed for domestic or agricultural purposes on the lease or production unit from which it is severed; or (G) placed in underground storage for recovery at a later date and which was either originally severed outside of the state of Kansas, or as to which the tax levied pursuant to this act has been paid;

(2) the severance and production of oil which is: (A) From a lease or production unit whose average daily production is five barrels or less per producing well, which well or wells have not been significantly curtailed by reason of mechanical failure or other disruption of production; (B) from a lease or production unit, the producing well or wells upon which have a completion depth of 2,000 feet or more, and whose average daily production is six barrels or less per producing well or, if the price of oil as determined pursuant to subsection (d) is \$16 or less, whose average daily production is seven barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$15 or less, whose average daily production is eight barrels or less per producing well, or, if

the price of oil as determined pursuant to subsection (d) is \$14 or less, whose average daily production is nine barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$13 or less, whose average daily production is 10 barrels or less per producing well, which well or wells have not been significantly curtailed by reason of mechanical failure or other disruption of production; (C) from a lease or production unit, whose production results from a tertiary recovery process. "Tertiary recovery process" means the process or processes described in subparagraphs (1) through (9) of 10 C.F.R. § 212.78(c) as in effect on June 1, 1979; (D) from a lease or production unit, the producing well or wells upon which have a completion depth of less than 2,000 feet and whose average daily production resulting from a water flood process, is six barrels or less per producing well, which well or wells have not been significantly curtailed by reason of mechanical failure or other disruption of production; (E) from a lease or production unit, the producing well or wells upon which have a completion depth of 2,000 feet or more, and whose average daily production resulting from a water flood process, is seven barrels or less per producing well or, if the price of oil as determined pursuant to subsection (d) is \$16 or less, whose average daily production is eight barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$15 or less, whose average daily production is nine barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$14 or less, whose average daily production is 10 barrels or less per producing well, which well or wells have not been significantly curtailed by reason of mechanical failure or other disruption of production; (F) test, frac or swab oil which is sold or exchanged for value; or (G) inadvertently lost on the lease or production unit by reason of leaks or other accidental means;

(3) (A) any taxpayer applying for an exemption pursuant to subsection (b)(2)(A) and (B) shall make application biennially to the director of taxation therefor. Exemptions granted pursuant to subsection (b)(2)(A) and (B) shall be valid for a period of two years following the date of certification thereof by the director of taxation; (B) any taxpayer applying for an exemption pursuant to subsection (b)(2)(D) or (E) shall make application biennially to the director of taxation therefor. Such application shall be accompanied by proof of the approval of an application for the utilization of a water flood process therefor by the corporation commission pursuant to rules and regulations adopted under the authority of K.S.A. 55-152, and amendments thereto, and proof that the oil produced therefrom is kept in a separate tank battery and that separate books and records are maintained therefor. Such exemption shall be valid for a period of two years following the date of certification thereof by the director of taxation; (C) any exemption granted pursuant to subsections (b)(2)(A), (B), (D) or (E) with an odd lease number and an exemption termination date between June 1, 2004, and May 31, 2005, inclusive, shall be valid

for a period of one year following the date of certification; and (D) notwithstanding the provisions of paragraph (A) or (B), any exemption in effect on the effective date of this act affected by the amendments to subsection (b)(2) by this act shall be redetermined in accordance with such amendments. Any such exemption, and any new exemption established by such amendments and applied for after the effective date of this shall be valid for a period commencing with May 1, 1998, and ending on April 30, 1999.

(4) the severance and production of gas or oil from any pool from which oil or gas was first produced on or after April 1, 1983, *and prior to July 1, 2012*, as determined by the state corporation commission and certified to the director of taxation, and continuing for a period of 24 months from the month in which oil or gas was first produced from such pool as evidenced by an affidavit of completion of a well, filed with the state corporation commission and certified to the director of taxation. Exemptions granted for production from any well pursuant to this paragraph shall be valid for a period of 24 months following the month in which oil or gas was first produced from such pool. The term “pool” means an underground accumulation of oil or gas in a single and separate natural reservoir characterized by a single pressure system so that production from one part of the pool affects the reservoir pressure throughout its extent;

(5) *the severance and production of oil from any pool from which oil was first produced on or after July 1, 2012, and from which the severance and production of oil from such pool does not exceed 50 barrels per day as certified by the state corporation commission and certified to the director of taxation, and continuing for a period of 24 months from the month in which oil was first produced from such pool as evidenced by an affidavit of completion of a well, filed with the state corporation commission and certified to the director of taxation. Exemptions granted for production from any well pursuant to this subsection shall be valid for a period of 24 months following the month in which oil was first produced from such pool. The term “pool” means an underground accumulation of oil in a single and separate natural reservoir characterized by a single pressure system so that production from one part of the pool affects the reservoir pressure throughout its extent;*

(6) the severance and production of oil or gas from a three-year inactive well, as determined by the state corporation commission and certified to the director of taxation, for a period of 10 years after the date of receipt of such certification. As used in this paragraph, “three-year inactive well” means any well that has not produced oil or gas in more than one month in the three years prior to the date of application to the state corporation commission for certification as a three-year inactive well. An application for certification as a three-year inactive well shall be in such form and contain such information as required by the state corporation

commission, and shall be made prior to July 1, 1996. The commission may revoke a certification if information indicates that a certified well was not a three-year inactive well or if other lease production is credited to the certified well. Upon notice to the operator that the certification for a well has been revoked, the exemption shall not be applied to the production from that well from the date of revocation;

~~(6)~~(7) (A) The incremental severance and production of oil or gas which results from a production enhancement project begun on or after July 1, 1998, shall be exempt for a period of seven years from the startup date of such project. As used in this paragraph ~~(6)~~:

(1) “Incremental severance and production” means the amount of oil or natural gas which is produced as the result of a production enhancement project which is in excess of the base production of oil or natural gas, and is determined by subtracting the base production from the total monthly production after the production enhancement project is completed.

(2) “Base production” means the average monthly amount of production for the twelve-month period immediately prior to the production enhancement project beginning date, minus the monthly rate of production decline for the well or project for each month beginning 180 days prior to the project beginning date. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the well or project for the twelve-month period immediately prior to the production enhancement project beginning date, except that the monthly rate of production decline shall be equal to zero in the case where the well or project has experienced no monthly decline during the twelve-month period immediately prior to the production enhancement project beginning date. Such monthly rate of production decline shall be continued as the decline that would have occurred except for the enhancement project. Any well or project which may have produced during the twelve-month period immediately prior to the production enhancement project beginning date but is not capable of production on the project beginning date shall have a base production equal to zero. The calculation of the base production amount shall be evidenced by an affidavit and supporting documentation filed by the applying taxpayer with the state corporation commission.

(3) “Workover” means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery of oil or gas, including but not limited to acidizing, reperforation, fracture treatment, sand/paraffin/scale removal or other wellbore cleanouts, casing repair, squeeze cementing, initial installation, or enhancement of artificial lifts including plunger lifts, rods, pumps, submersible pumps and coiled tubing velocity strings, downsizing existing tubing to reduce well loading, downhole commingling, bacteria treatments, polymer treatments, upgrading the size of pumping unit

equipment, setting bridge plugs to isolate water production zones, or any combination of the aforementioned operations; “workover” shall not mean the routine maintenance, routine repair, or like for-like replacement of downhole equipment such as rods, pumps, tubing packers or other mechanical device.

(4) “Production enhancement project” means performing or causing to be performed the following:

- (i) Workover;
- (ii) recompletion to a different producing zone in the same well bore, except recompletions in formations and zones subject to a state corporation commission proration order;
- (iii) secondary recovery projects;
- (iv) addition of mechanical devices to dewater a gas or oil well;
- (v) replacement or enhancement of surface equipment;
- (vi) installation or enhancement of compression equipment, line looping or other techniques or equipment which increases production from a well or a group of wells in a project;
- (vii) new discoveries of oil or gas which are discovered as a result of the use of new technology, including, but not limited to, three dimensional seismic studies.

(B) The state corporation commission shall adopt rules and regulations necessary to efficiently and properly administer the provisions of this paragraph ~~(6)~~ including rules and regulations for the qualification of production enhancement projects, the procedures for determining the monthly rate of production decline, criteria for determining the share of incremental production attributable to each well when a production enhancement project includes a group of wells, criteria for determining the start up date for any project for which an exemption is claimed, and determining new qualifying technologies for the purposes of ~~paragraph (6)~~ *subsection (7)(A)(4)(vii)*.

(C) Any taxpayer applying for an exemption pursuant to this paragraph ~~(6)~~ shall make application to the director of taxation. Such application shall be accompanied by a state corporation commission certification that the production for which an exemption is sought results from a qualified production enhancement project and certification of the base production for the enhanced wells or group of wells, and the rate of decline to be applied to that base production. The secretary of revenue shall provide credit for any taxes paid between the project startup date and the certification of qualifications by the commission.

(D) The exemptions provided for in this paragraph ~~(6)~~ shall not apply for 12 months beginning July 1 of the year subsequent to any calendar year during which: (1) In the case of oil, the secretary of revenue determines that the weighted average price of Kansas oil at the wellhead has exceeded \$20.00 per barrel; or (2) in the case of natural gas the secretary

of revenue determines that the weighted average price of Kansas gas at the wellhead has exceeded \$2.50 per Mcf.

(E) The provisions of this paragraph ~~(6)~~ shall not affect any other exemption allowable pursuant to this section; and

(7) for the calendar year 1988, and any year thereafter, the severance or production of the first 350,000 tons of coal from any mine as certified by the state geological survey.

(c) No exemption shall be granted pursuant to subsection (b)(3) or (4) to any person who does not have a valid operator's license issued by the state corporation commission, and no refund of tax shall be made to any taxpayer attributable to any production in a period when such taxpayer did not hold a valid operator's license issued by the state corporation commission.

(d) On April 15, 1988, and on April 15 of each year thereafter, the secretary of revenue shall determine from statistics compiled and provided by the United States department of energy, the average price per barrel paid by the first purchaser of crude oil in this state for the six-month period ending on December 31 of the preceding year. Such price shall be used for the purpose of determining exemptions allowed by subsection (b)(2)(B) or (E) for the twelve-month period commencing on May 1 of such year and ending on April 30 of the next succeeding year.

Sec. 30. On and after January 1, 2013, K.S.A. 2011 Supp. 79-4501 is hereby amended to read as follows: 79-4501. The title of this act shall be the homestead property tax refund act. The purpose of this act shall be to provide *ad valorem* tax refunds to: (a) Certain persons who are of qualifying age who own ~~or rent~~ their homestead; (b) certain persons who have a disability, who own ~~or rent~~ their homestead; and (c) certain persons other than persons included under the provisions of (a) or (b) who have low incomes and dependent children and own ~~or rent~~ their homestead.

Sec. 31. On and after January 1, 2013, K.S.A. 2011 Supp. 79-4502 is hereby amended to read as follows: 79-4502. As used in this act, unless the context clearly indicates otherwise:

(a) "Income" means the sum of adjusted gross income under the Kansas income tax act, maintenance, support money, cash public assistance and relief, not including any refund granted under this act, the gross amount of any pension or annuity, including all monetary retirement benefits from whatever source derived, including but not limited to, all payments received under the railroad retirement act, except disability payments, payments received under the federal social security act, except that for determination of what constitutes income such amount shall not exceed 50% of any such social security payments and shall not include any social security payments to a claimant who prior to attaining full retirement age had been receiving disability payments under the federal social security act in an amount not to exceed the amount of such disability

payments or 50% of any such social security payments, whichever is greater, all dividends and interest from whatever source derived not included in adjusted gross income, workers compensation and the gross amount of "loss of time" insurance. Income does not include gifts from nongovernmental sources or surplus food or other relief in kind supplied by a governmental agency, nor shall net operating losses and net capital losses be considered in the determination of income. Income does not include veterans disability pensions. Income does not include disability payments received under the federal social security act.

(b) "Household" means a claimant, a claimant and spouse who occupy the homestead or a claimant and one or more individuals not related as husband and wife who together occupy a homestead.

(c) "Household income" means all income received by all persons of a household in a calendar year while members of such household.

(d) "Homestead" means the dwelling, or any part thereof, ~~whether owned or rented, which is~~ and occupied as a residence by the household and so much of the land surrounding it, as defined as a home site for *ad valorem* tax purposes, and may consist of a part of a multi-dwelling or multi-purpose building and a part of the land upon which it is built or a manufactured home or mobile home and the land upon which it is situated. "Owned" includes a vendee in possession under a land contract, a life tenant, a beneficiary under a trust and one or more joint tenants or tenants in common.

(e) "Claimant" means a person who has filed a claim under the provisions of this act and was, during the entire calendar year preceding the year in which such claim was filed for refund under this act, except as provided in K.S.A. 79-4503, and amendments thereto, both domiciled in this state and was: (1) A person having a disability; (2) a person who is 55 years of age or older; (3) a disabled veteran; (4) the surviving spouse of active duty military personnel who died in the line of duty; or (5) a person other than a person included under (1), (2), (3) or (4) having one or more dependent children under 18 years of age residing at the person's homestead during the calendar year immediately preceding the year in which a claim is filed under this act. The surviving spouse of a disabled veteran who was receiving benefits pursuant to subsection (e)(3) of this section at the time of the veterans' death, shall be eligible to continue to receive benefits until such time the surviving spouse remarries.

When a homestead is occupied by two or more individuals and more than one of the individuals is able to qualify as a claimant, the individuals may determine between them as to whom the claimant will be. If they are unable to agree, the matter shall be referred to the secretary of revenue whose decision shall be final.

(f) "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest and charges for service, levied on a claimant's homestead in 1979 or any calendar year thereafter by the state

of Kansas and the political and taxing subdivisions of the state. When a homestead is owned by two or more persons or entities as joint tenants or tenants in common and one or more of the persons or entities is not a member of claimant's household, "property taxes accrued" is that part of property taxes levied on the homestead that reflects the ownership percentage of the claimant's household. For purposes of this act, property taxes are "levied" when the tax roll is delivered to the local treasurer with the treasurer's warrant for collection. When a claimant and household own their homestead part of a calendar year, "property taxes accrued" means only taxes levied on the homestead when both owned and occupied as a homestead by the claimant's household at the time of the levy, multiplied by the percentage of 12 months that the property was owned and occupied by the household as its homestead in the year. When a household owns and occupies two or more different homesteads in the same calendar year, property taxes accrued shall be the sum of the taxes allocable to those several properties while occupied by the household as its homestead during the year. Whenever a homestead is an integral part of a larger unit such as a multi-purpose or multi-dwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the homestead is of the total value. For the purpose of this act, the word "unit" refers to that parcel of property covered by a single tax statement of which the homestead is a part.

(g) "Disability" means:

(1) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, and an individual shall be determined to be under a disability only if the physical or mental impairment or impairments are of such severity that the individual is not only unable to do the individual's previous work but cannot, considering age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which the individual lives or whether a specific job vacancy exists for the individual, or whether the individual would be hired if application was made for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where the individual lives or in several regions of the country; for purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques; or

(2) blindness and inability by reason of blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of

any gainful activity in which the individual has previously engaged with some regularity and over a substantial period of time.

(h) "Blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purpose of this paragraph as having a central visual acuity of 20/200 or less.

(i) ~~"Rent constituting property taxes accrued" means 15% of the gross rent actually paid in cash or its equivalent in 2007 or any taxable year thereafter by a claimant and claimant's household solely for the right of occupancy of a Kansas homestead on which *ad valorem* property taxes were levied in full for that year. When a household occupies two or more different homesteads in the same calendar year, rent constituting property taxes accrued shall be computed by adding the rent constituting property taxes accrued for each property rented by the household while occupied by the household as its homestead during the year.~~

(j) ~~"Gross rent" means the rental paid at arm's length solely for the right of occupancy of a homestead or space rental paid to a landlord for the parking of a mobile home, exclusive of charges for any utilities, services, furniture and furnishings or personal property appliances furnished by the landlord as a part of the rental agreement, whether or not expressly set out in the rental agreement. Whenever the director of taxation finds that the landlord and tenant have not dealt with each other at arms length and that the gross rent charge was excessive, the director may adjust the gross rent to a reasonable amount for the purposes of the claim.~~

(k) ~~"Disabled veteran" means a person who is a resident of Kansas and has been honorably discharged from active service in any branch of the armed forces of the United States or Kansas national guard and who has been certified by the United States department of veterans affairs or its successor to have a 50% permanent disability sustained through military action or accident or resulting from disease contracted while in such active service.~~

Sec. 32. On and after January 1, 2013, K.S.A. 2011 Supp. 79-4508 is hereby amended to read as follows: 79-4508. (a) Commencing in the tax year beginning after December 31, 2005, the amount of any claim pursuant to this act shall be computed by deducting the amount computed under column (2) from the amount of claimant's property tax accrued ~~and/or rent constituting property tax accrued.~~

(1)		(2)
Claimants household income		Deduction from property tax
At least	But not More than	accrued <del>and/or rent constituting</del> property tax accrued
\$0	\$6,000	\$0
6,001	7,000	4%

7,001	16,000	4% plus 4% of every \$1,000, or fraction thereof, of income in excess of \$7,001
16,001	27,000	40% plus 5% of every \$1,000, or fraction thereof, of income in excess of \$16,001
27,001	27,600	95%

(b) The director of taxation shall prepare a table under which claims under this act shall be determined. The amount of claim for each bracket shall be computed only to the nearest \$1.

(c) The claimant may elect not to record the amount claimed on the claim. The claim allowable to persons making this election shall be computed by the department which shall notify the claimant by mail of the amount of the allowable claim.

(d) In the case of all tax years commencing after December 31, 2004, the upper limit threshold amount prescribed in this section, shall be increased by an amount equal to such threshold amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) of the federal internal revenue code for the calendar year in which the taxable year commences.

Sec. 33. On and after January 1, 2013, K.S.A. 2011 Supp. 79-4509 is hereby amended to read as follows: 79-4509. In the event property taxes accrued, ~~rent constituting property taxes accrued or their sum~~ exceeds \$700 for a household in any one year, the amount thereof shall, for purposes of this act, be deemed to have been \$700.

Sec. 34. On and after January 1, 2013, K.S.A. 2011 Supp. 79-4511 is hereby amended to read as follows: 79-4511. (a) Every claimant under this act shall supply to the division, in support of a claim, reasonable proof of age or disability, and changes of homestead, household membership, household income, and size and nature of property claimed as the homestead. A claim alleging disability shall be supported by a report of the examining physician of the claimant with a statement or certificate that the applicant has a disability within the meaning of subsection (g) of K.S.A. 79-4502, and amendments thereto.

(b) Every claimant who is a homestead owner, or whose claim is based wholly or partly upon homestead ownership at some time during the calendar year, shall supply to the division, in support of a claim, the amount of property taxes levied upon the property claimed as a homestead and a statement that the property taxes accrued used for purposes of this act have been or will be paid by the claimant. Upon request by the division, such claimant shall provide a copy of the statement of property taxes levied upon the property claimed as a homestead. The amount of personal property taxes levied on a manufactured home or mobile home shall be set out on the personal property tax statement showing the amount of such tax as a separate item.

(c) ~~Every claimant who is a homestead renter, or whose claim is based wholly or partly upon homestead rental at some time during the calendar~~

~~year, shall supply to the division, in support of a claim, a statement prescribed by the director certifying the amount of gross rent paid and that *ad valorem* property taxes were levied in full for that year on the property, all or a part of which was rented by the claimant. When such claimant reports household income that is 150% or less of the homestead rental amount and such claimant has failed to provide any documentation or information requested by the division to verify such household income in support of a claim as required pursuant to subsection (a), within 30 days of such request, such homestead property tax refund claim shall be denied.~~

~~(d)~~—The information required to be furnished under ~~subsections (b) or (c)~~ subsection (b) shall be in addition to that required under subsection (a).

Sec. 35. On and after January 1, 2013, K.S.A. 2011 Supp. 79-4522 is hereby amended to read as follows: 79-4522. A person owning or occupying a homestead ~~that is not rental property and~~ for which the appraised valuation for property tax purposes exceeds \$350,000 in any year shall not be entitled to claim a refund of property taxes under the homestead property tax refund act for any such year. The provisions of this section shall be part of and supplemental to the homestead property tax refund act.

New Sec. 36. Any nonrefundable credits applicable to the Kansas income tax imposed on individuals that are no longer available commencing in tax year 2013 pursuant to this act and earned in any tax year prior to 2013 which are unused may continue to be claimed, subject to the limitations applicable to any such credit pursuant to law at the time such credit was earned.

New Sec. 37. (a) For Kansas income tax purposes: (1) The basis of a partner's interest in a partnership formed prior to January 1, 2013, shall be determined by computing the basis as of January 1, 2013, in accordance with section 705 of the federal internal revenue code as in effect on January 1, 2013, and amendments thereto, and making any subsequent adjustments to the partner's interest as provided in section 733 of the federal internal revenue code as in effect on January 1, 2013, and amendments thereto.

(2) The basis of a partner's interest in a partnership formed on or after January 1, 2013, shall be determined by computing the basis as of the date of formation of the partnership in accordance with section 705 of the federal internal revenue code as in effect on January 1, 2013, and amendments thereto, and making any subsequent adjustments to the partners' interest as provided in section 733 of the federal internal revenue code as in effect on January 1, 2013, and amendments thereto.

(b) (1) The basis of each shareholder's stock and indebtedness in an S corporation formed prior to January 1, 2013, shall be determined by computing the basis as of January 1, 2013, in accordance with section

1367 of the federal internal revenue code as in effect on January 1, 2013, and amendments thereto, and making any subsequent adjustments to the shareholder's stock and indebtedness as provided in section 1367(a)(2)(A) of the federal internal revenue code as in effect on January 1, 2013, and amendments thereto.

(2) The basis of each shareholder's stock and indebtedness in an S corporation formed on or after January 1, 2013 shall be determined by computing the basis as of the date of formation of the S corporation in accordance with section 1367 of the federal internal revenue code as in effect on January 1, 2013, and amendments thereto, and making any subsequent adjustments to the shareholders stock and indebtedness as provided in section 1367(a)(2)(A) of the federal internal revenue code as in effect on January 1, 2013, and amendments thereto.

(c) The provisions of this section shall be effective for tax year 2013, and all tax years thereafter.

Sec. 38. On or after January 1, 2013, K.S.A. 2011 Supp. 79-32,266 is hereby amended to read as follows: 79-32,266. (a) For taxable years commencing after December 31, 2010, there shall be allowed as a credit against the tax liability of a resident individual taxpayer an amount equal to 95% of the resident individual's income tax liability under the provisions of the Kansas income tax act for Kansas source income received from a qualified company that is business income attributable to business activities conducted at the business facility, office, department or other operation relocated to Kansas when the taxpayer owns such qualified company and materially participates in such business activities conducted at such relocated business facility, office, department or other operation of such qualified company which qualified for benefits under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments thereto. A taxpayer shall be treated as materially participating in such qualified company's business activities conducted at such business facility, office, department or other operation relocated to Kansas only if the taxpayer is involved in such business activities of such qualified company on a basis which is regular, continuous and substantial. A taxpayer may claim the credit authorized by this section during any tax year in which the qualified company owned by the taxpayer qualifies for benefits under provisions of K.S.A. 74-50,212, and amendments thereto.

(b) Business income attributable to the business activities conducted at the business facility, office, department or other operation relocated to Kansas of a qualified company which qualified for benefits under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments thereto, shall be determined by multiplying the business income of the company apportioned to this state by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. For purposes of this subsection, the prop-

erty factor is a fraction, the numerator of which is the average value of the company's real and tangible personal property owned or rented and used during the tax period at such relocated facility, office, department or other relocated operation in Kansas, and the denominator of which is the average value of the company's real and tangible personal property owned or rented and used within this state during the tax period. The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the company for compensation at such relocated facility, office, department or other relocated operation in Kansas, and the denominator of which is the total compensation paid by the company in this state during the tax period. The sales factor is a fraction, the numerator of which is the total sales of the relocated facility, office, department or other relocated operation in this state during the tax period, and the denominator of which is the total sales of the company in this state during the tax period.

*(c) This credit shall not be available to any taxpayer making a modification under (b)(xix) or (c)(xxi) of K.S.A. 79-32,117, and amendments thereto.*

~~(e)(d)~~ The secretary of revenue shall adopt rules and regulations regarding the filing of documents that support the qualifications of the taxpayer for the credit claimed pursuant to this section.

Sec. 39. K.S.A. 2011 Supp. 79-4217 is hereby repealed.

Sec. 40. On and after January 1, 2013, K.S.A. 39-7,132, 65,1707, 74-8206, 74-8304, 79-32,118, 79-32,128, 79-32,176, 79-32,177, 79-32,182, 79-32,190 and 79-32,200 and K.S.A. 2011 Supp. 40-2246, 74-50,173, 74-50,208, 74-8316, 74-8401, 79-32,110, 79-32,111, 79-32,111a, 79-32,117, 79-32,119, 79-32,138, 79-32,143, 79-32,143a, 79-32,182b, 79-32,201, 79-32,202, 79-32,204, 79-32,207, 79-32,210, 79-32,212, 79-32,213, 79-32,222, 79-32,242, 79-32,266, 79-3633, 79-3634, 79-3635, 79-3636, 79-3637, 79-3638, 79-3639, 79-4501, 79-4502, 79-4508, 79-4509, 79-4511 and 79-4522 are hereby repealed.

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

Approved May 22, 2012.

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## CHAPTER 136

House Substitute for SENATE BILL No. 79°

AN ACT concerning the protection of rights and privileges granted under the United States or Kansas constitutions.

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

Section 1. While the legislature fully recognizes the right to contract freely under the laws of this state, it also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state's interest to protect and promote rights and privileges granted under the United States or Kansas constitution, including, but not limited to, equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage.

Sec. 2. As used in this act, "foreign law," "legal code" or "system" means any law, legal code or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals and applied by that jurisdiction's courts, administrative bodies or other formal or informal tribunals.

Sec. 3. Any court, arbitration, tribunal or administrative agency ruling or decision shall violate the public policy of this state and be void and unenforceable if the court, arbitration, tribunal or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on any foreign law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights and privileges granted under the United States and Kansas constitutions, including, but not limited to, equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage.

Sec. 4. A contract or contractual provision, if capable of segregation, which provides for the choice of a foreign law, legal code or system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon shall violate the public policy of this state and be void and unenforceable if the foreign law, legal code or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights and privileges granted under the United States and Kansas constitutions, including, but not limited to, equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage.

Sec. 5. (a) A contract or contractual provision, if capable of segregation, which provides for a jurisdiction for purposes of granting the courts or arbitration panels *in personam* jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually

agreed upon shall violate the public policy of this state and be void and unenforceable if the jurisdiction chosen includes any foreign law, legal code or system, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights and privileges granted under the United States and Kansas constitutions, including, but not limited to, equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage.

(b) If a resident of this state, subject to personal jurisdiction in this state, seeks to maintain litigation, arbitration, agency or similarly binding proceedings in this state and if the courts of this state find that granting a claim of forum *non conveniens* or a related claim violates or would likely violate the fundamental liberties, rights and privileges granted under the United States and Kansas constitutions of the nonclaimant in the foreign forum with respect to the matter in dispute, including, but not limited to, equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage, then it is the public policy of this state that the claim shall be denied.

Sec. 6. Nothing in this act shall be construed to disapprove of or abrogate any appellate decision previously rendered by the supreme court of Kansas.

Sec. 7. Nothing in this act shall be construed to allow a court to: (a) Adjudicate or prohibit any religious organization from deciding upon ecclesiastical matters of a religious organization, including, but not limited to, the selection, appointment, calling, discipline, dismissal, removal or excommunication of a member, member of the clergy, or other person who performs ministerial functions; or (b) determine or interpret the doctrine of a religious organization, including, but not limited to, where adjudication by a court would violate the prohibitions of the religion clauses of the first amendment to the constitution of the United States, or violate the constitution of the state of Kansas.

Sec. 8. Without prejudice to any legal right, this act shall not apply to a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity that contracts to subject itself to foreign law or courts in a jurisdiction other than this state or the United States.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 21, 2012.

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## CHAPTER 137

## SENATE BILL No. 273

AN ACT concerning costs for examination of an insurance company; amending K.S.A. 2011 Supp. 40-223 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 40-223 is hereby amended to read as follows: 40-223. ~~Any person who makes any examination under the provisions of this act,~~ (a) (1) Except as provided in K.S.A. 40-110 and 40-253, and amendments thereto, *any person who makes any examination under the provisions of this act* may receive, as full compensation for such person's services, on a *per diem* basis an amount fixed by the commissioner, which shall not exceed the amount recommended by the national association of insurance commissioners, for such time necessarily and actually occupied in going to and returning from the place of such examination and for such time the examiner is necessarily and actually engaged in making such examination including any day within the regular workweek when the examiner would have been so engaged had the company or society been open for business, together with such necessary and actual expenses for traveling and subsistence as the examiner shall incur because of the performance of such services.

(2) For the purposes of this act, "necessary and actual expenses" shall be limited, whether for travel within the state or travel outside the state, to those limitations expressed in K.S.A. 75-3207, and amendments thereto, which pertain to official travel outside the state. The daily charge shall be calculated by dividing the amount the examiner is authorized by the commissioner of insurance to charge per week by the number of days in the regular workweek of the company or society being examined.

(b) (1) All of such compensation, expenses, the employer's share of the federal insurance contributions act taxes, the employer's contribution to the Kansas public employees retirement system as provided in K.S.A. 74-4920, and amendments thereto, the self-insurance assessment for the workmen's compensation act as provided in K.S.A. 44-576, and amendments thereto, the employer's cost of the state health care benefits program under K.S.A. 75-6507, and amendments thereto, a *pro rata* amount determined by the commissioner to provide vacation and sick leave for the examiner not to exceed the number of days allowed state officers and employees in the classified service pursuant to regulations promulgated in accordance with the Kansas civil service act, all outside consulting and data processing fees necessary to perform any examination, and a *pro rata* amount determined by the commissioner not to exceed an annual aggregate of \$18,000 to fund the purchase, maintenance and enhancement of examination equipment and computer software shall be paid to the com-

missioner of insurance by the insurance company or society so examined, on demand of the commissioner.

(2) The amount paid for all outside consulting and data processing fees necessary to perform any *financial* examination at any one company or society, including examination of such company's or society's subsidiaries or any combination thereof, and the *pro rata* amount to fund the purchase of examination equipment and computer software shall not collectively total more than ~~\$25,000 at any one company examination including examination of its subsidiaries or combination thereof:~~

(A) \$50,000 for any insurance company or society which has less than \$200,000,000 in gross premiums, both direct and assumed, in the preceding calendar year; or

(B) \$100,000 for any insurance company or society which has \$200,000,000 or more in gross premiums, both direct and assumed, in the preceding calendar year.

(3) The amount paid for all outside consulting and data processing fees necessary to perform any market regulation examination at any one company or society, including examination of such company's or society's subsidiaries, or any combination thereof, and the *pro rata* amount to fund the purchase of examination equipment and computer software shall not collectively total more than \$25,000.

(c) Such demand shall be accompanied by the sworn statement of the person making such examination, setting forth in separate items the number of days necessarily and actually occupied in going to and returning from the place of such examination, the number of days the examiners were necessarily and actually engaged in making such examination including those days within the regular workweek while the examination was in progress and the company or society had closed for business, and the necessary and actual expenses for traveling and subsistence, incurred in and on account of such services.

(d) A duplicate of every such sworn statement shall be kept on file in the office of the commissioner of insurance. All moneys so paid to the commissioner of insurance shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the insurance company examination fund. The state treasurer shall issue duplicate receipts therefor, one to be delivered to the commissioner of insurance and the other to be filed with the director of accounts and reports.

Sec. 2. K.S.A. 2011 Supp. 40-223 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 25, 2012.

## CHAPTER 138

## HOUSE BILL No. 2613

AN ACT concerning crimes, criminal procedure and punishment; relating to protective orders; relating to permanent orders; relating to unlawful sexual relations; amending K.S.A. 2011 Supp. 21-5512, 21-5924, 60-3104, 60-3106, 60-3107, 60-31a04 and 60-31a06 and repealing the existing sections; also repealing K.S.A. 60-3111.

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

Section 1. K.S.A. 2011 Supp. 21-5512 is hereby amended to read as follows: 21-5512. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate;

(2) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole, conditional release or postrelease supervision and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is an inmate who has been released and is currently on parole, conditional release or postrelease supervision;

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such jail;

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility or sanctions house;

(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is

engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility;

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and:

(A) The person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is *a person* 16 years of age or older ~~and who has been~~:

~~(A)(i)~~ Released on conditional release from a juvenile correctional facility under the supervision and control of the juvenile justice authority or juvenile community supervision agency; or

~~(B)(ii)~~ placed in the custody of the juvenile justice authority under the supervision and control of the juvenile justice authority or juvenile community supervision agency; and

(B) the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

(7) the offender is an employee of the department of social and rehabilitation services or the employee of a contractor who is under contract to provide services in a social and rehabilitation services institution *or to the department of social and rehabilitation services* and the person with whom the offender is engaging in consensual sexual intercourse, ~~not otherwise subject to subsection (a)(2) of K.S.A. 2011 Supp. 21-5503, and amendments thereto,~~ lewd fondling or touching, or sodomy, ~~not otherwise subject to subsection (b)(3)(C) of K.S.A. 2011 Supp. 21-5504, and amendments thereto,~~ is a person 16 years of age or older who is a patient in such institution *or in the custody of the secretary of social and rehabilitation services*;

(8) *the offender is a worker, volunteer or other person in a position of authority in a family foster home licensed by the department of health and environment and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a foster child placed in the care of such family foster home;*

~~(8)(9)~~ the offender is a teacher or ~~a~~ other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, ~~not otherwise subject to subsection (a)(3) of K.S.A. 2011 Supp. 21-5503, or subsection (b)(1) of K.S.A. 2011 Supp. 21-5506, and amendments thereto,~~ lewd fondling or touching, ~~not otherwise subject to subsection (a) of K.S.A. 2011 Supp. 21-5506, or subsection (b)(2) or (b)(3) of K.S.A. 2011 Supp. 21-5506, and amendments thereto,~~ or sodomy, ~~not otherwise subject to subsection (a) of K.S.A. 2011 Supp. 21-5504, or subsection (b)(1) or (b)(2) of K.S.A. 2011 Supp. 21-5504, and amendments thereto,~~ *lewd fondling or touching, or sodomy is a person*

*16 years of age or older who is a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto, shall apply, not this subsection;*

~~(9)(10)~~ the offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services; or

~~(10)(11)~~ the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of community corrections.

(b) Unlawful sexual relations as defined in:

(1) Subsection (a)(5) is a severity level 4, person felony; and

(2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), ~~or~~ (a)(10) or (a)(11) is a severity level 5, person felony.

(c) (1) *If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of K.S.A. 2011 Supp. 21-5503, and amendments thereto, the provisions of K.S.A. 2011 Supp. 21-5503, and amendments thereto, shall apply, not this section.*

(2) *If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of subsection (b)(1) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, the provisions of subsection (b)(1) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, shall apply, not this section.*

(3) *If an offender violates the provisions of this section by engaging in sodomy which would constitute a violation of subsection (a)(3), (a)(4) or (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, the provisions of subsection (a)(3), (a)(4) or (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, shall apply, not this section.*

(4) *If an offender violates the provisions of this section by engaging in lewd fondling or touching which would constitute a violation of subsection (b)(2) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, the*

*provisions of subsection (b)(2) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, shall apply, not this section.*

~~(c)~~(d) As used in this section:

(1) “Correctional institution” means the same as in K.S.A. 75-5202, and amendments thereto;

(2) “inmate” means the same as in K.S.A. 75-5202, and amendments thereto;

(3) “parole officer” means the same as in K.S.A. 75-5202, and amendments thereto;

(4) “postrelease supervision” means the same as in K.S.A. 2011 Supp. 21-6803, and amendments thereto;

(5) “juvenile detention facility” means the same as in K.S.A. 2011 Supp. 38-2302, and amendments thereto;

(6) “juvenile correctional facility” means the same as in K.S.A. 2011 Supp. 38-2302, and amendments thereto;

(7) “sanctions house” means the same as in K.S.A. 2011 Supp. 38-2302, and amendments thereto;

(8) “institution” means the same as in K.S.A. 76-12a01, and amendments thereto;

(9) “teacher” means and includes teachers, *coaches*, supervisors, principals, superintendents and any other professional employee in any public or private school offering any of grades kindergarten through 12;

(10) “community corrections” means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the revised Kansas juvenile justice code, K.S.A. 2011 Supp. 38-2301 *et seq.*, and amendments thereto;

(11) “court services” means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state; and

(12) “juvenile community supervision agency” means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the juvenile justice authority.

Sec. 2. K.S.A. 2011 Supp. 21-5924 is hereby amended to read as follows: 21-5924. (a) Violation of a protective order is knowingly violating:

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 and 60-3107, and amendments thereto;

(2) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265, and amendments thereto;

(3) a restraining order issued pursuant to K.S.A. 2011 Supp. 23-2707, 38-2243, 38-2244 and 38-2255, *and amendments thereto*, and K.S.A. 60-1607, ~~and amendments thereto prior to its transfer~~;

(4) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person;

(5) an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or

(6) a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

(b) (1) Violation of a protective order is a class A person misdemeanor, *except as provided in subsection (b)(2)*.

(2) *Violation of an extended protective order as described in subsection (e)(2) of K.S.A. 60-3107, and amendments thereto, and subsection (d) of K.S.A. 60-31a06, and amendments thereto, is a severity level 6, person felony.*

(c) No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on such attorney's behalf, who is representing the defendant in any civil or criminal proceeding, from contacting the protected party for a legitimate purpose within the scope of the civil or criminal proceeding. The attorney, or person acting on such attorney's behalf, shall be identified in any such contact.

(d) As used in this section, "order" includes any order issued by a municipal or district court.

Sec. 3. K.S.A. 2011 Supp. 60-3104 is hereby amended to read as follows: 60-3104. (a) An intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member.

(b) A parent of or an adult residing with a minor child may seek relief under the protection from abuse act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member.

(c) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.

(d) Service of process served under this section shall be by personal service and not by certified mail return receipt requested. No docket fee shall be required for proceedings under the protection from abuse act.

(e) If the court finds that the plaintiff's address or telephone number, or both, needs to remain confidential for the protection of the plaintiff, plaintiff's minor children or minor children residing with the plaintiff, such information shall not be disclosed to the public, but only to authorized court or law enforcement personnel and to the commission on judicial performance in the discharge of the commission's duties pursuant

to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 4. K.S.A. 2011 Supp. 60-3106 is hereby amended to read as follows: 60-3106. (a) Within 21 days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence and the defendant shall have an opportunity to *cross-examine the petitioner's witnesses and* present evidence on the defendant's behalf. Upon the filing of the petition, the court shall set the case for hearing. ~~At the hearing, the court shall~~ *and* advise the parties of the right to be represented by counsel.

(b) Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief orders in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A. 60-3107, and amendments thereto, or any combination thereof, as it deems necessary to protect the plaintiff or minor children from abuse. Temporary orders may be granted *ex parte*. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section. No temporary order shall have the effect of modifying an existing order granting legal custody, residency, visitation or parenting time unless there is sworn testimony at a hearing to support a showing of good cause.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

Sec. 5. K.S.A. 2011 Supp. 60-3107 is hereby amended to read as follows: 60-3107. (a) The court may approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any of the following orders:

(1) Restraining the defendant from abusing, molesting or interfering with the privacy or rights of the plaintiff or of any minor children of the parties. Such order shall contain a statement that if such order is violated, such violation may constitute assault as defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2011 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2011 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

(2) Granting possession of the residence or household to the plaintiff to the exclusion of the defendant, and further restraining the defendant from entering or remaining upon or in such residence or household, subject to the limitation of subsection (d). Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined

in K.S.A. 2011 Supp. 21-5924, and amendments thereto. The court may grant an order, which shall expire 60 days following the date of issuance, restraining the defendant from cancelling utility service to the residence or household.

(3) Requiring defendant to provide suitable, alternate housing for the plaintiff and any minor children of the parties.

(4) Awarding temporary custody and residency and establishing temporary parenting time with regard to minor children.

(5) Ordering a law enforcement officer to evict the defendant from the residence or household.

(6) Ordering support payments by a party for the support of a party's minor child, if the party is the father or mother of the child, or the plaintiff, if the plaintiff is married to the defendant. Such support orders shall remain in effect until modified or dismissed by the court or until expiration and shall be for a fixed period of time not to exceed one year. On the motion of the plaintiff, the court may extend the effect of such order for 12 months.

(7) Awarding costs and attorney fees to either party.

(8) Making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary.

(9) Requiring any person against whom an order is issued to seek counseling to aid in the cessation of abuse.

(10) Ordering or restraining any other acts deemed necessary to promote the safety of the plaintiff or of any minor children of the parties.

(b) No protection from abuse order shall be entered against the plaintiff unless:

(1) The defendant properly files a written cross or counter petition seeking such a protection order;

(2) the plaintiff had reasonable notice of the written cross or counter petition by personal service as provided in subsection (d) of K.S.A. 60-3104, and amendments thereto; and

(3) the issuing court made specific findings of abuse against both the plaintiff and the defendant and determined that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

(c) Any order entered under the protection from abuse act shall not be subject to modification on *ex parte* application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 *et seq.*, prior to their transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 *et seq.*, and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 *et seq.*, prior to their transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 *et seq.*, and amendments thereto, shall be subject to modification under the protection from abuse act only as to those

matters subject to modification by the terms of K.S.A. 2011 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 2011 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, and amendments thereto, during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 2011 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, and amendments thereto, that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242, and amendments thereto. Any custody or parenting time order, or order relating to the best interests of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any such custody or parenting order involving the same child issued under the protection from abuse act, until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated. Any inconsistent custody or parenting order issued in the revised Kansas code for care of children case or the revised Kansas juvenile justice code case shall be specific in its terms, reference any pre-existing protection from abuse order and the custody being modified, and a copy of such order shall be filed in the preexisting protection from abuse case.

(d) If the parties to an action under the protection from abuse act are not married to each other and one party owns the residence or household, the court shall not have the authority to grant possession of the residence or household under subsection (a)(2) to the exclusion of the party who owns it.

(e) Subject to the provisions of subsections (b), (c) and (d), a protective order or approved consent agreement shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, except ~~that, or~~ *as provided in subsection (e)(1) and (e)(2).*

(1) *Upon* motion of the plaintiff, such period may be extended for one additional year.

(2) *Upon verified motion of the plaintiff and after the defendant has been personally served with a copy of the motion and has had an opportunity to present evidence and cross-examine witnesses at a hearing on the motion, if the court determines by a preponderance of the evidence that the defendant has violated a valid protection order or (A) has previously violated a valid protection order, or (B) has been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, committed against the plaintiff or any member of the plaintiff's household, the court shall extend a protective order for not less than two additional years and may extend the protective order up to the lifetime of the defendant. No service fee shall be required for a motion filed pursuant to this subsection.*

(f) The court may amend its order or agreement at any time upon motion filed by either party.

(g) No order or agreement under the protection from abuse act shall in any manner affect title to any real property.

(h) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2011 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2011 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

Sec. 6. K.S.A. 2011 Supp. 60-31a04 is hereby amended to read as follows: 60-31a04. (a) A person may seek relief under the protection from stalking act by filing a verified petition with ~~the any~~ district judge or clerk of the court ~~in the county where the stalking occurred~~. A verified petition must allege facts sufficient to show the following:

- (1) The name of the stalking victim;
- (2) the name of the defendant;
- (3) the dates on which the alleged stalking behavior occurred; and
- (4) the acts committed by the defendant that are alleged to constitute stalking.

(b) A parent or an adult residing with a minor child may seek relief under the protection from stalking act on behalf of the minor child by filing a verified petition with the district judge or with the clerk of the court in the county where the stalking occurred.

(c) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.

(d) Service of process served under this section shall be by personal service. No docket fee shall be required for proceedings under the protection from stalking act.

(e) The victim's address and telephone number shall not be disclosed to the defendant or to the public, but only to authorized court or law enforcement personnel and to the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 7. K.S.A. 2011 Supp. 60-31a06 is hereby amended to read as follows: 60-31a06. (a) The court may issue a protection from stalking order granting any of the following orders:

(1) Restraining the defendant from following, harassing, telephoning, contacting or otherwise communicating with the victim. Such order shall contain a statement that if such order is violated such violation may constitute stalking as defined in K.S.A. 2011 Supp. 21-5427, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

(2) Restraining the defendant from abusing, molesting or interfering with the privacy rights of the victim. Such order shall contain a statement that if such order is violated, such violation may constitute stalking as defined in K.S.A. 2011 Supp. 21-5427, and amendments thereto, assault as defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2011 Supp. 21-5413, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

(3) Restraining the defendant from entering upon or in the victim's residence or the immediate vicinity thereof. Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

(4) Any other order deemed necessary by the court to carry out the provisions of this act.

(b) A protection from stalking order shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, ~~except that, on motion of the plaintiff, such period may be extended for one additional year. Before the expiration of an order for protection from stalking, a victim, or a parent on behalf of the victim, may request an extension of the protection from stalking order for up to one additional year on showing of continuing threat of stalking~~ *except as provided in subsection (c) and (d).*

(c) Upon motion of the plaintiff the court may extend the order for an additional year.

(d) Upon verified motion of the plaintiff and after the defendant has been personally served with a copy of the motion and has had an opportunity to present evidence and cross-examine witnesses at a hearing on the motion, if the court determines by a preponderance of the evidence that the defendant has violated a valid protection order or (A) has previously violated a valid protection order, or (B) has been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, committed against the plaintiff or any member of the plaintiff's household, the court shall extend a protective order for not less than two additional years and up to a period of time not to exceed the lifetime of the defendant. No service fee shall be required for a motion filed pursuant to this subsection.

~~(e)~~(e) The court may amend its order at any time upon motion filed by either party.

~~(d)~~(f) The court shall assess costs against the defendant and may award attorney fees to the victim in any case in which the court issues a protection from stalking order pursuant to this act. The court may award attorney fees to the defendant in any case where the court finds that the petition to seek relief pursuant to this act is without merit.

~~(e)~~(g) A no contact or restraining provision in a protective order issued pursuant to this section shall not be construed to prevent:

- (1) Contact between the attorneys representing the parties;
- (2) a party from appearing at a scheduled court or administrative hearing; or
- (3) a defendant or defendant's attorney from sending the plaintiff copies of any legal pleadings filed in court relating to civil or criminal matters presently relevant to the plaintiff.

Sec. 8. K.S.A. 60-3111 and K.S.A. 2011 Supp. 21-5512, 21-5924, 60-3104, 60-3106, 60-3107, 60-31a04 and 60-31a06 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 25, 2012.

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## CHAPTER 139

Senate Substitute for HOUSE BILL No. 2267

AN ACT concerning homeowners associations; amending K.S.A. 2011 Supp. 58-4608, 58-4610 and 58-4618 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 58-4608 is hereby amended to read as follows: 58-4608. (a) The association shall:

- (1) Adopt and may amend bylaws and may adopt and amend rules;
  - (2) adopt and may amend budgets;
  - (3) have the power to require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding;
  - (4) promptly provide notice to the unit owners of any legal proceedings in which the association is a party other than proceedings involving enforcement of rules, covenants or declarations of restrictions, or to recover unpaid assessments or other sums due the association;
  - (5) establish a reasonable method for unit owners to communicate among themselves and with the board of directors concerning the association;
  - (6) have the power to suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:
    - (A) Deny a unit owner or other occupant access to the owner's unit;
    - (B) suspend a unit owner's right to vote except involving issues of assessments and fees; or
    - (C) withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person; and
  - (7) have all other powers that may be exercised in this state by organizations of the same type as the association.
- (b) The board of directors may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The board of directors does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:
- (1) The association's legal position does not justify taking any or further enforcement action;
  - (2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;
  - (3) although a violation may exist or may have occurred, it is not so

material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(4) it is not in the association's best interests to pursue an enforcement action.

(c) The board of directors' decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the board of directors from taking enforcement action under another set of circumstances, but the board of directors may not be arbitrary or capricious in taking enforcement action.

*(d) The provisions of subsection (a)(6)(B) shall not apply to an association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence.*

~~(d)~~(e) This section shall take effect on and after January 1, 2011.

Sec. 2. K.S.A. 2011 Supp. 58-4610 is hereby amended to read as follows: 58-4610. (a) The bylaws of the association must:

(1) Provide the number of members of the board of directors and the titles of the officers of the association;

(2) provide for election by the board of directors or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) specify the qualifications, powers and duties, terms of office, and manner of electing and removing board of directors' members and officers and filling vacancies;

(4) specify the powers the board of directors or officers may delegate to other persons or to a managing agent;

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) specify a method for the unit owners to amend the bylaws;

(7) contain any provision necessary to satisfy requirements in this act or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(8) provide for any matter required by law of this state other than this act to appear in the bylaws of organizations of the same type as the association.

(b) Subject to the declaration and this act, the bylaws may provide for any other necessary or appropriate matters, including, but not limited to, an election oversight committee and other matters that could be adopted as rules.

*(c) The requirements of this section shall not apply to an association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence.*

~~(c)~~(d) This section shall take effect on and after January 1, 2011.

Sec. 3. K.S.A. 2011 Supp. 58-4618 is hereby amended to read as follows: 58-4618. (a) *Except as provided in subsection (b)*, an association shall deliver any notice required to be given by the association under this act to any mailing or electronic mail address a unit owner designates. Otherwise, the association may deliver notices by:

- (1) Hand delivery to each unit owner;
- (2) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;
- (3) electronic means, if the unit owner has given the association an electronic address; or
- (4) any other method reasonably calculated to provide notice to the unit owner.

(b) (1) *An association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence shall comply with subsection (a) when providing notice for an annual meeting.*

(2) *For all other meetings such association shall:*

- (A) *Post a notice on the association's website;*
- (B) *send a notice by electronic mail to all unit owners who request such notice; and*
- (C) *post a sign containing the meeting notice at the main entrance of the common interest community.*

~~(b)~~(c) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

Sec. 4. K.S.A. 2011 Supp. 58-4608, 58-4610 and 58-4618 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 25, 2012.

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CHAPTER 140  
HOUSE BILL No. 2503

AN ACT concerning agriculture; relating to the Kansas department of agriculture; changes due to the establishment of the division of animal health, the agriculture marketing and promotions program and the division of conservation; agricultural boards and advisory bodies; amending K.S.A. 2-909, 2-1903, 2-1904, 2-1907, 24-1211, 24-1212, 47-122a, 47-230, 47-239, 47-414, 47-414a, 47-416, 47-416a, 47-417, 47-418a, 47-420, 47-422, 47-428, 47-429, 47-432, 47-433, 47-434, 47-435, 47-441, 47-442, 47-446, 47-448, 47-605, 47-607, 47-607a, 47-607d, 47-608, 47-610, 47-613, 47-616, 47-618, 47-619, 47-620, 47-622, 47-626, 47-627, 47-629, 47-629a, 47-629b, 47-629c, 47-631, 47-632, 47-632a, 47-633a, 47-634, 47-635, 47-646a, 47-650, 47-651, 47-653, 47-653a, 47-653b, 47-653d, 47-

653e, 47-653f, 47-653g, 47-653h, 47-654, 47-655, 47-657, 47-658a, 47-658b, 47-660, 47-666, 47-667, 47-673, 47-1001, 47-1001d, 47-1501, 47-1506, 47-1511, 47-1701, 47-1725, 47-1735, 47-1804, 47-1808, 47-1832, 49-603, 65-171i, 66-1319, 74-4002, 74-4003, 75-1901, 75-1903, 75-3141, 75-3142, 82a-326, 82a-1607, 82a-1608, 82a-1609, 82a-1702, 82a-1703 and 82a-1704 and K.S.A. 2011 Supp. 2-907, 2-1907c, 2-1915, 2-1930, 2-1931, 2-3709, 32-951, 47-417a, 47-437, 47-611, 47-612, 47-624, 47-672, 47-674, 47-816, 47-1001e, 47-1008, 47-1011a, 47-1201, 47-1218, 47-1302, 47-1303, 47-1304, 47-1503, 47-1706a, 47-1709, 47-1721, 47-1731, 47-1805, 47-1809, 47-1831, 47-2101, 48-3502, 65-5721, 74-552, 74-553, 74-567, 74-50,156, 74-50,163, 75-37,121, 82a-220, 82a-903, 82a-1602, 82a-1603, 82a-2007 and 82a-2101 and repealing the existing sections; also repealing K.S.A. 74-551 and 74-50,161 and K.S.A. 2011 Supp. 2-1932, 47-1307, 74-555, 74-50,157, 74-50,158, 74-50,159, 74-50,160 and 74-50,162.

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

Section 1. K.S.A. 2011 Supp. 2-3709 is hereby amended to read as follows: 2-3709. (a) There is hereby created the Kansas agricultural remediation board. The board shall consist of five members appointed by the governor. Of the five members, one shall be a representative of agricultural retailers, one shall be a representative of agricultural producers, one shall be a representative of agricultural processors, one shall be a representative of specialty chemical distributors or retailers and one shall be a representative of agricultural and specialty chemical registrants. Not more than three voting members shall be members of the same political party. One representative of the Kansas department of agriculture and one representative of the Kansas department of health and environment shall serve as members of the board *ex officio*.

(b) ~~(1) Members appointed by the governor shall be subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board, whose appointment is subject to confirmation shall exercise any power, duty or function as a member of the board until confirmed by the senate. Except as provided by this section, the term of office of each member of the board shall be four years. The initial appointments to the board shall be as follows: Two members shall be appointed for terms of two years, two members shall be appointed for terms of three years and one member shall be appointed for a term of four years. The governor shall designate the term of office for each member appointed to the first board. Each member shall serve until a successor is appointed and confirmed. Whenever a vacancy occurs in the membership of the board prior to the expiration of a term of office, the governor shall appoint a qualified successor to fill the unexpired term.~~

~~(2) The terms of members appointed pursuant to paragraph (1) of this subsection who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed.~~

(c) The governor shall designate the chairperson and vice-chairperson of the board from the members of such board.

(d) Meetings shall be held as determined by the board.

(e) Members of the board attending meetings of the board, or attending a subcommittee meeting thereof authorized by the board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

Sec. 2. K.S.A. 2011 Supp. 74-552 is hereby amended to read as follows: 74-552. (a) There is hereby established within the Kansas department of agriculture a grape and wine industry advisory council consisting of *no less than* nine members who shall be appointed by the secretary of agriculture. The membership of such council shall include:

(1) One member ~~representing the college of agriculture at Kansas State University~~ *from a Kansas higher education institution involved in related academic or research enterprises;*

(2) *no less than* two members representing the commercial grape growing industry, *with one appointed by each of the state's grape and wine industry organizations that are registered and in good standing with the secretary of state's office;*

(3) *no less than* two members representing the licensed farm winery industry, *with one appointed by each of the state's grape and wine industry organizations that are registered and in good standing with the secretary of state's office;*

(4) one member ~~representing the~~ *who is a licensed wine distributors industry distributor or wholesaler;*

(5) one member ~~representing the~~ *who is a licensed retail liquor industry store owner;*

(6) one member ~~representing the tourism industry of Kansas~~ *who is a registered agritourism operator;* and

(7) one member ~~representing the public at large having experience in marketing with marketing or business development expertise.~~

(b) ~~The members of the advisory council shall be appointed for terms as follows: (1) Four members shall be appointed for terms ending on June 30, 1995, and (2) five members shall be appointed for terms ending on June 30, 1996. After the expiration of the initial terms of such members all members shall be appointed for terms of two years. All members of the council shall be appointed for terms ending on June 30, 2016. All vacancies shall be filled by appointment for the remainder of the unexpired term of the member creating the vacancy.~~

(c) *The secretary of the Kansas department of agriculture and secretary of the Kansas department of wildlife, parks and tourism, or their designees, shall designate staff as nonvoting, ex officio members of the council. The director of the state alcoholic beverage control division of the*

*Kansas department of revenue or such director's designee shall also be a nonvoting, ex officio member.*

~~(c)(d)~~ The advisory council shall organize ~~annually~~ *biannually* by the election from the council's membership a chairperson and a vice-chairperson. The advisory council shall adopt such rules of procedure as the council deems necessary for conducting the council's business.

*(e) The provisions of this section shall expire on July 1, 2016.*

Sec. 3. K.S.A. 2011 Supp. 74-553 is hereby amended to read as follows: 74-553. (a) The grape and wine industry advisory council shall have the following duties, authorities and powers:

~~(a)(1)~~ Advise the Kansas department of agriculture and other state agencies on the grape and wine industry initiatives, ~~problems~~ *concerns* and needs;

~~(b) determine and recommend specific research programs and priorities at Kansas state university;~~

~~(c)(2)~~ facilitate improved communication and interaction among grape and wine producers, wine and liquor wholesalers and retailers, governmental agencies, both federal and state, and state tourism interests;

~~(d) determine and recommend specific marketing program priorities to assist in promoting and marketing the state's grape and wine industry;~~

~~(e)(3)~~ develop and recommend a long-term plan for financing continued programs for promotion, marketing, research and extension in support of the Kansas grape and wine industry; and

~~(f)(4)~~ report to the Kansas department of agriculture and *to the standing agriculture committees on agriculture of the senate and house of representatives of the legislature* on the status of the Kansas grape and wine industry.

*(b) To facilitate the organization and start-up of such plan and structure, the Kansas department of agriculture shall provide administrative assistance until such time as the secretary of the department of agriculture determines that the advisory council has resources to provide staffing on its own.*

*(c) The provisions of this section shall expire on July 1, 2016.*

Sec. 4. K.S.A. 2011 Supp. 74-50,163 is hereby amended to read as follows: 74-50,163. (a) There is hereby created ~~an agriculture products development~~ *an agriculture marketing and promotions* advisory board. Members shall be appointed by the ~~governor as follows, one member shall be a representative of the livestock industry, one member shall be a representative of a farmer's cooperative active in community economic development, one member shall be a representative of a commodity group, two members shall be representatives of entrepreneurs in a value added business, one member shall be a financial or investment banker or a seed capital fund manager and one member shall be from the marketing section of the agriculture products development division of the depart-~~

~~ment of commerce~~ *secretary of agriculture. The board shall consist of no less than nine and no more than 12 members. Each member appointed to the advisory board shall be recognized for knowledge and leadership in at least one of the following sectors: Livestock industry, commodity production, specialty crop production, local foods or farmers' markets, restaurant and food service industry, value-added or entrepreneurial agriculture, agricultural education, rural economic development, food processing, finance and banking, agricultural cooperatives and marketing or economics.*

(b) Of the members first appointed to the board, the ~~governor~~ *secretary of agriculture* shall designate ~~four~~ *five* whose terms shall expire June 30, ~~1998~~ *2014*, and ~~three~~ *whose* ~~the remaining members'~~ terms shall expire on June 30, ~~2000~~ *2016*. After the expiration of such terms, each member shall be appointed for a term of four years until a successor is appointed and qualified.

(c) A vacancy on the board of a member shall be filled for the unexpired term by appointment by the ~~governor~~ *secretary of agriculture*.

(d) ~~The governor shall appoint a chairperson.~~ *The board shall organize by election of a chairperson, vice-chairperson and such other officers as the board deems appropriate.*

~~(e) The board shall meet as the chairperson or a majority of the board members determine.~~

~~(f)~~ *(e)* The board shall advise the secretary of ~~commerce~~ *agriculture* and the agriculture ~~products development division~~ *marketing and promotions program* on issues and concerns of agriculture ~~product development and technical assistance for such~~ *marketing, promotions and agribusiness* development.

Sec. 5. K.S.A. 2011 Supp. 2-907 is hereby amended to read as follows: 2-907. The Kansas poultry improvement association of Manhattan, ~~Kan.~~ *Kansas*, whose articles of incorporation are recorded in the office of the secretary of state, is hereby designated and declared to be the official state agency for the state of Kansas, for the purpose of carrying out the national poultry improvement plan. The Kansas poultry improvement association shall cooperate with the United States department of agriculture, Kansas state university of agriculture and applied science, Kansas department of agriculture and the Kansas ~~livestock~~ *animal health* commissioner for the purpose of promoting the poultry industry and its allied branches and shall supervise and administer the national improvement plan in this state.

Sec. 6. K.S.A. 2-909 is hereby amended to read as follows: 2-909. As used in the poultry disease control act, except where the context clearly requires a different meaning, the following words and phrases shall have the meaning ascribed thereto.

(a) “Commissioner” means the ~~livestock~~ *animal health* commissioner of the state of Kansas *department of agriculture*.

(b) “Fowl typhoid” means a disease of poultry caused by *salmonella gallinarum*.

(c) “Hatchery” means a premises with equipment which is operated or controlled by a person for the production of baby poultry.

(d) “Person” means any individual, partnership, firm or corporation.

(e) “Plan” means the national poultry improvement plan contained in sections 145.1 ~~to through 145.54, inclusive,~~ of title 9 of the code of federal regulations and the auxiliary provisions thereto which are contained in sections 147.1 ~~to through 147.48, inclusive,~~ of title 9 of the code of federal regulations, and ~~any amendments or supplements to such plan or provisions thereto.~~

(f) “Poultry” means any domesticated birds which are bred for the primary purpose of producing eggs or meat or of being exhibited and which may include chickens, turkeys, waterfowl and game birds, but which shall not include doves or pigeons.

(g) “Pullorum” means a disease of poultry caused by *salmonella pullorum*.

Sec. 7. K.S.A. 2011 Supp. 32-951 is hereby amended to read as follows: 32-951. (a) Except as provided further, a game breeder permit is required to engage in the business of raising and selling game birds, game animals, furbearing animals or such other wildlife as required by rules and regulations adopted by the secretary in accordance with K.S.A. 32-805, and amendments thereto.

(b) Any person who desires to engage in the business described in subsection (a) may apply to the secretary for a game breeder permit. The application shall give the name and residence of the applicant, the description of the premises, the number and kind of birds or animals which it is proposed to propagate and any other information required by the secretary. The fee prescribed pursuant to K.S.A. 32-988, and amendments thereto, shall accompany the application.

(c) If the secretary determines that the application is made in good faith and that the premises are suitable for engaging in the business described in subsection (a), the secretary may issue such permit. The permit shall expire on June 30 of each year.

(d) Game breeders shall make such reports of their activities to the secretary as required by rules and regulations adopted by the secretary in accordance with K.S.A. 32-805, and amendments thereto. In addition to any other penalty prescribed by law, failure to make such reports or to comply with the laws of the state of Kansas or rules and regulations of the secretary shall be grounds for the secretary to refuse to issue, refuse to renew, suspend or revoke such permit.

(e) The secretary shall adopt, in accordance with K.S.A. 32-805, and

amendments thereto, such rules and regulations as necessary to implement the provisions of this section.

(f) Any person who is engaged in the business of raising domesticated deer shall not be required to have a game breeder permit as required by this section. As used in this section, "domesticated deer" means any member of the family *cervidae* which was legally obtained and is being sold or raised in a confined area for: (1) Breeding stock; ~~for~~(2) any carcass, skin or part of such animal; ~~for~~(3) exhibition; or ~~for~~(4) companionship.

(g) The secretary, on a quarterly basis, shall transmit to the ~~livestock~~ *animal health* commissioner a current list of persons issued a game breeder permit issued pursuant to this section who are raising or selling any member of the family *cervidae*.

(h) Any person holding a game breeder permit from the secretary is hereby authorized to recapture any game bird that such game breeder is permitted to raise or sell whenever any such game bird has escaped from confinement for any reason. The authorized area for such recapture is hereby limited to a one-quarter mile radius of the game breeder's operation from which the escape from confinement occurred, provided the game breeder has the prior approval of the owner of the land upon which the recapture will occur and has notified the department prior to the recapture.

Sec. 8. K.S.A. 47-122a is hereby amended to read as follows: 47-122a.

(a) Whenever the owner or the owner's authorized agent allows any livestock to run at large, in violation of K.S.A. 47-122, and amendments thereto, and such livestock remains on the property of another person, ~~the sheriff of the county in which such livestock are running at large,~~ at the request of such person upon whose property the livestock are running at large, ~~the sheriff of the county in which such livestock are running at large~~ may take such livestock into custody and retain them in a secure holding area.

(b) The county sheriff shall give notice to the owner or the owner's authorized agent within 24 hours after taking such livestock into custody that the owner or the owner's authorized agent has 10 days within which to claim such livestock and to pay all actual costs for taking up, keeping and feeding of such livestock.

(c) If the owner or the owner's authorized agent fails to claim the livestock and to pay all actual costs within the ten-day period, the county sheriff shall cause the livestock to be delivered to a public livestock market or to a secure holding area approved by the ~~livestock~~ *animal health* commissioner. If the livestock is delivered to the market, the county sheriff shall cause such livestock to be sold at such market to the highest bidder for cash. Livestock held in a secure holding area other than a livestock market shall be advertised by the county sheriff in the official county newspaper and sold to the highest bidder for cash.

(d) The county sheriff shall pay out of the proceeds from the sale of such livestock, all actual costs for taking up, keeping and feeding of such livestock. Any proceeds remaining in the hands of the sheriff after payment of all actual costs, shall be paid to the owner of the livestock or the owner's authorized agent. If the owner or the owner's authorized agent is not known or cannot be located, the proceeds remaining after the payment of actual costs shall be paid to the county treasurer of the county in which the livestock were running at large. Such funds shall be deposited by the county treasurer in the county's special stray fund provided for in K.S.A. 47-239, and amendments thereto.

(e) In counties having a consolidated law enforcement department, the provisions of this section relating to sheriffs shall be deemed to refer to such department.

Sec. 9. K.S.A. 47-230 is hereby amended to read as follows: 47-230. (a) Any person may take up any stray found upon ~~his such person's~~ premises; or upon any public thoroughfare adjoining thereto, ~~and he~~. *Within 24 hours after taking up the stray, such person shall report such the taking up to the sheriff of the county in which the stray is taken up within twenty-four (24) hours after the taking up of such stray. In giving such notice, the taker up shall describe said stray to the sheriff by stating the kind. The report shall include a description of the stray, including the type of animal, color, weight, size, sex and age, the marks, brands or other distinguishing features of the animal, if any there may be, the place where the animal is kept and the address of the taker up such person who took up the stray.* The sheriff ~~upon being given such notice shall~~ shall then notify the state ~~livestock animal health~~ commissioner and the owners of all registered brands found on ~~said animal the stray~~. If the sheriff and the ~~livestock animal health~~ commissioner ~~or his, or the commissioner's~~ duly authorized representatives find and establish the ~~ownership of said animal owner of the stray~~, a record to that effect shall be kept, ~~and said animal shall be then released to the established owner. Provided, That said owner has paid all costs accrued in said stray proceeding and has paid to the taker up reasonable compensation for keeping and feeding said stray, as determined and agreed to by both the sheriff and the state livestock commissioner or his authorized representative, together with the cost for any damage which said stray may have caused.~~

(b) *Subject to the agreement of both the sheriff and the animal health commissioner, or the commissioner's duly authorized representative, the stray shall be released to the established owner upon payment of:*

(1) *All costs accrued in the stray proceeding, including the cost for any damage which the stray may have caused while in the sheriff's control; and*

(2) *reasonable compensation to the person taking up the stray for the*

*costs of keeping and feeding such stray, including the cost for any damage which the stray may have caused.*

Sec. 10. K.S.A. 47-239 is hereby amended to read as follows: 47-239. (a) The notice for the sale of the stray shall be published for one ~~(1)~~ issue in a publication or publications having general circulation in the area where ~~said such~~ stray was taken up, ~~which~~. Such notice shall describe the stray ~~animal~~ by stating the kind of animal, sex, age, and brands. The notice shall not contain any statement as to the color of the stray ~~animal~~, or as to any marks or other distinguishing features; and it shall not contain the name or address of the ~~taker-up of such animal~~ person who took up such stray. Out of the proceeds from the sale of ~~said stray animal~~ such stray, the sheriff shall pay the ~~taker-up of such animal~~ person who took up such stray, reasonable compensation for ~~his~~ keeping and feeding ~~of the same, and the stray~~. The sheriff *also* shall pay all costs of the stray proceedings. Any proceeds remaining in the hands of the sheriff after payment of feeding and sale costs, shall be paid by ~~him~~ the sheriff to the treasurer of the county in which the stray ~~animal~~ was taken up. Such funds shall be placed by the county treasurer in a special stray fund.

(b) At any time prior to the expiration to six ~~(6)~~ months following the date of such deposit with the county treasurer, a claimant may appear before the sheriff and submit evidence of ownership of ~~said stray animal~~ such stray. If such evidence is acceptable and satisfactory to the sheriff and to the state ~~livestock animal health~~ commissioner or ~~his~~ the commissioner's authorized representative, for purpose of establishing ownership of ~~said stray animal~~ such stray, the sheriff shall direct the county treasurer to disburse the remainder of the proceeds from the sale of ~~said stray animal~~ to ~~said such stray~~ to the claimant.

(c) Upon the expiration of a period of six ~~(6)~~ months following the receipt of deposit of proceeds from the sale of any stray ~~animal~~, without any such directive having been received from the sheriff, the county treasurer shall pay the remaining proceeds to the ~~livestock animal health~~ commissioner to be remitted, deposited and credited as provided by K.S.A. 47-417a, *and amendments thereto*.

Sec. 11. K.S.A. 47-414 is hereby amended to read as follows: 47-414. As used in this act, except where the context clearly indicates a different meaning:

(a) "Person" means every natural person, firm, copartnership, association or corporation;

(b) "livestock" means cattle, sheep, horses, mules or asses;

(c) "brand" means any permanent identifying mark upon the surface of any livestock, except upon horns and hoofs, made by any acid, chemical, a hot iron or cryogenic branding; and, also in the case of sheep shall include the identifying marks made by paint or tar;

(d) “commissioner” means the ~~livestock~~-*animal health* commissioner of the *Kansas department of agriculture*;

(e) “board” means the animal health board, created in K.S.A. 74-4001, and amendments thereto;

(f) “cryogenic branding” means a brand produced by application of extreme cold temperature.

Sec. 12. K.S.A. 47-414a is hereby amended to read as follows: 47-414a. (a) Whenever in any statutes of this state the terms “*livestock commissioner*,” “*livestock brand commissioner*” or “*brand commissioner*” are used, or the term “*commissioner*” is used to refer to the livestock brand commissioner, such terms shall be construed to mean the ~~livestock~~-*animal health* commissioner appointed by the ~~Kansas animal health board~~ *secretary of agriculture* pursuant to K.S.A. ~~75-1901-74-5,119, and amendments thereto.~~

(b) Whenever the term “*board*” is used in the acts contained in K.S.A. 47-414 ~~to through 47-433, inclusive, and any acts amendatory thereof and amendments thereto,~~ such term shall be construed to mean the Kansas animal health board created in K.S.A. 74-4001, *and amendments thereto.*

Sec. 13. K.S.A. 47-416 is hereby amended to read as follows: 47-416. It shall be the duty of the ~~livestock~~-*animal health* commissioner to keep all books and records and to record all brands used for the branding or marking of livestock in Kansas. The commissioner shall receive applications for the recording of any and all brands and the commissioner shall decide on the availability and desirability of any brand or brands sent in for recording.

The commissioner may appoint an assistant commissioner in charge of brands and brand inspectors, special investigators, examiners, deputy assistants and employees necessary to carry out the provisions of the acts contained in article 4 of chapter 47 of the Kansas Statutes Annotated, and ~~any acts amendatory thereof and amendments thereto,~~ subject to approval of the board.

Sec. 14. K.S.A. 47-416a is hereby amended to read as follows: 47-416a. Each special investigator, appointed by the ~~livestock~~-*animal health* commissioner, pursuant to K.S.A. 47-416, and amendments thereto, shall have the authority to make arrests, conduct searches and seizures and carry firearms while investigating violations of the provisions of article 4 of chapter 47 of the Kansas Statutes Annotated and ~~acts amendatory of the provisions thereof and supplemental amendments thereto,~~ and while investigating livestock theft. The director as defined in K.S.A. 74-5602, and amendments thereto, is authorized to offer and carry out a special course of instruction for special investigators performing law enforcement duties under authority of this section. Such special investigators shall not carry firearms without having first successfully completed such special law enforcement training course.

Sec. 15. K.S.A. 47-417 is hereby amended to read as follows: 47-417.

(a) Any person may adopt a brand for the purpose of branding livestock in accordance with authorized rules and regulations of the ~~livestock-animal health~~ commissioner of the Kansas ~~animal health department~~ ~~department of agriculture division of animal health~~. Such person shall have the exclusive right to use such brand in this state, after registering such brand with the ~~livestock-animal health~~ commissioner.

(b) Any person desiring to register a livestock brand shall forward to the commissioner a facsimile of such brand and shall accompany the same with the registration fee in the amount provided under this section. Each person making application for the registering of ~~a-an available~~ livestock brand ~~which is available~~ shall be issued a certificate of brand title ~~which~~. *Such brand title* shall be valid for a period ending four years subsequent to the next April 1; following date of issuance.

(c) For the purpose of revising the brand records, the ~~livestock-animal health~~ commissioner shall collect a renewal fee in the amount provided under this section on all brands upon which *the* recording period expires. Any person submitting such renewal fee shall be entitled to a renewal of registration of such person's livestock brand for a five-year period from the date of expiration of registration of such person's livestock brand as shown by such person's last certificate of brand title.

(d) The livestock brand of any person whose registration expires and who fails to pay such renewal fee within a grace period of 60 days after expiration of the registration period shall be placed in a delinquency status. The use of a delinquent brand shall be unlawful. If the owner of any delinquent registered brand the registration of which has expired fails to renew registration of such brand within 120 days after such brand became delinquent, such failure shall constitute an abandonment of all claim to any property right in such brand.

(e) Upon the expiration of such delinquency period without any request for renewal and required remittance from the last record owner of a brand; or such owner's heirs, legatees or assigns, and with the termination of property rights by abandonment, the ~~livestock-animal health~~ commissioner is authorized to receive and accept an application for such brand to the same extent as if such brand had never been issued to anyone as a registered brand.

(f) The ~~livestock-animal health~~ commissioner shall determine annually the amount of funds which will be required for the purposes for which the brand registration and renewal fees are charged and collected and shall fix and adjust from time to time each such fee in such reasonable amount as may be necessary for such purposes, except that in no case shall either the brand registration fee or the renewal fee exceed \$55. The amounts of the brand registration fee and the renewal fee in effect on the day preceding the effective date of this act shall continue in effect

until the ~~livestock~~ *animal health* commissioner fixes different amounts for such fees under this section.

Sec. 16. K.S.A. 2011 Supp. 47-417a is hereby amended to read as follows: 47-417a. (a) The ~~livestock~~ *animal health* commissioner ~~may~~, when brand inspectors or examiners are available, *may* provide brand inspection. When brand inspection is requested and provided, the ~~livestock~~ *animal health* commissioner shall charge and collect from the person making the request, a brand inspection fee of not to exceed \$.75 per head on cattle and \$.05 per head on sheep and other livestock. No inspection charge shall be made or collected at any licensed livestock market where brand inspection is otherwise available.

(b) The ~~livestock~~ *animal health* commissioner shall remit all moneys received under the statutes contained in article 4 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto, except K.S.A. 47-434 through 47-445, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the livestock brand fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~livestock~~ *animal health* commissioner or by a person or persons designated by the commissioner.

Sec. 17. K.S.A. 47-418a is hereby amended to read as follows: 47-418a. Any person who willfully brands or causes to be branded any cattle in any manner other than as required or authorized by K.S.A. 47-418, and amendments thereto, or as required by the laws of this state and the rules and regulations of the ~~livestock~~ *animal health* commissioner, or any person who falsely brands or causes to be falsely branded any cattle in such a manner as to incorrectly designate the disease control identification or ownership of livestock, shall be deemed guilty of a class A misdemeanor.

Sec. 18. K.S.A. 47-420 is hereby amended to read as follows: 47-420. (a) It shall be unlawful for any person to use any brand for branding any livestock unless such brand has been duly registered in the office of the ~~livestock~~ *animal health* commissioner at Topeka, except: (1) The use of a single numeral digit ~~(0 to 9)~~, *zero to nine*, in conjunction with the registered brand of the owner may be used; for the purpose of determining the age of the branded animal, such number to be applied at least six inches from such registered brand; (2) the use of serial numbers in conjunction with the registered brand of the owner may be used for the purpose of identifying individual animals, such numbers to be applied at least six inches from the registered brand; (3) the use of numbers in conjunction with the registered brand of the owner may be used for the

purpose of identifying herds of the same owner for feeding or experimental purposes, such numbers to be applied at least six inches from the registered brand; and (4) the use of a digital system of branding livestock may be used for the purpose of identifying animals in a licensed feedlot. Such feedlot brand may be used in conjunction with the registered brand of the owner, such brand to be applied at least six inches from such registered brand or may be used on animals which are not branded with a registered brand of the owner, subject to conditions, limitations and requirements applicable to the use of a feedlot brand as prescribed in K.S.A. 47-446, and amendments thereto. The age, serial, herd or feedlot brand shall not be construed as a part of the registered brand; and the use of such numeral or numerals in conjunction with a registered brand shall not be unlawful. Before any person uses any such serial or herd brand in conjunction with a registered brand, such person shall first obtain a permit from the ~~livestock~~*animal health* commissioner authorizing such use.

(b) The ~~livestock~~*animal health* commissioner is authorized to receive applications for permits for such serial or herd brands and issue permits thereon. All applications for such permits shall be accompanied by a permit fee of \$1.50. No such fee shall be required if the application for such permit is submitted in conjunction with an original application for the registered brand or in conjunction with a request for renewal of registration of a registered brand.

Sec. 19. K.S.A. 47-422 is hereby amended to read as follows: 47-422. Any brand ~~recorded with the Kansas animal health board~~*registered with the animal health commissioner of the Kansas department of agriculture* in compliance with the requirements of this act shall be the property of the person causing such record to be made ~~and~~. ~~Such brand~~ shall be subject to sale, assignment, transfer, devise, and descent as other personal property. Instruments of writing evidencing the sale, assignment or transfer of such brand shall be recorded by the ~~livestock~~*animal health* commissioner, ~~and~~. The fee for recording such instruments of writing shall be \$15. Such instruments shall have the same force and effect as recorded instruments affecting real estate, ~~and~~. A certified copy of the record of any such instrument may be introduced in evidence the same as ~~is now provided for~~ certified copies of instruments affecting real estate. Any brand recorded with the Kansas ~~animal health department~~*department of agriculture division of animal health* shall not be used by any person other than the recorded owner. Any person violating any provision of this section shall be guilty of a class C misdemeanor.

Sec. 20. K.S.A. 47-428 is hereby amended to read as follows: 47-428. The ~~livestock~~*animal health* commissioner and the commissioner's deputies or assistants are hereby authorized to enter upon any private lands to make any inspections necessary for the purpose of carrying out the

provisions of this act or any of the provisions of article 4 of chapter 47 of the Kansas Statutes Annotated ~~or any, and~~ amendments thereto. The commissioner and the commissioner's deputies or assistants may accept proof of ownership of livestock from any person in possession of animals bearing the recorded brands of another party as sufficient to exclude and exempt such animals from being classified as stray animals under the provisions of this act.

Sec. 21. K.S.A. 47-429 is hereby amended to read as follows: 47-429. All moneys received from the sale of branded stray livestock shall be paid to the state ~~livestock-animal health~~ commissioner, ~~regardless of the provisions of notwithstanding~~ article 2 of chapter 47 of the Kansas Statutes Annotated ~~and acts amendatory, and amendments~~ thereto, or any other provision of law relating to the disposition of the moneys received from the sale of branded stray animals. The commissioner or the commissioner's deputies are hereby authorized and directed to receive and receipt for all moneys received from the sale of branded stray livestock and shall pay the same to the state treasurer, ~~and~~. The state treasurer shall credit ~~the such~~ amount ~~so paid~~ to the livestock brand fee fund.

Sec. 22. K.S.A. 47-432 is hereby amended to read as follows: 47-432. There is hereby created a livestock brand emergency revolving fund for the use of the state ~~livestock-animal health~~ commissioner for the purpose of paying expenses and costs of establishing the ownership of livestock which are mingled as a result of sudden or extreme storm conditions or other unforeseen occurrences.

Sec. 23. K.S.A. 47-433 is hereby amended to read as follows: 47-433. The livestock brand emergency revolving fund may be used to provide for the compensation, subsistence and travel of emergency livestock brand inspectors and other necessary temporary employees and to provide for such transactions which demand immediate attention. Emergency livestock brand inspectors and other needed personnel may be employed by the ~~livestock-animal health~~ commissioner, ~~Kansas animal health department, department of agriculture division of animal health~~ or by the assistant commissioner in charge of brands, on a temporary basis for services in the establishment of the ownership of livestock which may have been mingled as a result of sudden or extreme storm conditions; or other unforeseen occurrences. Personnel employed under this act shall be in the unclassified service and shall be exempt from the provisions of subsection (b) of K.S.A. 75-2935, ~~and amendments thereto~~, requirements of the civil service law and processing by the division of personnel services of the department of administration. Such revolving fund shall not be used to pay any regular employees, or for current accounts, which are payable monthly. Advanced payments may be made from such revolving fund by the commissioner or assistant commissioner for subsistence and travel of employees and for other necessary emergency purposes when

deemed necessary. A settlement, based on an approved accounting for any advance payments, shall be completed prior to the certification to the director of accounts and reports for payment of any compensation earned. The assistant commissioner shall comply with supplemental procedures as the controller may require, but payments for services, subsistence and travel from the livestock brand emergency revolving fund shall be made by voucher method, showing periods of time worked.

Sec. 24. K.S.A. 47-434 is hereby amended to read as follows: 47-434. As used in this act:

(a) "Commissioner" means the state ~~livestock~~*animal health* commissioner;

(b) "brand inspection area" means any county which has been designated as such by the board of county commissioners of such county in the manner provided by K.S.A. 47-435, and amendments thereto;

(c) "resident owner of cattle" means any resident of a county who has owned one or more head of cattle at any time during the 12 preceding months;

(d) "brand inspection" means the inspection of brands, marks, and other identifying characteristics of cattle or sheep, or both, for the purpose of determining the ownership thereof; and

(e) "person" means any individual, firm, association, partnership or corporation.

Sec. 25. K.S.A. 47-435 is hereby amended to read as follows: 47-435.

(a) Whenever a petition is submitted to the board of county commissioners, signed by not less than 51% of the resident owners of cattle, as determined by an enumeration taken and verified for this purpose by a qualified elector of the county, requesting that the county be designated a brand inspection area, it shall be the duty of the board of county commissioners, within 10 days after receipt of such petition, to make a determination as to the sufficiency of the qualifications and numbers of signers. If such petition is found sufficient the board shall adopt a resolution declaring the county a brand inspection area, and shall immediately file a certified copy of such resolution with the ~~livestock~~*animal health* commissioner. In every case, the date of filing of the certified copy of the resolution of the board of county commissioners declaring the county a brand inspection area with the commissioner shall be the date the county shall qualify as a brand inspection area.

(b) Any and all counties which have been ~~so~~ designated as a brand inspection area, and which are adjacent to and contiguous with other counties so designated, shall ~~be and~~ constitute a part of a basic brand inspection area. From and after the effective date of this act, the counties of Hamilton, Kearny and Wichita shall be and are hereby designated and declared to be a part of a basic brand inspection area. Such basic brand

inspection area shall be subject to enlargement by the addition of other contiguous counties.

(c) Whenever a petition is submitted to the board of county commissioners, signed by not less than 51% of the resident owners of cattle, as determined by an enumeration taken and verified for this purpose by a qualified elector of the county, requesting that the county no longer be designated a brand inspection area and that its status as a brand inspection area be terminated, it shall be the duty of the board of county commissioners, within 10 days after receipt of such petition, to make a determination as to the sufficiency of the qualifications and numbers of signers. If such petition is found sufficient the board shall adopt a resolution declaring that the county is no longer a brand inspection area; and shall immediately file a certified copy of such resolution with the ~~livestock~~ *animal health* commissioner. Thereupon the county shall be terminated as a brand inspection area, but the termination as a brand inspection area by a county within a basic brand inspection area shall not affect the existence of such basic brand inspection area as to the remaining counties therein.

Sec. 26. K.S.A. 2011 Supp. 47-437 is hereby amended to read as follows: 47-437. (a) The ~~livestock~~ *animal health* commissioner shall charge and collect a fee of not to exceed \$.75 per head on all cattle and not to exceed \$.05 per head on all sheep inspected in brand inspection areas of the state. In addition to the per head fee, the ~~livestock~~ *animal health* commissioner may charge and collect an on-site inspection fee and a mileage fee for each mile necessarily and actually traveled in going to and returning from the place of inspection. The ~~livestock~~ *animal health* commissioner, when brand inspectors are available, may provide brand inspection in other areas where brand inspection is requested and the commissioner shall charge and collect inspection fees in the same manner as prescribed for the collection of such fees in brand inspection areas. The owner or seller of cattle or sheep inspected shall be responsible for the payment of the inspection fees and such fees shall be collected in such manner as the ~~livestock~~ *animal health* commissioner shall prescribe or authorize by rule or regulation.

(b) When the ~~livestock~~ *animal health* commissioner determines that the fees collected under this section are yielding more than is required for the purposes for which such fees are collected, the commissioner may reduce such fees for such period as the commissioner deems justified. In the event the ~~livestock~~ *animal health* commissioner, after reducing such fees, finds that sufficient revenues are not being produced by the reduced fees to properly administer and enforce this act and acts of which this section is amendatory or supplemental, the commissioner may increase such fees to such rate as will, in the commissioner's judgment, produce

sufficient revenue for the purposes provided in this section, but not exceeding \$.75 per head on cattle and not to exceed \$.05 per head on sheep.

(c) The ~~livestock-animal health~~ commissioner shall remit all moneys received under K.S.A. 47-434 through 47-445, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the county option brand fee fund, except any amounts received for brand inspection services of livestock outside of a county option area. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~livestock-animal health~~ commissioner or by a person or persons designated by the commissioner. All amounts received for inspection of livestock outside of a county option area shall be deposited to the credit of the livestock brand fee fund.

Sec. 27. K.S.A. 47-441 is hereby amended to read as follows: 47-441. It shall be unlawful for any person in any brand inspection area, including the owner of cattle, the shipper, motor carrier, railroad company, other carrier or corporation, or the agent or servant of any such person, carrier or corporation, to move, drive, ship or transport, in any manner, any cattle from any point in a brand inspection area, to any point outside such area other than another brand inspection area, unless such cattle ~~shall have~~ first *have* been inspected for brands by the state ~~livestock-animal health~~ commissioner, the commissioner's inspectors or examiners; or some person deputized by the commissioner to perform such inspection, unless such cattle are accompanied by a brand inspection certificate. The ~~livestock-animal health~~ commissioner and the commissioner's inspectors and deputies may give permission for such movement of cattle without inspection when: (1) There is no change of ownership involved; or (2) shipment of such cattle is to a market where Kansas brand inspection is maintained. No such inspection shall be required in any case where any such cattle are being moved from a feedlot the operator of which has been licensed pursuant to K.S.A. 47-1503, and amendments thereto. It shall be unlawful for any motor carrier, railroad company or other carrier transporting any cattle from any brand inspection area to any market to permit the owner, the shipper or the party in charge of cattle to change the billing from consignment point to a point other than to a market where Kansas brand inspection is maintained, unless such carrier has or first secures an authorized brand inspection certificate for such cattle.

Sec. 28. K.S.A. 47-442 is hereby amended to read as follows: 47-442. (a) It shall be unlawful for any person in any brand inspection area to move any cattle within such area unless such cattle have been first inspected for brands by the ~~livestock-animal health~~ commissioner or the commissioner's inspectors or deputies except that cattle may be moved

without such inspection when: (1) Cattle are moved to a market where Kansas brand inspection is maintained; or (2) cattle are moved from a feedlot the operator of which has been licensed pursuant to K.S.A. 47-1503, and amendments thereto, except that when any such cattle are moved to any such feedlot the ~~same cattle~~ shall be inspected at the time they enter such feedlot. ~~The livestock commissioner shall have the authority~~

(b) In any case where as a result of a natural or man-made disaster cattle have strayed or have become mixed, *the animal health commissioner shall have the authority* to conduct a one time brand inspection of the cattle in any such feedlot.

(c) Any person who purchases cattle from within a brand inspection area without receiving a bill of sale and a brand inspection certificate shall be deemed as counseling, aiding and abetting the seller in the unlawful sale of such livestock.

Sec. 29. K.S.A. 47-446 is hereby amended to read as follows: 47-446. Feedlot brands may be lawfully applied to livestock which ~~livestock~~ are not branded with a registered brand of the owner and which are in the custody of, and upon the premises of, a feedlot operator licensed under the provisions of article 15 of chapter 47 of the Kansas Statutes Annotated, and ~~acts amendatory thereof or supplemental amendments~~ thereto, subject to the following conditions, limitations and requirements: (1) Such feedlot brand shall not be construed as evidence of ownership identification; (2) livestock which are branded with a feedlot brand shall be held by the licensed feedlot operator under quarantine upon ~~said feedlot such feedlot~~ premises until (a) ~~either~~ released by ~~said such~~ feedlot operator for movement to slaughter or (b) ~~released by the livestock animal health commissioner; or his such commissioner's~~ authorized representative, by issuance of a permit authorizing such livestock to be moved from the feedlot premises for grazing purposes; Any such permit, ~~if issued, shall be subject to the requirement that only shall be issued if~~ such livestock have been branded with a registered brand of the owner of the livestock before release from licensed feedlot premises, ~~shall be branded with a registered brand of the owner of the livestock.~~

Sec. 30. K.S.A. 47-448 is hereby amended to read as follows: 47-448. The ~~livestock animal health~~ commissioner is authorized to enter into reciprocity agreements with any livestock commissioner or brand inspection agency of any other state or the United States, for cooperation in the administration of brand inspection laws and laws for the control, suppression and eradication of contagious diseases among domestic animals.

The ~~livestock animal health~~ commissioner may set and charge fees for brand inspection of animals subject to any reciprocity agreement, ~~and~~ Such fees shall not be limited by or subject to the provisions of K.S.A.

47-417a or 47-437, *and amendments thereto*, or any other law prescribing fees for brand inspection.

Sec. 31. K.S.A. 47-605 is hereby amended to read as follows: 47-605. For the purpose of this act, the ~~livestock-animal health~~ commissioner is hereby authorized and empowered to administer oaths and affirmations.

Sec. 32. K.S.A. 47-607 is hereby amended to read as follows: 47-607. (a) It shall be unlawful for any person or persons to bring, drive or transport any cattle, calves, sheep, swine, horses, mules, goats, domesticated deer, as defined in K.S.A. 47-1001, and amendments thereto, any creature of the ratite family that is not indigenous to this state, including, but not limited to, ostriches, emus and rheas, or any other animal that may be used in the preparation of meat or meat products into the state of Kansas, without first having caused such animal or animals to be inspected and passed under certificate of health as required by the ~~livestock-animal health~~ commissioner of this state.

(b) All shipments and movements of livestock into the state of Kansas upon a public highway shall be accompanied by any such certificates of health or permits required by the ~~livestock-animal health~~ commissioner. The ~~livestock-animal health~~ commissioner shall prescribe, by rules and regulations, procedure whereby certificates of health and other required statements and declarations may be submitted to the commissioner at the time of shipment.

(c) The ~~livestock-animal health~~ commissioner is authorized to issue a special quarantine on such conditions as the commissioner deems necessary to prevent the spread of infectious and contagious diseases in the state of Kansas and on the condition that, if any such livestock upon inspection by an authorized veterinarian are found not to be free and clear of infectious and contagious diseases, ~~the same such livestock~~ shall be: ~~(1) Forthwith~~

(1) Disposed of by the owner or possessor thereof either by: (A) Sale at a public market for immediate slaughter; (B) delivery at a licensed disposal plant; or (C) return to place of origin; or

(2) held by the owner or possessor thereof under quarantine of and subject to the orders and rules and regulations of the ~~livestock-animal health~~ commissioner.

Sec. 33. K.S.A. 47-607a is hereby amended to read as follows: 47-607a. When the ~~livestock-animal health~~ commissioner of this state determines that a special permit is required to move any or all kinds or species of livestock into or through the state of Kansas, the ~~livestock-animal health~~ commissioner may declare that no person or persons, firm, corporation, railway, aerial or motor transportation company, or individual owner of a truck, or the agents thereof, shall ship, trail, permit to cross the state line or in any manner transport any class of livestock into the state of Kansas from any other area, state or states designated by the ~~livestock-animal~~

*health* commissioner, without first obtaining a special permit, by wire, letter or telephone, from the ~~livestock-animal health~~ commissioner at Topeka, Kansas. Such special permit or the authorized permit number of such special permit shall accompany such shipment of livestock into the state of Kansas.

Sec. 34. K.S.A. 47-607d is hereby amended to read as follows: 47-607d. The ~~livestock-animal health~~ commissioner may adopt such rules and regulations as necessary to carry out the purposes of this act.

Sec. 35. K.S.A. 47-608 is hereby amended to read as follows: 47-608. The ~~livestock-animal health~~ commissioner is hereby authorized and directed to cooperate with the secretary of agriculture of the United States; or any officer or authority of the general government, in the suppression and extirpation of contagious diseases among domestic animals and in the enforcement and execution of all acts of congress to prevent the importation and exportation of diseased animals and the spread of infectious or contagious diseases among domestic animals.

Sec. 36. K.S.A. 47-610 is hereby amended to read as follows: 47-610. The state ~~livestock-animal health~~ commissioner is hereby directed to protect the health of domestic animals of the state from all contagious or infectious diseases and for this purpose is hereby authorized and empowered to establish, maintain and enforce such quarantine, sanitary and other regulations as necessary. If the ~~livestock-animal health~~ commissioner requires the assistance of technical knowledge, experience or skill to carry out the duties of the ~~livestock-animal health~~ commissioner, the ~~livestock-animal health~~ commissioner may command the services of any competent veterinarian or may call upon the dean of the college of veterinary medicine, Kansas state university at Manhattan, Kansas, for that purpose. In case the dean of the college of veterinary medicine, Kansas state university is called, the dean shall receive actual and necessary expenses in the performance of such duties as full compensation for such services. If any other veterinarian is employed, such veterinarian shall receive such actual and necessary expenses and reasonable compensation for such services.

Sec. 37. K.S.A. 2011 Supp. 47-611 is hereby amended to read as follows: 47-611. (a) When the *animal health* commissioner determines that a quarantine and other regulations are necessary to prevent the spread among domestic animals of any contagious or infectious disease, the commissioner shall notify the governor of such determination, and the governor shall issue a proclamation announcing the boundary of such quarantine and the orders and rules and regulations prescribed by the commissioner, ~~which~~. Such proclamation shall be published in the Kansas register, except that the commissioner, if the area affected by the quarantine is limited in extent, may dispense with the proclamation of the

governor and give such notice as the commissioner shall deem sufficient to make the quarantine effective.

(b) Upon a determination by the governor that a quarantine or other regulations are necessary to prevent the spread among domestic animals of any contagious or infectious disease, the governor shall direct the commissioner to establish a quarantine pursuant to this section.

(c) The governor may require and direct the cooperation and assistance of any state agency in enforcing such quarantine or other regulations pursuant to subsection (a) or (b).

(d) The commissioner shall establish such quarantine immediately and shall give and enforce such directions, rules and regulations as to separating, isolating, handling and treating, feeding and caring for such diseased animals, animals exposed to the disease and animals within the quarantine which have not been immediately exposed, as the commissioner deems necessary to prevent those classes of animals from coming into contact with one another.

(e) The ~~livestock-animal health~~ commissioner or the commissioner's designee is hereby authorized and empowered to enter any grounds and premises to carry out the provisions of this act.

Sec. 38. K.S.A. 2011 Supp. 47-612 is hereby amended to read as follows: 47-612. Whenever the ~~livestock-animal health~~ commissioner determines that certain animals within the state are capable of communicating infectious or contagious disease, the commissioner may issue an order to the sheriff of the county or to any agent, inspector or authorized representative of the ~~livestock-animal health~~ commissioner in which such animals are found, commanding such individuals to take into custody and keep such animals subject to such quarantine regulations as the ~~livestock-animal health~~ commissioner may prescribe, until such time as the commissioner directs such person to deliver such animals to their owner or owners or to the agent of the owner or owners. Before any animals are delivered, ~~there shall be paid by~~ the owner of such animals *shall pay* to the ~~livestock-animal health~~ commissioner all the fees, costs and expenses of taking, detaining and holding and caring for the animals. In case such fees, costs and expenses are not paid at the time fixed by the ~~livestock-animal health~~ commissioner, the officer having custody of such animals shall advertise, in the same manner as provided by law in case of sale of personal property on execution, that the officer will sell such animals or such portion of such animals as may be necessary to pay such fees, costs and expenses, together with the costs and expenses of such sale. At the time and place advertised the officer shall sell as many of the animals as may be necessary to pay for such fees, costs and expenses and the costs and expenses of such sale. Upon such sale the officer shall without delay pay to the owner any amount received in excess of the fees, costs and expenses, including, but not limited to, legal fees of such officer. Any

officer performing any of the duties directed in this section or any other section of this act shall receive the same compensation for such services as is prescribed by law for similar services. In case such fees, costs and expenses cannot be collected by sale of such animals, such fees, costs and expenses shall be paid by the state of Kansas unless payment or indemnity for the costs of taking into custody, keeping and selling such animals may be obtained from the United States government.

Sec. 39. K.S.A. 47-613 is hereby amended to read as follows: 47-613. The sheriff to whom the existence of any contagious or infectious disease of domestic animals is reported shall proceed without delay to the place where such domestic animal or animals are and examine the same, and shall report immediately the result of such examination to the ~~livestock~~ *animal health* commissioner. The sheriff shall enforce such temporary quarantine regulations as the ~~livestock-animal health~~ commissioner may direct to prevent the spread of such disease, until the ~~livestock-animal health~~ commissioner provides and orders suitable permanent quarantine rules and regulations. No sheriff who takes or detains such animals under the provisions of this act shall be liable to the owner or owners of such animals for any damages by reason of such taking or detention or by reason of the performance of any other duties directed by law.

Sec. 40. K.S.A. 47-616 is hereby amended to read as follows: 47-616. When any animal or animals are killed under the provisions of this act by order of the commissioner, the owner of such animal or animals shall be paid for such animal or animals such proportion of the appraised value as fixed by the appraisement as provided by law. The right of indemnity on account of animals killed by order of the commissioner under the provisions of this act shall not extend to: (a) ~~To~~ Animals killed on account of rabies; (b) ~~to~~ the owner of animals which have been brought into the state in a diseased condition, or from a state, country, territory or district in which the disease with which the animal is infected or to which it has been exposed exists; (c) ~~to~~ any animal which has been brought into the state in violation of any law or quarantine regulations thereof, or the owner of which has violated any of the provisions of this act or disregarded any rule and regulation or order of the ~~livestock-animal health~~ commissioner; (d) ~~to~~ any animal which came into the possession of the claimant with the claimant's knowledge that such animal was diseased or was suspected of being diseased or of having been exposed to any contagious or infectious disease; ~~nor~~ or (e) ~~to~~ any animal belonging to the United States.

Sec. 41. K.S.A. 47-618 is hereby amended to read as follows: 47-618. The *animal health* commissioner shall have power to call upon any sheriff, undersheriff or deputy sheriff to execute ~~his~~ *the commissioner's* orders; ~~and~~. Such officers shall obey the orders of ~~said~~ *the* commissioner; and for performing such services shall receive mileage and fees as is now provided for service in process in civil actions; ~~and in addition thereto shall receive.~~

For killing and disposing of diseased animals, in accordance with the rules prescribed by the ~~livestock-animal health~~ commissioner, ~~such officers shall receive~~ the following fees: (1) For the first animal, not to exceed ~~five dollars (\$5)~~, \$5; (2) for each additional animal, not to exceed ~~two dollars (\$2)~~, \$2; but in no case shall the amount exceed the actual cost of doing such work, ~~and~~. Such fees shall be paid by the board of county commissioners of the county in which the services are rendered. Any such officer may arrest on view and take before any judge of a court of competent jurisdiction of the county any person found violating the provisions of this act, and such officer shall immediately notify the county or district attorney of such arrest, and ~~he~~ ~~such county or district attorney~~ shall prosecute the person so offending according to law.

Sec. 42. K.S.A. 47-619 is hereby amended to read as follows: 47-619. ~~The owner or owners of any stockyards doing business in this state.~~ When requested by the ~~livestock-animal health~~ commissioner, ~~the owner or owners of any stockyards doing business in this state~~ shall keep constantly in their employ a competent inspector of livestock appointed by the commissioner whose compensation shall be fixed and duties prescribed by the ~~livestock-animal health~~ commissioner. The ~~livestock-animal health~~ commissioner shall prescribe that portion of the compensation which shall be paid by the owner or owners of the stockyards. It shall be the duty of such inspector to work in conjunction with the United States government authorities to prohibit and prevent any stock affected with any contagious or infectious disease to be driven or shipped out of any such stockyards except to some licensed rendering establishment.

Sec. 43. K.S.A. 47-620 is hereby amended to read as follows: 47-620. Whenever the state ~~livestock-animal health~~ commissioner has good reason to believe that any contagious or infectious disease has become epidemic in certain localities in other states, territories or countries, or that there are conditions which render domestic animals from such infected districts liable to convey such disease, the ~~livestock-animal health~~ commissioner shall publish an order prohibiting the entrance of any livestock of the kind diseased into the state from such infected district.

Sec. 44. K.S.A. 47-622 is hereby amended to read as follows: 47-622. It shall be the duty of the owner or person in charge of any domestic animal or animals who discovers, or has reason to believe that any domestic animal owned by such person or in such person's charge or keeping is affected with any contagious or infectious disease, to immediately report such fact or belief to the ~~livestock-animal health~~ commissioner. It shall be the duty of any person who discovers the existence of any such contagious or infectious disease among the domestic animals of any person to *immediately* report this information ~~at once~~ to the ~~livestock-animal health~~ commissioner.

Sec. 45. K.S.A. 2011 Supp. 47-624 is hereby amended to read as

follows: 47-624. (a) In addition to any other penalty provided by law, any person who has in such person's possession any domestic animal affected with any contagious or infectious disease, knowing such animal to be so affected, ~~who may incur a civil penalty imposed under subsection (b) if such person:~~

- (1) ~~Permits such animal to run at large; or who~~
- (2) ~~keeps such animal where other domestic animals, not affected with or previously exposed to such disease, may be exposed to such contagious or infectious disease; or who~~
- (3) ~~sells, ships, drives, trades or gives away such diseased and infected animal or animals which have been exposed to such infection or contagion, except by sale, trade or gift to a regularly licensed disposal plant; or who~~
- (4) ~~moves or drives any domestic animal in violation of the rules and regulations, directions or orders establishing and regulating quarantine may incur a civil penalty imposed under subsection (b) in the amount of not less than \$250 nor more than \$1,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.~~

(b) Any owner of any domestic animal which has been affected with or exposed to any contagious or infectious disease may dispose of the same after such owner obtains from the ~~livestock animal health~~ commissioner a bill of health for such animal.

~~(b)~~(c) Any duly authorized agent of the commissioner, upon a finding that any person, or agent or employee thereof, has violated any of the provisions ~~stated above of subsection (a)~~, may impose a civil penalty upon such person as provided in this section. *Such penalty shall be an amount not less than \$250 nor more than \$1,000 for each such violation and in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.*

~~(c)~~(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the commissioner to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the commissioner. Any such person, within 20 days after notification, may make written request to the commissioner for a hearing in accordance with the provisions of the Kansas administrative procedure act. The commissioner shall affirm, reverse or modify the order and shall specify the reasons therefor.

~~(d)~~(e) Any person aggrieved by an order of the commissioner made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

~~(e)~~(f) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of

each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 46. K.S.A. 47-626 is hereby amended to read as follows: 47-626. The state ~~livestock~~*livestock-animal health* commissioner may employ such persons and purchase such supplies, appliances and materials as may be necessary to carry into full effect all the orders given by the ~~livestock~~*livestock-animal health* commissioner as provided by law. No labor shall be employed and no material or supplies purchased by the ~~livestock~~*livestock-animal health* commissioner except such additional labor, material and supplies as may be necessary to carry into effect the quarantine and other regulations prescribed by the commissioner. The director of accounts and reports shall draw warrants upon the treasurer of state for the necessary amount upon vouchers properly verified by the person performing such labor or furnishing such material and approved by the ~~livestock~~*livestock-animal health* commissioner.

Sec. 47. K.S.A. 47-627 is hereby amended to read as follows: 47-627. If the ~~livestock~~*livestock-animal health* commissioner finds the disease known as the itch or mange existing among domestic animals, the ~~livestock~~*livestock-animal health* commissioner shall order all animals so affected to be properly treated as the commissioner deems necessary.

Sec. 48. K.S.A. 47-629 is hereby amended to read as follows: 47-629. It shall be unlawful for any person to inject any virulent hog cholera virus into any hog; in the state of Kansas; unless such person first obtains a permit from the ~~livestock~~*livestock-animal health* commissioner authorizing such injection. A permit to inject virulent hog cholera virus may be issued by the ~~livestock~~*livestock-animal health* commissioner upon application to the ~~livestock~~*livestock-animal health* commissioner upon a form provided by the ~~livestock~~*livestock-animal health* commissioner. Such permit shall be issued only to persons who are sufficiently informed as to qualify to safely handle and use such virus, ~~and~~ Such permit shall state ~~such~~*the* conditions, limitations and regulations as the ~~livestock~~*livestock-animal health* commissioner deems necessary for the protection of the health of the domestic animals of this state from infectious or contagious diseases. Such permit shall be issued for a definite period which duration shall be fixed by the ~~livestock~~*livestock-animal health* commissioner as the ~~livestock~~*livestock-animal health* commissioner deems necessary to prevent the spread of infectious or contagious diseases. The permit holder shall comply with the requirements of such permit.

Sec. 49. K.S.A. 47-629a is hereby amended to read as follows: 47-629a. It shall be unlawful for any person to sell or offer for sale virulent hog cholera virus to another unless the vendor is: (1) A manufacturer thereof; or (2) a distributor of veterinarian supplies, authorized by the ~~livestock~~*livestock-animal health* commissioner to handle and sell such virus; or (3) a veterinarian licensed under the Kansas veterinary practice act.

Sec. 50. K.S.A. 47-629b is hereby amended to read as follows: 47-

629b. It shall be unlawful for any person to sell; or offer for sale; any virulent hog cholera virus to another unless the purchaser is: (1) A holder of a permit from the ~~livestock-animal health~~ commissioner, currently in effect, authorizing such person to inject virulent hog cholera virus; or (2) a distributor of veterinarian supplies authorized by the ~~livestock-animal health~~ commissioner to handle and sell such virus.

Sec. 51. K.S.A. 47-629c is hereby amended to read as follows: 47-629c. Any person who violates any provision of this act, or any provision of a permit to inject virulent hog cholera virus issued by the ~~livestock-animal health~~ commissioner, and any person who fails to comply with any provision of this act or any provision of such a permit, shall be guilty of a misdemeanor and upon conviction shall be fined ~~in a sum of~~ not less than \$25 or more than \$500 or shall be imprisoned in the county jail for not more than six months, or both.

Sec. 52. K.S.A. 47-631 is hereby amended to read as follows: 47-631. (a) The ~~livestock-animal health~~ commissioner, whenever the ~~livestock-animal health~~ commissioner deems it necessary, shall formulate and announce the rules under which the tuberculin test for tuberculosis in domestic animals shall be applied ~~and~~. For all proceedings ~~subsequent to~~ *pursuant to* such application:

(1) No tuberculin shall be used other than that furnished by the United States government;

(2) no person other than one indicated for that purpose by the ~~livestock-animal health~~ commissioner shall inject any tuberculin into any animal in this state; *and*

(3) all charts giving the temperature and conditions existing at the time the animal was tested, accompanied by a history and description of the animal, shall be submitted, immediately after the test is made, to the state ~~livestock-animal health~~ commissioner, ~~who shall thereupon~~. *The animal health commissioner shall then render an opinion—a decision* thereon, which ~~decision~~ shall be final and shall be recorded in the office of the ~~livestock-animal health~~ commissioner.

(b) The state ~~livestock-animal health~~ commissioner shall ~~at once~~ *immediately* apply the quarantine and other regulations issued under the provisions of this act to animals found infected with tuberculosis.

Sec. 53. K.S.A. 47-632 is hereby amended to read as follows: 47-632. Whenever the ~~livestock-animal health~~ commissioner ~~shall have decided~~ *determines* that any domestic animal is affected with tuberculosis ~~he or she shall at once~~, *the commissioner shall immediately* condemn ~~said~~ *such* animal and quarantine the herd ~~wherein~~ *in which* it is found. Whereupon, the owner shall sell such diseased animal for immediate slaughter under state or federal inspection, subject to a post-mortem examination under the direction of the ~~livestock-animal health~~ commissioner. ~~Said~~ *Such* owner shall be indemnified by the state ~~livestock-animal health~~ commis-

sioner, from funds appropriated therefor, in an amount equal to ~~one hundred dollars (\$100)~~ \$100 for each condemned grade bovine animal and ~~two hundred dollars (\$200)~~ \$200 for each registered bovine animal.

Sec. 54. K.S.A. 47-632a is hereby amended to read as follows: 47-632a. The ~~livestock animal health~~ commissioner shall not be required to examine the records in the county where condemned animals are situated to determine names and rights of lien claimants or mortgagees.

Sec. 55. K.S.A. 47-633a is hereby amended to read as follows: 47-633a. The ~~livestock animal health~~ commissioner may order the condemnation of an entire herd of domestic animals when tuberculosis of any animal within such herd has been diagnosed. In such event, the ~~livestock animal health~~ commissioner shall indemnify the owner of such herd in an amount not to exceed ~~fifty percent (50%)~~ 50% of the difference between the salvage value and the appraised value of the animals in the condemned herd. Such payment by the commissioner shall be from funds appropriated therefor, but in no event shall such payment exceed the sum of ~~four hundred dollars (\$400)~~ \$400 per head for registered bovine animals, the sum of ~~two hundred dollars (\$200)~~ \$200 per head for grade bovine animals. Such compensation shall not be paid, and the premises from which the herd was taken shall not be restocked, until such premises have been cleaned and disinfected and, ~~subsequent thereto~~, have been inspected and approved by the ~~livestock animal health~~ commissioner, or ~~his or her~~ the commissioner's authorized representative. Appraisals of animals condemned shall be made by the ~~livestock animal health~~ commissioner, or ~~his or her~~ the commissioner's authorized representative, and by the owner. If ~~said~~ such appraisers cannot agree, a disinterested third party, who has knowledge of livestock values in such locality, shall be selected as an arbitrator by the commissioner and the owner, at the expense of the owner. The determination of values by ~~said~~ such arbitrator shall be final.

Sec. 56. K.S.A. 47-634 is hereby amended to read as follows: 47-634. The disinfection of the premises where a diseased animal or animals coming within the provisions of this act have been kept shall be under the supervision of the ~~livestock animal health~~ commissioner, or the designee of the ~~livestock animal health~~ commissioner. The ~~livestock animal health~~ commissioner, ~~in addition~~, shall designate the materials to be used and the method of their application. The cost of such material together with the necessary labor of disinfecting shall be paid by the owner of such animals. Except for disinfection, the premises shall be kept in quarantine until such time as the ~~livestock animal health~~ commissioner may determine.

Sec. 57. K.S.A. 47-635 is hereby amended to read as follows: 47-635. The provisions of this act shall ~~be construed to~~ include all contagious or infectious diseases among all kinds of domestic animals, including, but

not limited to, horses, mules, asses, cattle, sheep, goats, llamas, swine, dogs, cats, poultry, birds, nonhuman primates, ferrets, domesticated deer, as defined in K.S.A. 47-1001, and amendments thereto, all creatures of the ratite family, including, but not limited to, ostriches, emus and rheas and exotic animals as defined by rules and regulations in 9 C.F.R. § 1.1, pursuant to 7 U.S.C. § 2131 *et seq.* The state ~~livestock~~-*animal health* commissioner is given the same power over any domestic animal afflicted with rabies as is conferred upon the ~~livestock~~-*animal health* commissioner in relation to other diseases of domestic animals.

Sec. 58. K.S.A. 47-646a is hereby amended to read as follows: 47-646a. It shall be lawful for any authorized representative of the ~~livestock~~-*animal health* commissioner, any sheriff, any city marshal or any law enforcement officer at any time to kill any dog which may be found unconfined in violation of any rabies quarantine or other quarantine order issued by the state ~~livestock~~-*animal health* commissioner or issued by the secretary of health and environment.

Sec. 59. K.S.A. 47-650 is hereby amended to read as follows: 47-650. Upon the presentation to the state ~~livestock~~-*animal health* commissioner of a petition signed by 50 farmers who are resident taxpayers of any county in this state asking that they be permitted to establish a county hog cholera-control organization in their county, such commissioner shall notify in writing the president of Kansas state university; and the inspector in charge of the office of the United States department of agriculture, animal plant health inspection service, veterinary services, that a meeting will be held at the county seat of the county at a certain date and hour to perfect the organization prayed for in the petition. All persons attending such meeting shall proceed to perfect the establishment of the \_\_\_\_\_ county hog cholera-control organization by choosing a president, vice-president, secretary and treasurer and one farmer from each township in the county, who ~~shall~~, in connection with such officers, *shall* constitute the executive board of the \_\_\_\_\_ county hog cholera-control organization.

Sec. 60. K.S.A. 47-651 is hereby amended to read as follows: 47-651. Upon the completion of the establishment of such organization, the state ~~livestock~~-*animal health* commissioner ~~shall~~, upon the recommendation of the executive board, *shall* appoint a competent person as deputy state ~~livestock~~-*animal health* commissioner for the county. Such county deputy ~~livestock~~-*animal health* commissioner shall perform all services and discharge all duties in the county hog cholera- control work in exact conformity with the rules and regulations promulgated by the ~~livestock~~-*animal health* commissioner.

Sec. 61. K.S.A. 47-653 is hereby amended to read as follows: 47-653. The county deputy ~~livestock~~-*animal health* commissioner shall receive a reasonable compensation, to be determined by the state ~~livestock~~-*animal health* commissioner, in an amount not to exceed \$100 per month and

necessary travel expenses while absent from home in the discharge of the duties of such position.

Sec. 62. K.S.A. 47-653a is hereby amended to read as follows: 47-653a. It shall be unlawful for any person to sell or to use hog cholera vaccines in the state of Kansas unless the hog cholera vaccine is first approved by the state ~~livestock~~ *animal health* commissioner.

Sec. 63. K.S.A. 47-653b is hereby amended to read as follows: 47-653b. The state ~~livestock~~ *animal health* commissioner is hereby authorized and empowered to adopt rules and regulations designating which hog cholera vaccines may be sold or used in this state.

Sec. 64. K.S.A. 47-653d is hereby amended to read as follows: 47-653d. In order to prevent the spread of hog cholera, and to reduce the danger of the spread thereof, the ~~livestock~~ *animal health* commissioner, or the authorized representative of the ~~livestock~~ *animal health* commissioner, may destroy or require the destruction of any swine which the ~~livestock~~ *animal health* commissioner has determined to be affected with or exposed to hog cholera. Prior to such destruction there shall be an appraisal of the value of any swine, which shall be made jointly by the owner of such swine and the ~~livestock~~ *animal health* commissioner, or the authorized representative of the ~~livestock~~ *animal health* commissioner. If the appraisers cannot agree, a disinterested third party who has knowledge of livestock values in such locality shall be selected by the commissioner and the owner, at the expense of the owner, as an arbitrator. The arbitrator's determination of the value of such swine shall be final.

Sec. 65. K.S.A. 47-653e is hereby amended to read as follows: 47-653e. The owner or custodian of such swine, immediately after the determination of its appraised value, shall cause such swine to be disposed of in the manner directed by the ~~livestock~~ *animal health* commissioner or the authorized representative of the ~~livestock~~ *animal health* commissioner. Any owner or custodian of swine who fails to dispose of swine as directed by the ~~livestock~~ *animal health* commissioner, upon conviction, shall be guilty of a misdemeanor and shall be punished in the manner provided in K.S.A. 47-607c, and amendments thereto.

Sec. 66. K.S.A. 47-653f is hereby amended to read as follows: 47-653f. On presentation to the ~~livestock~~ *animal health* commissioner of acceptable evidence that disposition of such swine has been made in the prescribed manner, the owner of such swine shall be entitled to indemnity, to be paid by the state, in an amount equal to the amount of indemnity paid by the federal government for such destruction of swine. Such indemnification by the state shall not exceed \$40 per head for grade swine and shall not exceed \$60 per head for purebred swine. Indemnities shall not be paid on swine which have been brought or moved into Kansas in violation of the import regulations of this state; and indemnity shall not

be paid on any swine which have been allowed to mingle with swine so brought or moved into Kansas.

Indemnification payments shall be made from legislative appropriations for such purpose to the ~~livestock~~ *animal health* commissioner. The director of accounts and reports is hereby authorized and directed to draw warrants upon the state treasurer for the amounts and for the purposes provided herein upon duly executed vouchers approved by the ~~livestock~~ *animal health* commissioner.

Sec. 67. K.S.A. 47-653g is hereby amended to read as follows: 47-653g. The ~~livestock~~ *animal health* commissioner is hereby authorized to cooperate with any department, agency or officer of the federal government in the control and eradication of hog cholera, including the sharing in the payment of indemnities for swine destroyed pursuant to this act.

Sec. 68. K.S.A. 47-653h is hereby amended to read as follows: 47-653h. Any motor vehicle used in the hauling or transporting of swine from the premises where diseased or exposed swine have been under hog cholera quarantine to a destination where such swine are to be slaughtered, including a licensed disposal plant, shall be thoroughly cleaned and disinfected after unloading such swine. Such cleaning and disinfection shall be made under the supervision of the ~~livestock~~ *animal health* commissioner, or the authorized representative of the ~~livestock~~ *animal health* commissioner, ~~and~~ with a disinfectant which has been approved by the ~~livestock~~ *animal health* commissioner.

Sec. 69. K.S.A. 47-654 is hereby amended to read as follows: 47-654. It shall be unlawful for any person to ship into Kansas or offer for sale in Kansas any food for livestock contained in sacks which have not been first thoroughly disinfected or fumigated in accordance with the requirements of the ~~livestock~~ *animal health* commissioner. It shall be unlawful for any person to offer for sale in Kansas any food for livestock manufactured within the state that is contained in sacks which have not been first thoroughly disinfected or fumigated in accordance with the requirements of the ~~livestock~~ *animal health* commissioner.

Sec. 70. K.S.A. 47-655 is hereby amended to read as follows: 47-655. It shall be unlawful for any person to sell or offer for sale any old or secondhand sacks until ~~the same~~ *such sacks* have been thoroughly disinfected or fumigated as required by the ~~livestock~~ *animal health* commissioner.

Sec. 71. K.S.A. 47-657 is hereby amended to read as follows: 47-657. (a) The state ~~livestock~~ *animal health* commissioner, whenever the commissioner deems it necessary, shall formulate and announce the rules under which approved test for brucellosis in cattle shall be applied and for all proceedings subsequent to such application:

- (1) No person or laboratory other than those indicated for that pur-

pose by the ~~livestock~~ *animal health* commissioner shall test cattle for brucellosis;

(2) all charts showing result of test and conditions existing at the time of test, together with a history and description of cattle, shall be submitted to the ~~livestock~~ *animal health* commissioner immediately upon completion of test and the ~~livestock~~ *animal health* commissioner shall render an opinion thereon, ~~which~~. Such decision shall be final, and shall be recorded in the office of the ~~livestock~~ *animal health* commissioner.

(b) The ~~livestock~~ *animal health* commissioner may at once apply the quarantine and other regulations issued under the provisions of law to animals found infected with brucellosis.

Sec. 72. K.S.A. 47-658a is hereby amended to read as follows: 47-658a. Whenever the state ~~livestock commissioner shall have decided~~ *animal health commissioner determines* that any domestic animal is affected with brucellosis, ~~he or his authorized representatives~~ *the animal health commissioner or the authorized representative of the animal health commissioner*, may proceed at once to identify such reactor animal by causing ~~said~~ *such* reactor animal to be branded with the letter "B" on the left jaw by hot iron. ~~Provided~~. The ~~livestock~~ *animal health* commissioner may approve the use of other methods for the identification of brucellosis reactors.

Sec. 73. K.S.A. 47-658b is hereby amended to read as follows: 47-658b. Any animal determined to be a reactor animal to brucellosis shall be sold for slaughter within ~~fifteen (15)~~ 15 days after being properly identified. Such animal being shipped to be sold for slaughter shall be accompanied by an official shipping permit issued by the ~~livestock~~ *animal health* commissioner or ~~his~~ *the* authorized representative of *the animal health commissioner*. Under unusual circumstances, the ~~livestock~~ *animal health* commissioner may extend the period for sale for slaughter up to a maximum of an additional ~~thirty (30)~~ 30 days following the proper identification of such reactor.

Sec. 74. K.S.A. 47-660 is hereby amended to read as follows: 47-660. The secretary of agriculture of the United States, authorized officers of the bureau of animal industry of such department, the state ~~livestock~~ *animal health* commissioner of Kansas and the authorized deputies of such officials shall have free access to enter upon the premises of any and all persons who own or are in possession of domestic animals and free access to inspect and examine all such domestic animals *which are*:

- (a) ~~Which are~~ Affected with any infectious or contagious disease; ~~or~~
- (b) ~~which are~~ suspected or reported to be affected with any infectious or contagious disease; ~~or~~
- (c) ~~which are~~ located within any area which has been designated as a tuberculosis modified accredited area or brucellosis modified accredited area by the secretary of agriculture of the United States, or by an officer

or authority under the United States department of agriculture, animal plant health inspection service, veterinary services or by the state ~~livestock animal health~~ commissioner; ~~or~~

(d) ~~which are~~ within a herd that has been designated as accredited tuberculosis free or accredited brucellosis free; or

(e) ~~which are~~ located upon the premises of an owner who has a herd of domestic animals which has been accredited as tuberculosis free or brucellosis free.

Sec. 75. K.S.A. 47-666 is hereby amended to read as follows: 47-666. Whenever the ~~livestock animal health~~ commissioner has decided that any swine is affected with vesicular exanthema and that it is necessary to order the animals killed in order to prevent the spread of such disease in Kansas, the ~~livestock animal health~~ commissioner shall proceed with the appraisal, condemnation and killing of ~~the same such swine~~ as authorized under K.S.A. 47-614 and 47-615, and amendments ~~to such sections thereto~~. The owner of such diseased animals which have been so killed and disposed of shall be entitled to receive from the state of Kansas  $\frac{1}{3}$  of the difference between the appraised value of the animals and the salvage proceeds, if any, received by the owner from the destruction and disposal of such animals.

The ~~livestock animal health~~ commissioner shall draw a voucher upon the director of accounts and reports of the state of Kansas in favor of the owner of such diseased animals for the amount of indemnity for which such owner is entitled, and the director of accounts and reports is hereby authorized and directed to accept such vouchers so drawn by the state ~~livestock animal health~~ commissioner, such amounts to be paid for out of the funds appropriated for such purposes.

Sec. 76. K.S.A. 47-667 is hereby amended to read as follows: 47-667. As used in this act, unless the context otherwise requires: (a) "Commissioner" means the ~~livestock animal health~~ commissioner appointed by the ~~Kansas animal health board pursuant to K.S.A. 75-1901~~ *secretary of agriculture pursuant to K.S.A. 74-5,119, and amendments thereto*.

(b) "SPF" swine means specific pathogen free swine, which conform to the regulations and health standards prescribed by the commissioner.

(c) "Person" means any individual, partnership, firm, association or corporation.

Sec. 77. K.S.A. 2011 Supp. 47-672 is hereby amended to read as follows: 47-672. (a) The ~~livestock animal health~~ commissioner of the Kansas ~~animal health department~~ *department of agriculture division of animal health* is hereby authorized to supervise the operation of cattle and other animal dipping equipment which is used in the control and eradication of scabies in cattle and other animals and which is made available by the federal government for use by livestock producers and others under the supervision of the ~~livestock animal health~~ commissioner. The ~~livestock~~

*animal health* commissioner is hereby authorized to fix, charge and collect a fee from the owner of such cattle and other animals which are dipped as provided in this section, in an amount of not more than \$5 per head, to recover all or part of the costs of operating and maintaining such cattle and other animal dipping equipment.

(b) All moneys received by the ~~livestock~~ *animal health* commissioner for fees under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund, which is hereby created. All expenditures from the animal disease control fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~livestock~~ *animal health* commissioner or by a person or persons designated by the ~~livestock~~ *animal health* commissioner.

Sec. 78. K.S.A. 47-673 is hereby amended to read as follows: 47-673.

(a) The ~~livestock~~ *animal health* commissioner is hereby authorized to take control of any pseudorabies infected herd of swine from the owner. A pseudorabies infected herd of swine is a herd that has been determined to be infected with pseudorabies virus by official pseudorabies testing procedures conducted at approved veterinary diagnostic laboratories from adequate samples collected from the herd by an accredited veterinarian.

(b) For any such herd, the ~~livestock~~ *animal health* commissioner shall develop and monitor a mandatory infected herd plan to eradicate the virus from the owner's premises. If, in the opinion of the ~~livestock~~ *animal health* commissioner, sufficient progress toward pseudorabies free status, as defined in the state-federal-industry pseudorabies eradication program as in effect on the effective date of this act, is not being made, the ~~livestock~~ *animal health* commissioner shall order the depopulation of such herd.

(c) Whenever any swine are depopulated under provisions of this act by order of the ~~livestock~~ *animal health* commissioner, the owner of such swine shall be paid for such swine in an amount determined by the ~~livestock~~ *animal health* commissioner from funds appropriated for such purpose by the legislature.

(d) The ~~livestock~~ *animal health* commissioner may adopt rules and regulations as necessary to carry out the purposes of this act.

Sec. 79. K.S.A. 2011 Supp. 47-674 is hereby amended to read as follows: 47-674. (a) The ~~livestock~~ *animal health* commissioner is authorized to cooperate with the United States department of agriculture, other state governmental officials, tribal officials and representatives of private industry, and subject to the provisions of subsection (d), to promulgate rules and regulations, to define premises where animals are located and

to develop and implement a voluntary premises registration and animal identification and tracking system for Kansas.

(b) In the development of such system, the ~~livestock animal health~~ commissioner shall ensure that:

(1) The requirements are consistent with the federal program and with the United States animal identification plan;

(2) the costs and paperwork requirements are minimized for the registrant and the state; and

(3) the program is not duplicative of or in conflict with proposed federal requirements.

(c) The ~~livestock animal health~~ commissioner is authorized to prepare for the implementation of a premises registration program for Kansas prior to implementation of a national animal identification or premises registration system. Such acts in preparation shall include, but not be limited to, public hearings, educational meetings, development of proposed rules and regulations and cooperative development with the department of agriculture of a proposal regarding infrastructure necessary for such implementation.

(d) If the United States department of agriculture issues proposed or final uniform methods and rules or regulations for the implementation of a voluntary national animal identification and tracking system or premises registration system, or the congress of the United States enacts requirements for a voluntary national animal identification and tracking system or premises registration system, the ~~livestock animal health~~ commissioner is authorized to promulgate such rules and regulations as may be reasonably necessary to implement voluntary premises registration and the national animal identification and tracking system to the extent authorized by federal requirements.

(e) Subject to appropriations therefor, the ~~livestock animal health~~ commissioner is authorized to hire, in accordance with the civil service act, not more than two employees for the purpose of carrying out the provisions of this section.

(f) The ~~livestock animal health~~ commissioner is authorized to enter into agreements with federal agencies or officials, other state agencies or officials, tribal officials or the owner of animals or such owner's authorized agent to coordinate efforts and share records and data systems pursuant to law to maximize the efficiency and effectiveness of this section.

(g) Any data or records provided or obtained pursuant to this section to an official of the *Kansas department of agriculture division of animal health department* shall be considered confidential by the *Kansas department of agriculture division of animal health department* and shall not be disclosed to the public. The provisions of subsection (b) of K.S.A. 45-229, and amendments thereto, shall not apply to the provisions of this subsection.

(h) Any federal financial aid or assistance, grants, gifts, bequests,

money or aid of any kind for premises registration or animal identification and tracking in Kansas, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the premises registration and animal identification fund, which fund is hereby created. All expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the ~~livestock~~ *animal health* commissioner or by a person designated by the ~~livestock~~ *animal health* commissioner and shall be used solely for the administration of the voluntary premises registration or animal identification and tracking system.

(i) The ~~livestock~~ *animal health* commissioner shall form study groups representing the various animal species to be affected by the provisions of this section. Each such study group shall include representatives for each such specie selected by the ~~livestock~~ *animal health* commissioner and shall include assistance from the secretary of agriculture or the secretary's designees. Each such study group shall make recommendations to the ~~livestock~~ *animal health* commissioner regarding the development of premises registration, animal identification and tracking for purposes of such systems, appropriations and fees necessary in administration of the program, enforcement provisions necessary in administration of the program and other issues related to the administration of the program.

~~(j) The livestock commissioner shall prepare a report and present such report to the legislature by February 1, 2006, on the status of the state and federal voluntary premises registration and animal identification and tracking systems. Such report shall include the recommendations of the livestock commissioner, appropriations and fees necessary in administration of the system, enforcement provisions necessary in administration of the system and any other recommendation deemed necessary by the livestock commissioner to carry out the provisions of this section.~~

Sec. 80. K.S.A. 2011 Supp. 47-816 is hereby amended to read as follows: 47-816. As used in the Kansas veterinary practice act:

(a) "Animal" means any mammalian animal other than human and any fowl, bird, amphibian, fish or reptile, wild or domestic, living or dead.

(b) "Board" means the state board of veterinary examiners.

(c) "Companion animal" means any dog, cat or other domesticated animal possessed by a person for purposes of companionship, security, hunting, herding or providing assistance in relation to a physical disability but shall exclude any animal raised on a farm or ranch and used or intended for use as food.

(d) "Clock hour of continuing education" means 60 minutes of participation in a continuing education program or activity which meets the

minimum standards for continuing education according to rules and regulations adopted by the board.

(e) “Direct supervision” means the supervising licensed veterinarian:

(1) Is on the veterinary premises or in the same general area in a field setting;

(2) is quickly and easily available;

(3) examines the animal prior to delegating any veterinary practice activity to the supervisee and performs any additional examination of the animal required by good veterinary practice; and

(4) delegates only those veterinary practice activities which are consistent with rules and regulations of the board regarding employee supervision.

(f) “Licensed veterinarian” means a veterinarian who is validly and currently licensed to practice veterinary medicine in this state.

(g) “Indirect supervision” means that the supervising licensed veterinarian:

(1) Is not on the veterinary premises or in the same general area in a field setting, but has examined the animal and provided either written or documented oral instructions or a written protocol for treatment of the animal patient, except that in an emergency, the supervising licensed veterinarian may provide oral instructions prior to examining the animal and subsequently examine the animal and document the instruction in writing;

(2) delegates only those veterinary practice tasks which are consistent with the rules and regulations of the board regarding employee supervision; and

(3) the animal being treated is not anesthetized as defined in rules and regulations.

(h) “Practice of veterinary medicine” means any of the following:

(1) To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury or other physical or mental condition; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthesia or other therapeutic or diagnostic substance or technique on any animal, including, but not limited to, acupuncture, surgical or dental operations, animal psychology, animal chiropractic, theriogenology, surgery, including cosmetic surgery, any manual, mechanical, biological or chemical procedure for testing for pregnancy or for correcting sterility or infertility or to render service or recommendations with regard to any of the above and all other branches of veterinary medicine.

(2) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in paragraph (1).

(3) To use any title, words, abbreviation or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in paragraph (1). Such use shall be

*prima facie* evidence of the intention to represent oneself as engaged in the practice of veterinary medicine.

(4) To collect blood or other samples for the purpose of diagnosing disease or conditions. This shall not apply to unlicensed personnel employed by the United States department of agriculture, ~~the Kansas animal health department~~ or the Kansas department of agriculture who are engaged in such personnel's official duties.

(5) To apply principles of environmental sanitation, food inspection, environmental pollution control, animal nutrition, zoonotic disease control and disaster medicine in the promotion and protection of public health in the performance of any veterinary service or procedure.

(i) "School of veterinary medicine" means any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent, which conforms to the standards required for accreditation by the American veterinary medical association and which is recognized and approved by the board.

(j) "Veterinarian" means a person who has received a doctor of veterinary medicine degree or the equivalent from a school of veterinary medicine.

(k) "Veterinary premises" means any premises or facility where the practice of veterinary medicine occurs, including, but not limited to, a mobile clinic, outpatient clinic, satellite clinic or veterinary hospital or clinic, but shall not include the premises of a veterinary client, research facility, a federal military base, Kansas state university college of veterinary medicine or any premises wherein the practice of veterinary medicine occurs no more than three times per year as a public service outreach of a registered veterinary premises.

(l) "Graduate veterinary technician" means a person who has graduated from an American veterinary medical association accredited school approved by the board.

(m) "Registered veterinary technician" means a person who is a graduate veterinary technician, has passed the examinations required by the board for registration and is registered by the board.

(n) "Veterinary-client-patient relationship" means:

(1) The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal or animals and the need for medical treatment, and the client, owner or other caretaker has agreed to follow the instruction of the veterinarian;

(2) there is sufficient knowledge of the animal or animals by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal or animals. This means that the veterinarian has recently seen or is personally acquainted with the keeping and care of the animal or animals by virtue of an examination of the animal or animals, or by medically appropriate and timely visits to the premises where the animal or animals are kept, or both; and

(3) the practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen of therapy.

(o) “Veterinary prescription drugs” means such prescription items as defined by 21 U.S.C. ~~Sec.~~ § 353, as in effect on July 1, 2001.

(p) “Veterinary corporation” means a professional corporation of licensed veterinarians incorporated under the professional corporation act of Kansas, cited at K.S.A. 17-2706 *et seq.*, and amendments thereto.

(q) “Veterinary partnership” means a partnership pursuant to the Kansas uniform partnership act, cited at K.S.A. 56a-101 *et seq.*, and amendments thereto, formed by licensed veterinarians engaged in the practice of veterinary medicine.

(r) “Person” means any individual, corporation, partnership, association or other entity.

Sec. 81. K.S.A. 47-1001 is hereby amended to read as follows: 47-1001. As used in this act, except where the context clearly indicates a different meaning:

(a) “Commissioner” means the ~~livestock~~ *animal health* commissioner of the state of Kansas.

(b) “Livestock” means and includes cattle, swine, sheep, goats, horses, mules, domesticated deer, all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas, and any other animal as deemed necessary by the commissioner established through rules and regulations.

(c) “Person” means and includes any individual, partnership, corporation or association.

(d) “Producer” means any person engaged in the business of breeding, grazing or feeding livestock.

(e) “Consignor” means any person who ships or delivers to any public livestock market livestock for handling, sale or resale at a public livestock market.

(f) “Public livestock market” means any place, establishment or facility commonly known as a “livestock market,” “livestock auction market,” “sales ring,” “stockyard,” “community sale” as such term is used in article 10 of chapter 47 of the Kansas Statutes Annotated, *and amendments thereto*, which includes any business conducted or operated for compensation or profit as a public market for livestock, consisting of pens, or other enclosures, and their appurtenances, in which livestock are received, held, sold or kept for sale or shipment except that this term shall not apply to any livestock market where federal veterinary inspection is regularly maintained.

(g) “Public livestock market operator” means any person who, in this state, receives on consignment, or solicits from the producer or consignee thereof, or holds in trust or custody for another, any livestock for sale or exchange, on behalf of such producer or consignee at a public livestock

market, or sells, or offer for sale, at a public livestock market, for the account of the producer or consignor thereof, any livestock or directly or indirectly owns, conducts or operates a public livestock market. The term “public livestock market operator” shall not be construed to include any packer or agent of a packer who receives or purchases livestock for prompt slaughter.

(h) “Packer” means any person engaged in the business of buying livestock for purposes of slaughter, or of manufacturing or preparing meats or meat food products for sale or shipment, or of manufacturing or preparing livestock products for sale or shipment, or of marketing meats, meat food products, livestock products, dairy products, poultry or poultry products.

(i) “Board” means any three members of the Kansas animal health board designated by the chairperson of the Kansas animal health board for each particular hearing. The chairperson may be included in such designation.

(j) “Dealer” as used in article 10 of chapter 47 of the Kansas Statutes Annotated, ~~to which this act is amendatory and supplemental and amendments thereto~~, shall have the same meaning as the term “public livestock market operator.”

(k) “Domesticated deer” means any member of the family *cervidae* which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

(l) “Occasional livestock sale” means livestock auctions or sales, that receive on consignment, or solicits from the producer or consignor thereof, or holds in trust or custody for another, any livestock for sale or exchange, on behalf of such producer or consignor at such auction or sale, or sells, or offers for sale, at such auction or sale, for the account of the producer or consignor thereof, any livestock or directly or indirectly owns, conducts or operates such auction or sale and such auctions or sales are held 12 or less times per year.

(m) “Electronic auction” means a live audio-visual broadcast of an actual auction where livestock are offered for sale and shall include auctions conducted by satellite communications and over the internet.

Sec. 82. K.S.A. 47-1001d is hereby amended to read as follows: 47-1001d. (a) ~~The livestock animal health~~ commissioner, through rules and regulations, may exempt occasional livestock sales or issue a license for such occasional livestock sales at a fee of not more than \$100 without a hearing.

(b) All livestock consigned and delivered on the premises of any licensed occasional livestock sale, before being offered for sale, shall be inspected by a licensed veterinarian who shall visually examine each animal consigned to such sale, for the purpose of determining its condition

of health and freedom of clinical signs of infectious or contagious animal diseases that are determined to be reportable by the ~~livestock animal health~~ commissioner. Such veterinarian may issue certificates of inspections, on a form to be approved by the commissioner.

(c) Licensed occasional livestock sales shall not: (1) Collect a fee per head pursuant to K.S.A. 47-1011, and amendments thereto; (2) collect an inspection fee per head pursuant to K.S.A. 47-1008, and amendments thereto; or (3) be required to furnish a bond in the manner required by K.S.A. 47-1002, and amendments thereto.

Sec. 83. K.S.A. 2011 Supp. 47-1001e is hereby amended to read as follows: 47-1001e. (a) Each livestock market operator shall pay annually, on or before June 30, a renewal market license fee in an amount set by the Kansas animal health board and adopted by rules and regulations of the commissioner of not more than \$250 to the commissioner for each public livestock market operated by such operator, which payment shall constitute a renewal until June 30 of the following year. The renewal market license fee established by this section on the day preceding the effective date of this act shall continue in effect until a different renewal market license fee is set as provided under this section.

(b) Any person who owns or operates an electronic auction which is simulcast into the state of Kansas and at which livestock located in the state of Kansas are offered for sale, shall apply to the ~~livestock animal health~~ commissioner for an electronic auction license. A license shall be granted to such person upon a showing that such person meets the bond requirements, as established in K.S.A. 47-1002, and amendments thereto, and has paid an annual fee in an amount set by the Kansas animal health board and adopted by rules and regulations of the commissioner of not more than \$250. Any such license shall expire on June 30 of each year.

Sec. 84. K.S.A. 2011 Supp. 47-1008 is hereby amended to read as follows: 47-1008. (a) Livestock shall not be offered for sale or sold at any licensed public livestock market if such livestock:

- (1) Is infected with a disease that permanently renders the livestock unfit for human consumption;
- (2) has severe neoplasia;
- (3) has severe actinomycosis;
- (4) is unable to rise to its feet by itself; or
- (5) has an obviously fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without that limb collapsing.

(b) If, in the judgment of an accredited veterinarian, the livestock consigned and delivered on the premises of any licensed public livestock market is in any of the conditions described in subsection (a), such veterinarian shall euthanize humanely the livestock or direct the consignor to immediately remove the livestock from the premises of the public

livestock market. All expenses incurred for euthanasia and disposal of the livestock under the provisions of this subsection shall be the responsibility of the consignor. Collection of expenses shall not be the responsibility of the consignee.

(c) All livestock consigned and delivered on the premises of any licensed public livestock market, before being offered for sale, shall be inspected by a veterinarian authorized by the commissioner who shall visually examine or test, or both, each animal consigned to such market, for the purpose of determining its condition of health and freedom of clinical signs of infectious or contagious animal diseases that are determined to be reportable by the ~~livestock~~ *livestock animal health* commissioner. Such regulatory veterinary services shall be contracted for by the ~~livestock~~ *livestock animal health* commissioner who shall select an accredited veterinarian for each public livestock market. The public livestock market operator, for each public livestock market, shall submit to the ~~livestock~~ *livestock animal health* commissioner a list of accredited veterinarians to be considered for the position or positions. Such veterinarian shall be authorized to make all required examinations and tests, and to issue certificates of inspection at the public livestock market where such veterinarian serves. All livestock sold, resold, exchanged or transferred, or offered for sale or exchange at a livestock market shall be treated as may be necessary to prevent the spread of contagious or infectious diseases. A certificate of inspection, on a form to be approved by the commissioner, shall be issued to the purchaser by the inspector. For the visual inspection of livestock offered for sale, there shall be collected by the market operator from the consignor a fee which shall be determined by negotiation between the market operator and the market veterinarian but shall not be less than \$.07 per head, except that no fee for inspection shall be collected unless the inspection actually has been made. If the charges per head collected on all livestock inspected at a livestock market on any sales day do not amount to a minimum per diem of \$40 or any amount greater than \$40 negotiated by the operator, the market operator shall be required to supply sufficient funds to provide such amount. Any amount lesser or greater than the \$40 amount specified, shall be determined by negotiation between the market operator and the market veterinarian. A copy of any agreement or contract shall be on file with the commissioner. Payments for veterinary services rendered under a contract as provided in this section shall be paid from the veterinary inspection fee fund, and for such services rendered prior to the end of a fiscal year, payment may be made within 90 days after the end of the fiscal year.

(d) Livestock market operators shall pay amounts received and amounts due under this section to the ~~livestock~~ *livestock animal health* commissioner. The commissioner shall remit all such amounts received to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state

treasurer shall deposit the entire amount in the state treasury to the credit of the veterinary inspection fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or by a person or persons designated by such commissioner.

(e) The ~~livestock~~ *animal health* commissioner shall promulgate rules and regulations as may be necessary to carry out the purposes of this section, including, but not limited to, rules and regulations designating any disease as a disease that renders livestock or the carcasses thereof permanently unfit for human consumption. The ~~livestock~~ *animal health* commissioner shall promulgate all such rules and regulations in accordance with existing antemortem inspection regulations promulgated by the United States department of agriculture food safety and inspection service, as in effect on July 1, 1997.

(f) All livestock sold by a licensed electronic auction, before being delivered to an out-of-state buyer, shall have a health certificate issued by a licensed, accredited veterinarian. Kansas buyers shall be furnished a health certificate upon request.

Sec. 85. K.S.A. 2011 Supp. 47-1011a is hereby amended to read as follows: 47-1011a. (a) The public livestock market operator shall collect from the consignor of cattle sold at a public livestock market, where brand inspection of such cattle is requested, by the public livestock market operator, as a brand inspection fee, in addition to amounts specified in K.S.A. 47-1011, and amendments thereto, a sum of not more than \$.40 per head on all such cattle. Such amount shall be determined by the ~~livestock~~ *animal health* commissioner. If a public livestock market operator requests brand inspection at a public livestock market pursuant to this section, the public livestock market operator shall contract with the ~~livestock~~ *animal health* commissioner to perform such brand inspection services.

(b) Where cattle consigned to, or sold at, such public livestock market originate in, and have brand inspection clearance from a county option brand inspection area, operating under K.S.A. 47-434 through 47-445, and amendments thereto, such livestock brand inspection fee under this section shall not be required.

(c) The public livestock market operator shall pay all amounts received under this section to the ~~livestock~~ *animal health* commissioner.

(d) The ~~livestock~~ *animal health* commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the livestock market brand inspection fee fund. All expenditures from such fund shall be made in accordance

with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the livestock *animal health* commissioner or by a person or persons designated by the commissioner.

Sec. 86. K.S.A. 2011 Supp. 47-1201 is hereby amended to read as follows: 47-1201. As used in this act, except where the context clearly indicates a different meaning:

(a) “Commissioner” means the ~~livestock~~ *animal health* commissioner of the state of Kansas.

(b) “Person” means any individual, partnership, firm, corporation or association.

(c) “Disposal plant” means a place of business or a location where the carcasses of domestic animals or packing house refuse is purchased, received or unloaded and where such carcasses or refuse are processed for the purpose of obtaining the hide, skin, grease, residue, or any other byproduct from the animal or refuse, in any way whatsoever.

(d) “Substation” means a concentration site equipped with at least one storage building and operated and maintained for the temporary deposit or storage of the carcasses of domestic animals pending final delivery of the carcasses to the disposal plant.

(e) “Place of transfer” means a reloading site, authorized for use in direct transferring of carcasses of domestic animals from vehicles making original pickup or loading to a line vehicle for the transportation of the carcasses to the disposal plant.

(f) “Carcasses of domestic animals” means bodies, or any part or portion thereof, of dead domestic animals not slaughtered for human food.

Sec. 87. K.S.A. 2011 Supp. 47-1218 is hereby amended to read as follows: 47-1218. (a) All moneys received by the ~~livestock~~ *animal health* commissioner under article 12 of chapter 47 of Kansas Statutes Annotated, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund.

(b) On July 1, 1986, the director of accounts and reports shall transfer all moneys in the animal health department fee fund to the animal disease control fund. On July 1, 1986, all liabilities of the animal health department fee fund are hereby imposed upon the animal disease control fund, and the animal health department fee fund is hereby abolished.

Sec. 88. K.S.A. 2011 Supp. 47-1302 is hereby amended to read as follows: 47-1302. (a) Except as provided in subsection (b) ~~or (e)~~, it shall be unlawful for any person, firm, partnership or corporation to feed garbage to animals.

(b) ~~Any person, firm, partnership or corporation who on the effective~~

~~date of this act is registered as a garbage feeding operator may continue to feed garbage to animals through October 31, 2001, if such garbage has been heated to a temperature of 212 degrees Fahrenheit (boiling point) for at least 30 minutes as provided by rules and regulations promulgated by the state livestock commissioner.~~

(e) Nothing in this section shall prohibit an individual from feeding such individual's own animals only the garbage obtained from such individual's own household.

Sec. 89. K.S.A. 2011 Supp. 47-1303 is hereby amended to read as follows: 47-1303. (a) It shall be unlawful for the governing body of any city, or any official or employee of a city, to enter into any contract or agreement for the collection or disposal of garbage unless such contract or agreement requires a disposal of garbage in accordance with rules and regulations of the state ~~livestock~~ *animal health* commissioner, when disposed of by other means.

(b) It shall be unlawful for any person to give, sell or transfer garbage to another person, if such person knows that such other person is commercially feeding the garbage to a cloven hoofed animal.

Sec. 90. K.S.A. 2011 Supp. 47-1304 is hereby amended to read as follows: 47-1304. The state ~~livestock~~ *animal health* commissioner is hereby authorized to promulgate and enforce all rules and regulations deemed necessary to carry out the provisions of K.S.A. 47-1301 through 47-1307, and amendments thereto.

Sec. 91. K.S.A. 47-1501 is hereby amended to read as follows: 47-1501. *As used in this act:*

(a) "Feedlot" means: (1) A livestock feedlot, or feed yard, having more than 1,000 head of livestock at one time during the licensed year; or (2) any other livestock feedlot whose operator elects to come under this act.

(b) "Feed yard feeding" means the feeding of livestock in lots or pens which are not used normally for raising crops and in which no vegetation, intended for livestock feed, is growing.

(c) "Livestock" means cattle, swine, sheep and horses.

(d) "Operator" means the owner, or the person having charge or control, of a feedlot.

(e) "Person" means an individual, a corporation, a group of individuals, joint venturers, a partnership or any other business entity.

(f) "Commissioner" means the state ~~livestock~~ *animal health* commissioner.

(g) "Board" means the Kansas animal health board.

Sec. 92. K.S.A. 2011 Supp. 47-1503 is hereby amended to read as follows: 47-1503. (a) It shall be unlawful for any person to operate a feedlot within the state of Kansas without having first obtained a license

from the ~~livestock~~ *animal health* commissioner authorizing and permitting such operation.

(b) An operator of any feedlot in the state of Kansas, or a person desiring to operate a feedlot in the state of Kansas, shall obtain, from the ~~livestock~~ *animal health* commissioner, a license to operate a feedlot, unless exempted therefrom. The owner or operator of any livestock feedlot, with a capacity of less than 1,000 head of livestock, may apply for and obtain a license for feedlot operations, if such owner or operator chooses and elects to come under the terms and provisions of this act, but the licensing for operations at a capacity of less than 1,000 head shall not be required.

(c) Application for a livestock feedlot license shall be filed with the ~~livestock~~ *animal health* commissioner, on a form prescribed and furnished by the commissioner. Upon the filing of such an application and payment of the required fees, the commissioner shall issue a livestock feedlot license to such applicant, provided the application discloses information assuring the commissioner that the operation of such feedlot will be conducted in accordance with the standards set forth elsewhere in this act, and with rules and regulations adopted by the commissioner.

(d) Feedlot licenses shall be issued for the term of one year, to expire on June 30 following the date of issuance. Feedlot licenses may be continued in force by annual renewal or extension of such license with the payment of an annual license fee, and with continued compliance by the operator with the provisions of this act, ~~and acts amendatory of the provisions thereof and supplemental thereto,~~ and rules and regulations adopted hereunder.

(e) Each cattle feedlot operator, who shall be granted a license, shall pay a fee in an amount set by the Kansas animal health board and adopted by rules and regulations of the commissioner for such license and for annual renewal thereof, in accordance with and subject to the following schedule of maximum fees:

<i>Feedlot capacity</i>	<i>Maximum fee</i>
Under 1,000 head .....	\$75
1,000 to 2,999 head .....	\$350
3,000 to 5,999 head .....	\$650
6,000 to 9,999 head .....	\$750
10,000 to 17,999 head .....	\$1,100
18,000 to 29,999 head .....	\$1,500
30,000 to 49,999 head .....	\$1,650
50,000 to 99,999 head .....	\$1,800
100,000 head and over .....	\$2,000

The fees established by this subsection on the day preceding the effective date of this act shall continue in effect until different fees are set as provided under this subsection.

(f) For the purposes of this subsection, “animal unit” means the number of swine weighing more than 55 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or less multiplied by 0.1; plus the number of sheep or lambs multiplied by 0.1; plus the number of goats multiplied by 0.1. Each swine, sheep and goat feedlot operator, who shall be granted a license, shall pay a fee in an amount set by the Kansas animal health board and adopted by rules and regulations of the commissioner for such license and for annual renewal thereof, in accordance with and subject to the following schedule of maximum fees:

<i>Feedlot capacity</i>	<i>Maximum fee</i>
300 to 999 Animal units .....	\$75
1,000 to 2,999 Animal units .....	\$350
3,000 to 5,999 Animal units .....	\$650
6,000 to 9,999 Animal units .....	\$750
10,000 to 17,999 Animal units .....	\$1,100
18,000 to 29,999 Animal units .....	\$1,500
30,000 to 49,999 Animal units .....	\$1,650
50,000 to 99,999 Animal units .....	\$1,800
100,000 Animal units and over .....	\$2,000

(g) If an original feedlot license expires within six months after date of issuance, only 50% of the applicable license fee shall be required. An application for feedlot license shall not be approved, nor shall a license be issued to any applicant unless the application is accompanied by the applicable license fee under the schedule of fees in this section. Each licensed feedlot operator shall pay an annual license fee in accordance with the schedule of fees in this section and, upon payment of such fee and a showing of compliance with other requirements, shall be entitled to a renewal or extension of such operator’s license for the ensuing license year.

(h) The ~~livestock~~ *animal health* commissioner shall remit all moneys received by or for the commissioner under article 15 of chapter 47 of Kansas Statutes Annotated, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund.

Sec. 93. K.S.A. 47-1506 is hereby amended to read as follows: 47-1506. (a) The *animal health* commissioner shall have the power to: (1) Receive applications for feedlot licenses; (2) issue licenses to qualifying applicants; (3) make and enforce reasonable regulations pertaining to the operation of feedlots, within the framework of the standards set forth in this act, and acts amendatory and supplemental thereto; (4) make rules of procedure for the administration and enforcement of this act; and (5)

determine adequateness of the compliance with the requirements fixed in standards prescribed in this act.

(b) The commissioner shall have the duty to: (1) Prepare, design and have printed application forms which shall be available to feedlot operators and to applicants for such a license. Such forms shall provide for answers and statements by applicants, to disclose whether such applicants can, and are capable of complying with standards of operation set forth in this act, and as set forth in the regulations made by such commissioner under authority of this act; (2) keep, maintain and compile all necessary records; and (3) undertake and carry through research studies, investigations and surveys which are needed and required for the proper administration of this act.

(c) The commissioner shall have the power to call upon the university of Kansas and Kansas state university for aid and assistance in conducting such research studies and surveys.

(d) The commissioner, or authorized agents or employees, are authorized to investigate all complaints concerning the operation of feedlots within the state of Kansas when an operator of such a feedlot is charged with any violations of the provisions of this act. The commissioner shall have the power to enter upon feedlot premises and to investigate the methods of operation of all such feedlots.

(e) The commissioner shall have the power and the duty to suspend or revoke the license of any feedlot operator; after a hearing; and after an administrative determination that such an operator has violated, or has failed to comply with any of the provisions of this act, or any regulation adopted thereunder. The commissioner shall have the power and duty to reinstate any such suspended or revoked licenses, upon a satisfactory and acceptable showing and assurance that such feedlot operator conducted feedlot operations in conformity with, and in compliance with, the provisions of this act and regulations adopted thereunder, and that such conformity and compliance will be continuous. A feedlot license shall not be suspended or revoked by the commissioner, until charges have been submitted, in writing, concerning alleged violations, and until the licensee shall have been given an opportunity to be heard in such licensee's defense in accordance with the provisions of the Kansas administrative procedure act.

Sec. 94. K.S.A. 47-1511 is hereby amended to read as follows: 47-1511. Upon request of the ~~livestock~~ *animal health* commissioner, the secretary of health and environment shall make staff engineers available to assist: (1) An operator of any feedlot in the state of Kansas;; and (2) any person who has applied for a license to operate a feedlot in the state of Kansas, in the development of plans and in the design for the construction of facilities for a feedlot in order to control pollution of streams and lakes. Nothing in this act shall be construed as limiting the authority of

the secretary of health and environment in matters of stream and lake pollution as provided for in K.S.A. 65-161 ~~to through~~ 65-171h, ~~inclusive~~, and amendments thereto.

Sec. 95. K.S.A. 47-1701 is hereby amended to read as follows: 47-1701. As used in the Kansas pet animal act, unless the context otherwise requires:

(a) “Adequate feeding” means supplying, at suitable intervals ~~(not to exceed 24 hours)~~, ~~of~~ a quantity of wholesome foodstuff; suitable for the animal species and age, and sufficient to maintain a reasonable level of nutrition in each animal.

(b) “Adequate watering” means a supply of clean, fresh, potable water, supplied in a sanitary manner and either continuously accessible to each animal or supplied at intervals suitable for the animal species, not to exceed intervals of 12 hours.

(c) “Ambient temperature” means the temperature surrounding the animal.

(d) (1) “Animal” means any live dog, cat, rabbit, rodent, nonhuman primate, bird or other warm-blooded vertebrate or any fish, snake or other cold-blooded vertebrate.

(2) Animal does not include horses, cattle, sheep, goats, swine, ratites, domesticated deer or domestic fowl.

(e) “Animal breeder” means any person who operates animal breeder premises.

(f) “Animal breeder premises” means any premises where all or part of six or more litters of dogs or cats, or both, or 30 or more dogs or cats, or both, are sold, or offered or maintained for sale, primarily at wholesale for resale to another.

(g) “Animal shelter” or “pound” means a facility which is used or designed for use to house, contain, impound or harbor any seized stray, homeless, relinquished or abandoned animal or a person who acts as an animal rescuer, or who collects and cares for unwanted animals or offers them for adoption. Animal shelter or pound also includes a facility of an individual or organization, profit or nonprofit, maintaining 20 or more dogs or cats, or both, for the purpose of collecting, accumulating, amassing or maintaining the animals or offering the animals for adoption.

(h) “Cat” means an animal which is wholly or in part of the species *Felis domesticus*.

(i) “Commissioner” means the ~~livestock~~ *animal health* commissioner appointed by the ~~Kansas animal health board~~ *secretary of agriculture*.

(j) “Dog” means any animal which is wholly or in part of the species *Canis familiaris*, but does not include any greyhound, as defined by K.S.A. 74-8802, and amendments thereto.

(k) “Animal control officer” means any person employed by, contracted with or appointed by the state, or any political subdivision thereof,

for the purpose of aiding in the enforcement of this law, or any other law or ordinance relating to the licensing or permitting of animals, control of animals or seizure and impoundment of animals, and includes any state, county or municipal law enforcement officer, dog warden, constable or other employee, whose duties in whole or in part include assignments which involve the seizure or taking into custody of any animal.

(l) “Euthanasia” means the humane destruction of an animal, which may be accomplished by any of those methods provided for in K.S.A. 47-1718, and amendments thereto.

(m) “Hobby breeder premises” means any premises where all or part of 3, 4 or 5 litters of dogs or cats, or both, are produced for sale or sold, offered or maintained for sale. This provision applies only if the total number of dogs or cats, or both, sold, offered or maintained for sale is less than 30 individual animals.

(n) “Hobby breeder” means any person who operates a hobby breeder premises.

(o) “Housing facility” means any room, building or area used to contain a primary enclosure or enclosures.

(p) “Kennel operator” means any person who operates an establishment where four or more dogs or cats, or both, are maintained in any one week for boarding, training or similar purposes for a fee or compensation.

(q) “Kennel operator premises” means the facility of a kennel operator.

(r) “License year” or “permit year” means the 12-month period ending on June 30.

(s) “Person” means any individual, association, partnership, corporation or other entity.

(t) (1) “Pet shop” means any premises where there are sold, or offered or maintained for sale, at retail and not for resale to another:

(A) Any dogs or cats, or both; or (B) any other animals except those which are produced and raised on such premises and are sold, or offered or maintained for sale, by a person who resides on such premises.

(2) Pet shop does not include: (A) Any pound or animal shelter; (B) any premises where only fish are sold, or offered or maintained for sale; or (C) any animal distributor premises, hobby breeder premises, retail breeder premises or animal breeder premises.

(3) Nothing in this section prohibits inspection of those premises which sell only fish to verify that only fish are being sold.

(u) “Pet shop operator” means any person who operates a pet shop.

(v) “Primary enclosure” means any structure used or designed for use to restrict any animal to a limited amount of space, such as a room, pen, cage, compartment or hutch.

(w) “Research facility” means any place, laboratory or institution, except an elementary school, secondary school, college or university, at

which any scientific test, experiment or investigation involving the use of any living animal is carried out, conducted or attempted.

(x) “Sale,” “sell” and “sold” include transfers by sale or exchange. Maintaining animals for sale is presumed whenever 20 or more dogs or cats, or both, are maintained by any person.

(y) “Sanitize” means to make physically clean and to remove and destroy, to a practical minimum, agents injurious to health, at such intervals as necessary.

(z) “Animal distributor” means any person who operates an animal distributor premises.

(aa) “Animal distributor premises” means the premises of any person engaged in the business of buying for resale dogs or cats, or both, as a principal or agent, or who holds such distributor’s self out to be so engaged.

(bb) “Out-of-state distributor” means any person residing in a state other than Kansas, who is engaged in the business of buying for resale dogs or cats, or both, within the state of Kansas, as a principal or agent.

(cc) “Food animals” means rodents, rabbits, reptiles, fish or amphibians that are sold or offered or maintained for sale for the sole purpose of being consumed as food by other animals.

(dd) (1) “Adequate veterinary medical care” means:

(A) A documented program of disease control and prevention, euthanasia and routine veterinary care shall be established and maintained under the supervision of a licensed veterinarian, on a form provided by the commissioner, and shall include a documented on-site visit to the premises by the veterinarian at least once a year; and

(B) that diseased, ill, injured, lame or blind animals shall be provided with veterinary care as is needed for the health and well-being of the animal.

(2) As used in the Kansas pet animal act, “adequate veterinary medical care” shall not apply to United States department of agriculture licensed animal breeders or animal distributors.

(ee) “Ratites” means all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas.

(ff) “Retail breeder” means any person who operates a retail breeder premises.

(gg) “Retail breeder premises” means any premises where all or part of six or more litters or 30 or more dogs or cats, or both, are sold, or offered or maintained for sale, primarily at retail and not for resale to another.

(hh) “Retail” means any transaction where the animal is sold to the final consumer.

(ii) “Wholesale” means any transaction where the animal is sold for the purpose of resale to another.

Sec. 96. K.S.A. 2011 Supp. 47-1706a is hereby amended to read as follows: 47-1706a. (a) When an animal is seized or impounded pursuant to K.S.A. 47-1706, 47-1707 or 47-1715, and amendments thereto, the owner or person who was in possession of the animal at the time such animal was seized or impounded may post a cash or security bond as provided in this section which shall prevent the sale, placement or euthanasia of the animal. Such cash or security bond shall be in an amount sufficient to pay for the animal's care and keeping for a period of at least 30 days, commencing on the date which the animal was seized or impounded. Any such security bond or any security bond as provided in subsection (b) shall be approved by the Kansas ~~animal health department~~ *department of agriculture division of animal health*.

(b) Such bond shall be filed with the Kansas ~~animal health department~~ *department of agriculture division of animal health* and shall be posted on or before the date of the disposition hearing or within ~~ten~~ 10 days after the animal is seized or impounded, whichever is earlier. At the end of the time for which expenses are covered by the bond if the owner or person who was in possession of the animal at the time it was seized or impounded desires to prevent disposition of the animal, such owner or person shall post a new cash or security bond prior to the previous bond's expiration. At the end of the time for which expenses are covered by the bond, the animal may be sold, placed or euthanized.

(c) The authority seizing or impounding an animal shall give notice by delivering a copy of this section to a person residing on the property where the animal was seized or by posting a copy at the place where the animal was seized.

(d) Nothing in this section shall prevent the euthanasia at any time of an animal seized or impounded which is determined by a licensed veterinarian to be diseased or disabled beyond recovery for any useful purpose.

(e) This act is supplemental to and shall become a part of the Kansas pet animal act.

Sec. 97. K.S.A. 2011 Supp. 47-1709 is hereby amended to read as follows: 47-1709. (a) The commissioner or the commissioner's authorized, trained representatives shall make an inspection of the premises for which an application for an original license or permit is made under K.S.A. 47-1701 *et seq.*, and amendments thereto, before issuance of such license or permit. The application for a license shall conclusively be deemed to be the consent of the applicant to the right of entry and inspection of the premises sought to be licensed or permitted by the commissioner or the commissioner's authorized, trained representatives at reasonable times with the owner or owner's representative present. Refusal of such entry and inspection shall be grounds for denial of the license or permit. Notice need not be given to any person prior to inspection.

(b) The commissioner or the commissioner's authorized, trained representatives may make an inspection of each premises for which a license or permit has been issued under K.S.A. 47-1701 *et seq.*, and amendments thereto. If such premises are premises of a person licensed or permitted under public law 91-579 (7 U.S.C. § 2131 *et seq.*), such premises may be inspected at least once each year. Otherwise, the premises may be inspected at least twice each year. The acceptance of a license or permit shall conclusively be deemed to be the consent of the licensee or permittee to the right of entry and inspection of the licensed or permitted premises by the commissioner or the commissioner's authorized, trained representatives at reasonable times with the owner or owner's representative present. Refusal of such entry and inspection shall be grounds for suspension or revocation of the license or permit. Notice need not be given to any person prior to inspection.

(c) The commissioner or the commissioner's authorized, trained representatives shall make inspections of the premises of a person required to be licensed or permitted under K.S.A. 47-1701 *et seq.*, and amendments thereto, upon a determination by the commissioner that there are reasonable grounds to believe that the person is violating the provisions of K.S.A. 47-1701 *et seq.*, and amendments thereto, or rules and regulations adopted thereunder or that there are grounds for suspension or revocation of such person's license or permit.

(d) Any complaint filed with the commissioner shall be confidential and shall not be released to any person other than employees of the commissioner as necessary to carry out the duties of their employment.

(e) Any person making inspections under this section shall be trained by the commissioner in reasonable standards of animal care.

(f) The commissioner may request a licensed veterinarian to assist in any inspection or investigation made by the commissioner or the commissioner's authorized representative under this section.

(g) Any person acting as the commissioner's authorized representative for purposes of making inspections and conducting investigations under this section who knowingly falsifies the results or findings of any inspection or investigation or who intentionally fails or refuses to make an inspection or conduct an investigation pursuant to this section shall be guilty of a class A nonperson misdemeanor.

(h) No person shall act as the commissioner's authorized representative for the purposes of making inspections and conducting investigations under this section if such person has a beneficial interest in a person required to be licensed or permitted pursuant to K.S.A. 47-1701 *et seq.*, and amendments thereto.

(i) Records of inspections pursuant to this section shall be maintained in the office of the ~~Kansas animal health department~~ *department of agriculture division of animal health*. Records of a deficiency or violation

shall not be maintained for longer than three years after the deficiency or violation is remedied.

(j) The commissioner shall, in consultation with Kansas state university college of veterinary medicine: (1) Continue procedures to provide for pet animal training or updated training for authorized trained representatives who inspect premises under the pet animal act and to allow the owners of such facilities licensed or permitted under the pet animal act to attend and participate at the training workshops for the authorized trained representatives; and (2) make available to such owners and other interested persons an inspection handbook describing the duties and responsibilities of such authorized trained representatives.

Sec. 98. K.S.A. 2011 Supp. 47-1721 is hereby amended to read as follows: 47-1721. (a) Each application for issuance or renewal of a license or permit required under K.S.A. 47-1701 *et seq.*, and amendments thereto, shall be accompanied by the fee prescribed by the commissioner under this section. Such fees shall be as follows:

(1) Except as provided in paragraph (5) or (6), for a license for premises of a person licensed under public law 91-579 (7 U.S.C. § 2131 *et seq.*), an amount not to exceed \$200;

(2) except as provided in paragraph (5) or (6), for a license for any other premises, an amount not to exceed \$405;

(3) for a temporary closing permit, an amount not to exceed \$95;

(4) for an out-of-state distributor permit, an amount not to exceed \$675;

(5) for a hobby breeder license or a kennel operator license an amount not to exceed \$95;

(6) for a license for an animal shelter or a pound, an amount not to exceed \$300; and

(7) a late fee of \$70 shall be assessed to any person whose permit or license renewal is more than 45 days' late.

(b) The commissioner shall determine annually the amount necessary to carry out and enforce K.S.A. 47-1701 *et seq.*, and amendments thereto, for the next ensuing fiscal year and shall fix by rules and regulations the license and permit fees for such year at the amount necessary for that purpose, subject to the limitations of this section. In fixing such fees, the commissioner may establish categories of licenses and permits, based upon the type of license or permit, size of the licensed or permitted business or activity and the premises where such business or activity is conducted, and may establish different fees for each such category. The fees in effect immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the commissioner as provided by this subsection.

(c) If a licensee, permittee or applicant for a license or permit requests an inspection of the premises of such licensee, permittee or ap-

plicant, the commissioner shall assess the costs of such inspection, as established by rules and regulations of the commissioner, to such licensee, permittee or applicant.

(d) No fee or assessment required pursuant to this section shall be refundable.

(e) The commissioner shall remit all moneys received by or for the commissioner under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal dealers fee fund, which is hereby created in the state treasury. Moneys in the animal dealers fee fund may be expended only to administer and enforce K.S.A. 47-1701 *et seq.*, and amendments thereto. All expenditures from the animal dealers fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the Kansas ~~livestock~~ *animal health* commissioner or the commissioner's designee.

(f) Premises required to be licensed under the Kansas pet animal act shall not be required to pay for more than one license. If more than one operation is ongoing at the premises, each operation shall comply with the applicable statutes and rules and regulations pertaining to such operation.

(g) Except as provided further, when a premises required to be licensed or permitted under the Kansas pet animal act applies for an initial license or permit, the commissioner shall prorate to the nearest whole month the license or permit fee established in subsection (a). The commissioner shall have discretion to determine whether the application is an initial application or an application for a premises which has been doing business but is not licensed or permitted. If the commissioner determines the premises has been doing business without a license or permit, the commissioner is not required to prorate the fee.

(h) This section shall be part of and supplemental to K.S.A. 47-1701 *et seq.*, and amendments thereto.

Sec. 99. K.S.A. 47-1725 is hereby amended to read as follows: 47-1725. (a) There is hereby created the Kansas pet animal advisory board, consisting of 10 members. Members shall be appointed by the governor as follows:

- (1) One member shall be a representative of a licensed animal shelter or pound;
- (2) one member shall be an employee of a licensed research facility;
- (3) one member shall be a licensed animal breeder;
- (4) one member shall be a licensed retail breeder;
- (5) one member shall be a licensed pet shop operator;
- (6) one member shall be a licensed veterinarian and shall be selected

from a list of three names presented to the governor by the Kansas veterinary medical association;

- (7) one member shall be a private citizen with no link to the industry;
- (8) one member shall be a licensed animal distributor;
- (9) one member shall be a licensed hobby breeder; and
- (10) one member shall be a licensed kennel operator.

(b) Of the members first appointed to the board, the governor shall designate three whose terms shall expire June 30, 1992; three whose terms shall expire June 30, 1993; and three whose terms shall expire June 30, 1994. After the expiration of such terms, each member shall be appointed for a term of three years and until a successor is appointed and qualified.

(c) A vacancy on the board of a member shall be filled for the unexpired term by appointment by the governor.

(d) The board shall meet at least once every calendar quarter regularly or at such other times as the chairperson or a majority of the board members determine. A majority of the members shall constitute a quorum for conducting board business.

(e) The members of the board shall annually elect a chairperson.

(f) The board shall have the following duties, authorities and powers:

(1) To advise the Kansas ~~livestock~~ *animal health* commissioner on hiring a director to implement the Kansas pet animal act;

(2) to review the status of the Kansas pet animal act;

(3) to make recommendations on changes to the Kansas pet animal act; and

(4) to make recommendations concerning the rules and regulations for the Kansas pet animal act.

(g) Board members who are required to be licensed, except retail breeders, shall be affiliated with or a member of an organized pet animal association which is representative of the position such person will hold on the board.

(h) Upon the effective date of this act, the governor shall appoint a licensed kennel operator. When the current board members' terms expire, the governor shall appoint persons or representatives in accordance with this section.

Sec. 100. K.S.A. 2011 Supp. 47-1731 is hereby amended to read as follows: 47-1731. (a) No dog or cat may be transferred to the permanent custody of a prospective owner by a pound or animal shelter, as defined by K.S.A. 47-1701, and amendments thereto, or by a humane society, unless:

(1) Such dog or cat has been surgically spayed or neutered before the physical transfer of the animal occurs; or

(2) the prospective owner signs an agreement to have the dog or cat spayed or neutered and deposits with the pound or animal shelter funds

not less than the lowest nor more than the highest cost of spaying or neutering in the community. Any funds deposited pursuant to such an agreement shall be refunded to such person upon presentation of a written statement signed by a licensed veterinarian that the dog or cat has been spayed or neutered. If such person does not reclaim the deposit within six months after receiving custody of the animal, the pound or animal shelter shall keep the deposit and may reclaim the unspayed or unneutered animal.

(b) No person shall spay or neuter any dog or cat for or on behalf of a pound or animal shelter unless such person is a licensed veterinarian or a student currently enrolled in the college of veterinary medicine, Kansas state university, who has completed at least two years of study in the veterinary medical curriculum and is participating in a spay or neuter program and as part of the curriculum under the direct supervision of a licensed veterinarian. Students shall only spay or neuter any dog or cat that belongs to the pound or animal shelter, and shall not spay or neuter any dog or cat that belongs to a member or of the public. No pound or animal shelter shall designate the veterinarian which a person must use, or a list from which a person must select a veterinarian, to spay or neuter a dog or cat transferred by such person from such pound or animal shelter. Any premises located in the state of Kansas where the spaying, neutering or any other practice of veterinary medicine occurs shall register such premises with the board of veterinary examiners.

(c) With the written approval of the ~~livestock~~ *animal health* commissioner, any pound or shelter may use an innovative spay or neuter program not precisely meeting the requirements of subsection (a)(2), if the pound or shelter can prove to the commissioner that it is actively enforcing the spaying and neutering requirements set forth in this statute.

(d) Nothing in this section shall be construed to require sterilization of a dog or cat which is being held by a pound or animal shelter and which may be claimed by its rightful owner within the holding period established in K.S.A. 47-1710, and amendments thereto.

(e) The ~~livestock~~ *animal health* commissioner shall promulgate rules and regulations as may be necessary to carry out the provisions of this section.

Sec. 101. K.S.A. 47-1735 is hereby amended to read as follows: 47-1735. (a) A licensee, permittee or applicant for a license or permit shall not interfere with, hinder, threaten or abuse, including verbal abuse, any representative or employee of the animal health department who is carrying out such representative's or employee's duties under the provisions of the Kansas pet animal act.

(b) This section shall be part of and supplemental to the Kansas pet animal act.

Sec. 102. K.S.A. 47-1804 is hereby amended to read as follows: 47-1804. As used in this act, unless the context otherwise requires:

(a) “Commissioner” means the ~~livestock~~ *animal health* commissioner of the state of Kansas.

(b) “Livestock” means cattle, swine, horses, sheep, goats, poultry, all creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus and rheas and domesticated deer.

(c) (1) “Livestock dealer” means any person engaged in the business of buying or selling livestock in commerce, either on that person’s own account or as the employee or agent of the seller or purchaser, or any person engaged in the business of buying or selling livestock in commerce on a commission basis and shall include any person who buys or sells livestock with the use of a video.

(2) “Livestock dealer” does not include any person who buys or sells livestock as part of that person’s own breeding, feeding or dairy operation, nor any person who receives livestock exclusively for immediate slaughter.

(d) (1) “Person” means any individual, partnership, corporation, company, firm or association.

(2) “Person” does not include any public livestock market operator licensed under K.S.A. 47-1001 *et seq.*, and amendments thereto, or any feedlot operator licensed under K.S.A. 47-1501 *et seq.*, and amendments thereto.

(e) “Domesticated deer” means any member of the family *cervidae* which was legally obtained and is being sold or raised in a confined area for: (1) Breeding stock; ~~for~~ (2) any carcass, skin or part of such animal; ~~for~~ (3) exhibition; or ~~for~~ (4) companionship.

Sec. 103. K.S.A. 2011 Supp. 47-1805 is hereby amended to read as follows: 47-1805. (a) Any person operating as a livestock dealer in Kansas shall register with the Kansas ~~animal health department~~ *department of agriculture division of animal health*. Registration shall be made on an application form approved by the ~~livestock~~ *animal health* commissioner. The application shall be accompanied by the livestock dealer registration fee or renewal fee fixed by the commissioner under subsection (b). If an application for registration or renewal of registration is denied by the commissioner or withdrawn by the applicant, the fee shall not be refunded. Unless renewed under this section, each registration shall expire on the June 30 following the date of issuance.

(b) The ~~livestock~~ *animal health* commissioner shall determine annually the amount of funds which will be required for the administration and enforcement of this section and K.S.A. 47-1806, and amendments thereto, and shall fix and adjust from time to time a livestock dealer registration fee and a renewal fee in such reasonable amounts as may be necessary for such purposes, except that in no case shall either the livestock dealer registration fee or the renewal fee exceed \$75.

(c) The ~~livestock~~ *animal health* commissioner shall remit all moneys received by or for the commissioner under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund.

Sec. 104. K.S.A. 47-1808 is hereby amended to read as follows: 47-1808. (a) Except if bonded under the packers and stockyards act, 1921, as amended and supplemented, 7 U.S.C. § 181 *et seq.*, every livestock dealer required to be registered pursuant to K.S.A. 47-1805, and amendments thereto, upon notification by the ~~livestock~~ *animal health* commissioner of the amount of bond required, shall file with the ~~livestock~~ *animal health* commissioner a bond with good corporate surety qualified under the laws of the state of Kansas in a sum computed by dividing the dollar value of livestock sold during the preceding business year, or the substantial part of that business year, in which the livestock dealer did business, by the actual number of days on which livestock was sold. The divisor, the number of days on which livestock was sold, shall not exceed 130. The amount of bond coverage must be the next multiple of \$5,000 above the amount so determined. When the computation exceeds \$75,000, the amount of bond coverage need not exceed \$75,000 plus 10% of the excess over \$75,000, raised to the next \$5,000 multiple. In cases where a business operation is being commenced, an estimated amount of business to be transacted during the next 12 months may be used subject to adjustment later, if indicated. In no event shall the bond be for an amount less than \$10,000.

(b) The bond shall be in favor of the state of Kansas for the benefit of all persons interested, their legal representatives, attorneys or assigns and shall be conditioned on the faithful performance of all the registrant's duties as a livestock dealer. Any person injured by the breach of any obligation of the livestock dealer may commence suit on the bond in any court of competent jurisdiction to recover damages that the person has sustained, but any suit commenced shall either be a class action or shall join as parties plaintiff or parties defendant or other persons who may be affected by such suit on the bond. No bond shall be ~~cancelled~~ *canceled* by the surety on less than 30 days' notice by mail to the ~~livestock~~ *animal health* commissioner and the principal except that no such notice shall be required for cancellation of any bond by reason of nonpayment of the premium thereon. The liability of the surety on the bond may continue for each successive registration period the bond covers. The total liability of the surety shall be limited to the amount stated on the current bond or on an appropriate rider or endorsement to the current bond. It is the intent of this statute that the bonds be nonaccumulative, that stacking of bonds not occur in excess of the face value of the current bond.

(c) Whenever the ~~livestock~~ *animal health* commissioner determines that any bond given by any livestock dealer is inadequate and insufficient security against any loss that might arise under the terms of the bond, the ~~livestock~~ *animal health* commissioner shall require any additional bond that the ~~livestock~~ *animal health* commissioner considers necessary to provide adequate security. If the ~~livestock~~ *animal health* commissioner considers the financial condition of the surety upon any livestock dealer and the livestock dealer's bond to be impaired, the ~~livestock~~ *animal health* commissioner shall require any substituted or additional bond that the ~~livestock~~ *animal health* commissioner considers necessary except this act shall not apply to those who buy livestock for others incidentally to their own farming operation.

(d) In all actions hereafter commenced in which judgment is rendered against any surety company on any surety bond furnished under the provisions of this section, if it appears from the evidence that the surety company has refused without just cause to pay the loss upon demand, the court shall allow the plaintiff a reasonable sum as attorney fees to be recovered and collected as a part of the costs. When a tender is made by the surety company before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of the tender, no such costs shall be allowed.

(e) Any person violating or failing to comply with the provisions of this section shall be deemed guilty of a class A misdemeanor.

(f) This section shall be part of and supplemental to article 18 of chapter 47 of the Kansas Statutes Annotated, *and amendments thereto*.

Sec. 105. K.S.A. 2011 Supp. 47-1809 is hereby amended to read as follows: 47-1809. (a) As used in this section, "feral swine" means any untamed or undomesticated hog, boar or pig; swine whose reversion from the domesticated state to the wild state is apparent; or an otherwise freely roaming swine having no visible tags, markings or characteristics indicating that such swine is from a domestic herd, and reasonable inquiry within the area does not identify an owner.

(b) No person shall import, transport or possess live feral swine in this state.

(c) No person shall intentionally or knowingly release any hog, boar, pig or swine to live in a wild or feral state upon public or private land.

(d) No person shall engage in, sponsor, instigate, assist or profit from the release, killing, wounding or attempted killing or wounding of feral swine for the purpose of sport, pleasure, amusement or production of a trophy.

(e) Violation of subsection (b) or (c) may result in a civil penalty in the amount of not less than \$1,000 nor more than \$5,000 for each such violation. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(f) Violation of subsection (d) may result in a civil penalty of not less than \$250 nor more than \$2,500 for each such violation.

(g) Any duly authorized agent of the ~~livestock~~ *animal health* commissioner, upon a finding that any person, or agent or employee thereof, has violated any of the provisions stated above, may impose a civil penalty upon such person as provided in this section.

(h) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the ~~livestock~~ *animal health* commissioner to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the commissioner. Any such person, within 20 days after notification, may make written request to the commissioner for a hearing in accordance with the provisions of the Kansas administrative procedure act. The commissioner shall affirm, reverse or modify the order and shall specify the reasons therefor.

(i) Any person aggrieved by an order of the commissioner made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(j) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(k) The ~~livestock~~ *animal health* commissioner, or the authorized representative of the ~~livestock~~ *animal health* commissioner, may destroy or require the destruction of any feral swine upon discovery of such swine.

(l) The provisions of this section shall not be construed to prevent owners or legal occupants of land, the employees of such owners or legal occupants or persons designated by such owners or legal occupants from killing any feral swine when found on their premises or when destroying property. Such designees shall have a permit issued by the ~~livestock~~ *animal health* commissioner in their possession at the time of the killing of the feral swine.

(m) The ~~livestock~~ *animal health* commissioner may adopt rules and regulations to carry out the provisions of this section.

Sec. 106. K.S.A. 2011 Supp. 47-1831 is hereby amended to read as follows: 47-1831. (a) The ~~livestock~~ *animal health* commissioner is hereby authorized to:

(1) Register original veterinary certificates of inspection for livestock, as defined in K.S.A. 47-1001, and amendments thereto; and

(2) provide official calfhooed vaccination tags. Such tags shall not exceed \$.25 for each tag.

(b) The commissioner shall determine annually tag fee and shall fix such fee by rules and regulations.

(c) The commissioner shall remit all moneys received by or for the commissioner under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund.

Sec. 107. K.S.A. 47-1832 is hereby amended to read as follows: 47-1832. The ~~livestock~~ *animal health* commissioner is hereby authorized to establish rules and regulations on disease control programs for and on the sale and importation into Kansas of farm animals and exotic animals. As used in this section “farm animals” and “exotic animal” means the definitions given by rules and regulations in 9 C.F.R. § 1.1, pursuant to 7 U.S.C. § 2131 *et seq.*

Sec. 108. K.S.A. 2011 Supp. 47-2101 is hereby amended to read as follows: 47-2101. (a) It shall be unlawful for any person to engage in the business of raising domesticated deer unless such person has obtained from the ~~livestock~~ *animal health* commissioner a domesticated deer permit. Application for such permit shall be made in writing on a form provided by the commissioner. The permit period shall be for the permit year ending on June 30 following the issuance date.

(b) Each application for issuance or renewal of a permit shall be accompanied by a fee of not more than \$150 as established by the commissioner in rules and regulations.

(c) The ~~livestock~~ *animal health* commissioner shall adopt any rules and regulations necessary to enforce this section.

(d) Any person who fails to obtain a permit as prescribed in section (a) shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$150. Continued operation, after a conviction, shall constitute a separate offense for each day of operation.

(e) The commissioner may refuse to issue or renew or may suspend or revoke any permit for any one of the following reasons:

(1) Material misstatement in the application for the original permit or in the application for any renewal of a permit;

(2) the conviction of any crime, an essential element of which is misstatement, fraud or dishonesty, or relating to the theft of or cruelty to animals;

(3) substantial misrepresentation;

(4) the person who is issued a permit is found to be adding to such person's herd by poaching or illegally obtaining deer;

(5) willful disregard to any rule or regulation adopted under this section.

(f) Any refusal to issue or renew a permit and any suspension or revocation of a permit under this section shall be in accordance with the

provisions of the Kansas administrative procedure act and shall be subject to review in accordance with the Kansas judicial review act.

(g) Domesticated deer shall be identified through implantation of microchips, ear tags, ear tattoos, ear notches or any other permanent identification on such deer as to identify such deer as domesticated deer. Any person who receives a permit issued pursuant to subsection (a) shall keep records of the deer herd pursuant to rules and regulations.

(h) The ~~livestock~~ *animal health* commissioner shall inspect any premises where a domesticated deer herd has been issued a permit upon receipt of a written, signed complaint that such premises is not being operated, managed or maintained in accordance with rules and regulations.

(i) The ~~livestock~~ *animal health* commissioner, on a quarterly basis, shall transmit to the secretary of wildlife and parks a current list of persons issued a permit pursuant to this section.

(j) All moneys received under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund.

(k) As used in this section:

(1) "Deer" means any member of the family *cervidae*.

(2) "Domesticated deer" means any member of the family *cervidae* which was legally obtained and is being sold or raised in a confined area for: (1) Breeding stock; ~~for~~ (2) any carcass, skin or part of such animal; ~~for~~ (3) exhibition; or ~~for~~ (4) companionship.

Sec. 109. K.S.A. 2011 Supp. 48-3502 is hereby amended to read as follows: 48-3502. (a) There is hereby established the Kansas national bio and agro defense facility interagency working group.

(b) The working group shall consist of the following members *ex officio*: The secretary of health and environment, the secretary of commerce or designee, the secretary of administration or designee, the secretary of agriculture or designee, the ~~livestock~~ *animal health* commissioner or designee, the secretary of revenue or designee, the attorney general or designee, the state board of regents or designee, the mayor of the city of Manhattan or designee, the chairperson of the Leavenworth county board of commissioners or designee, the adjutant general (the state director of homeland security) or designee and the superintendent of the Kansas highway patrol or designee.

(c) The secretary of health and environment shall serve as chairperson of the working group, and the working group may elect a vice-chairperson from among the members of the working group.

(d) All appointments of designees must be made and submitted to the Kansas bioscience authority no more than 30 days after enactment of this act.

Sec. 110. K.S.A. 65-171i is hereby amended to read as follows: 65-171i. Nothing in this act shall be construed as limiting the authority of the state ~~livestock~~ *animal health* commissioner in matters concerning the administration of the law concerning feedlots ~~( K.S.A. 47-1501 et seq.), and amendments thereto.~~

Sec. 111. K.S.A. 2011 Supp. 65-5721 is hereby amended to read as follows: 65-5721. (a) There is hereby established the commission on emergency planning and response.

(b) The membership of the commission on emergency planning and response shall consist of the agency head or secretary or a designated person of authority from the following agencies:

- (1) The fire marshal;
- (2) the department of health and environment;
- (3) the department of transportation;
- (4) the Kansas highway patrol;
- (5) the adjutant general;
- (6) the department of commerce;
- (7) the Kansas bureau of investigation;
- (8) the Kansas department of agriculture; and
- (9) the Kansas ~~animal health department~~ *department of agriculture division of animal health*.

(c) In addition, the membership of the commission on emergency planning and response shall also consist of 18 members appointed by the governor as follows:

- (1) One individual shall be representative of counties;
  - (2) one individual selected to represent cities;
  - (3) three individuals selected to represent businesses and industries, one of which represents broadcasting;
  - (4) one individual selected to represent agriculture, crop or livestock;
  - (5) one individual selected to represent transportation, trucking or rail;
  - (6) one individual selected to represent energy;
  - (7) one individual selected to represent law enforcement officers;
  - (8) one individual selected to represent fire fighters;
  - (9) one individual selected to represent county emergency managers;
  - (10) one individual selected to represent emergency medical services;
  - (11) one individual selected to represent public works services;
  - (12) one individual selected to represent hospitals;
  - (13) one individual selected to represent public health;
  - (14) one individual selected to represent the tribes of Kansas;
  - (15) one individual selected to represent individuals with disabilities;
- and
- (16) one individual selected to represent the seven regional homeland security councils.

(d) A designee of the adjutant general shall serve as the secretary of the commission on emergency planning and response. The adjutant general shall provide staff support for the commission on emergency planning and response.

(e) Of the members first appointed to the commission on emergency planning and response by the governor, one representative of cities, one representative of counties, and one representative of business and industry shall serve a term of two years, and the remainder of the members appointed by the governor shall serve terms of three years. Thereafter, members appointed pursuant to subsection (c) shall serve terms of four years and until the successor has been appointed. Any vacancy in the office of an appointed member shall be filled for the unexpired term by appointment by the governor.

(f) A chairperson shall be elected annually by the members of the commission. A vice-chairperson shall be designated by the chairperson to serve in the absence of the chairperson.

(g) For attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, those members of the commission appointed by the governor shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

Sec. 112. K.S.A. 66-1319 is hereby amended to read as follows: 66-1319. (a) Members of the Kansas highway patrol shall exercise the power and authority of the superintendent of the Kansas highway patrol in the execution of the duties imposed upon the superintendent by this act to the extent that the exercise of such power and authority is delegated to such members by the superintendent or is prescribed by law. In enforcing the laws referred to in K.S.A. 66-1318, and amendments thereto, members of the highway patrol are authorized and empowered to inspect any motor vehicle required by law to comply with any of such laws and rules and regulations relating thereto. Except as otherwise provided in K.S.A. 8-1910, and amendments thereto, whenever any member of the highway patrol shall determine that any vehicle is not properly registered under or not in compliance with any of such laws, such member of the highway patrol may require such vehicle to be driven to the nearest motor carrier inspection station, if there is one within five miles, and if not, to another suitable place, and remain there until the driver thereof has complied with any or all of such laws. Any driver of a vehicle who fails or refuses to drive such vehicle to the nearest inspection station or other suitable place when so directed by a member of the highway patrol shall be deemed guilty of a misdemeanor.

(b) The superintendent of the Kansas highway patrol or any other member thereof designated by the superintendent may issue any license,

permit, registration or certificate required under any of such laws when so directed by law or by the head of the agency administering such laws.

(c) The superintendent of the Kansas highway patrol, the secretary of revenue, the secretary of transportation, the chairperson of the state corporation commission and the ~~livestock~~ *animal health* commissioner shall cooperate in all functions relating to the enforcement of such laws.

Sec. 113. K.S.A. 74-4002 is hereby amended to read as follows: 74-4002. The members of the Kansas animal health board shall choose their own chairman, who shall serve for a term of one ~~(1)~~ year. ~~Said~~ *Such* board shall meet at least once in each quarter. Meetings may be called and held at the discretion of the chairman, and meetings shall be called by the chairman upon written request of a majority of the members of ~~said~~ *such* board. Members of the Kansas animal health board attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, *and amendments thereto*. Amounts paid under this section shall be paid from appropriations to the ~~livestock~~ *animal health* commissioner upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner.

Sec. 114. K.S.A. 74-4003 is hereby amended to read as follows: 74-4003. It shall be the duty of the Kansas animal health board to serve in an advisory capacity to the ~~livestock~~ *animal health* commissioner. It shall aid ~~him~~ *the commissioner* in determining policies and plans relating to ~~his~~ *the commissioner's* office.

Sec. 115. K.S.A. 75-1901 is hereby amended to read as follows: 75-1901. ~~A livestock~~ *An animal health* commissioner shall be appointed by the ~~Kansas animal health board~~ *secretary of agriculture* and shall serve as the executive officer of the Kansas ~~animal health department which is hereby created~~ *department of agriculture division of animal health*. The person so appointed shall have been actively engaged in one of the major phases of the livestock industry for a period of not less than five ~~(5)~~ years immediately preceding ~~his or her~~ *such person's* appointment. Before entering upon the duties of ~~said~~ *such* office, such commissioner shall take and subscribe an oath of office to faithfully and honestly discharge the duties of ~~said~~ *such* office to the best of ~~his or her~~ *such commissioner's* knowledge and ability, and shall file the same with the secretary of state. The ~~livestock~~ *animal health* commissioner shall serve at the pleasure of the *secretary of agriculture and the animal health board*.

Sec. 116. K.S.A. 75-1903 is hereby amended to read as follows: 75-1903. (a) Whenever in any of the statutes of this state the term "livestock sanitary commissioner" is used, or the term "commissioner" is used to refer to the livestock sanitary commissioner, such terms shall be construed to mean the ~~livestock~~ *animal health* commissioner appointed by the ~~Kan-~~

~~as animal health board~~ *secretary of agriculture* pursuant to K.S.A. ~~75-1901~~ 74-5,119, and amendments thereto.

(b) Whenever in any of the statutes of this state the terms “Kansas livestock commission” or “livestock commission” are used, or the term “commission” is used to refer to the Kansas livestock commission, such terms shall be construed to mean the Kansas animal health board created in K.S.A. 74-4001, ~~as amended~~ and amendments thereto.

Sec. 117. K.S.A. 75-3141 is hereby amended to read as follows: 75-3141. The ~~livestock~~ *animal health* commissioner shall devote full time to the discharge of official duties, and shall be within the unclassified service under the Kansas civil service act. The commissioner’s compensation shall be determined by the ~~Kansas animal health board~~ *secretary of agriculture*, subject to the approval of the governor.

Sec. 118. K.S.A. 75-3142 is hereby amended to read as follows: 75-3142. The ~~livestock~~ *animal health* commissioner is hereby authorized to appoint, within the provisions of the civil service law and within available appropriations, such employees as are necessary to properly discharge the duties of office.

Sec. 119. K.S.A. 2011 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ or contract with presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its presiding officers within 60 days in response to a requesting agency’s request, the director shall designate in writing a full-time employee of an agency other than the requesting agency to serve as presiding officer for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of presiding officers employed by the office.

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding other than a proceeding as provided in subsection (h).

(e) The secretary of administration may adopt rules and regulations:

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

(2) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern presiding officers; and

(3) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.

(f) The director may implement the provisions of this section and rules and regulations adopted under its authority.

(g) The secretary of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using a presiding officer.

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for conducting adjudicative hearings under the Kansas administrative procedures act in which the presiding officer is not the agency head or one or more members of the agency head:

(1) On and after July 1, 2005: Department of social and rehabilitation services, juvenile justice authority, department on aging, department of health and environment, Kansas public employees retirement system, Kansas water office, Kansas ~~animal health department~~ *department of agriculture division of animal health* and Kansas insurance department.

(2) On and after July 1, 2006: Emergency medical services board, emergency medical services council, Kansas health policy authority and Kansas human rights commission.

(3) On and after July 1, 2007: Kansas lottery, Kansas racing and gaming commission, state treasurer, pooled money investment board, Kansas department of wildlife and parks and state court of tax appeals.

(4) On and after July 1, 2008: Department of human resources, state corporation commission, ~~state conservation commission~~ *Kansas department of agriculture division of conservation*, agricultural labor relations board, department of administration, department of revenue, board of adult care home administrators, Kansas state grain inspection department, board of accountancy and Kansas wheat commission.

(5) On and after July 1, 2009, all other Kansas administrative procedure act hearings not mentioned in subsections (1), (2), (3) and (4).

(i) (1) Effective July 1, 2005, any presiding officer in agencies specified in subsection (h)(1) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws

of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(2) Effective July 1, 2006, any presiding officer in agencies specified in subsection (h)(2) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(3) Effective July 1, 2007, any presiding officer in agencies specified in subsection (h)(3) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(4) Effective July 1, 2008, any full-time presiding officer in agencies specified in subsection (h)(4) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws

of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(5) Effective July 1, 2009, any full-time presiding officer in agencies specified in subsection (h)(5) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment occurred.

Sec. 120. K.S.A. 2011 Supp. 74-567 is hereby amended to read as follows: 74-567. (a) The state board of agriculture shall have such powers, duties and functions as prescribed by this section. The board shall serve in an advisory capacity to the governor and the secretary to review and make recommendations on department legislative initiatives and proposed rules and regulations or proposed revised rules and regulations prior to the submission of such rules and regulations to the secretary of administration pursuant to K.S.A. 77-420, and amendments thereto, other than rules and regulations pertaining to personnel matters of the department, rules and regulations of the division of water resources and rules and regulations of the division of food safety. The board shall not have any powers, duties or functions concerning the day-to-day operations of the Kansas department of agriculture.

(b) The board shall serve in an advisory capacity to the agriculture ~~products development division of the department of commerce~~ *marketing and promotions program within the Kansas department of agriculture*. The board shall advise the ~~division~~ *program* on issues and concerns relating to agriculture products development and marketing.

(c) The agriculture ~~products development division~~ *marketing and promotions program* of the Kansas department of ~~commerce~~ *agriculture*

shall report to the board, at not less than two meetings of such board each year, on the activities and functions of the ~~division~~ *program*.

Sec. 121. K.S.A. 2011 Supp. 74-50,156 is hereby amended to read as follows: 74-50,156. (a) There is hereby established within and as a part of the Kansas department of ~~commerce agriculture~~ the agriculture ~~products development division~~ *marketing and promotions program*. The secretary of ~~commerce agriculture~~ shall appoint a director of such ~~division~~ *program* and such director shall be in the unclassified service of the Kansas civil service act. Subject to and in accordance with appropriations acts, the agriculture ~~products development division~~ *marketing and promotions program* shall include: (1) All powers, duties and functions related to the agricultural value added center pursuant to subsections (b) and (c); (2) all powers and duties created regarding the division of markets pursuant to K.S.A. 74-530, and amendments thereto, which are hereby transferred; (3) all powers and duties created regarding registered trademarks pursuant to K.S.A. 74-540a, and amendments thereto, which are hereby transferred; (4) all powers and duties regarding the trademark fund pursuant to K.S.A. 74-540b, and amendments thereto, which are hereby transferred; and (5) all powers and duties created regarding expenditures and moneys credited to the market development fund pursuant to K.S.A. 74-540c, and amendments thereto, which are hereby transferred.

(b) The objectives of the agricultural value added center within the agriculture ~~products development division~~ *marketing and promotions program* shall include, but not be limited to, providing technical assistance to existing and potential value added facilities, including incubator facilities; developing a network for collecting and distributing information to individuals involved in value added processing in Kansas; initiating pilot plant facilities to act as research and development laboratories for existing and potential small scale value added processing endeavors in Kansas; providing technical assistance to new agricultural value added businesses; developing and promoting communication and cooperation among private businesses; state government agencies and public and private colleges and universities in Kansas; establishing research and development programs in technologies that have value added commercial potential for food and nonfood agricultural products achieving substantial and sustainable continuing growth for the Kansas economy through value added products from agriculture; serving as a catalyst for industrial agriculture through technological innovation in order to expand economic opportunity for all Kansas communities; establishing an industrial agriculture industry for the state of Kansas; commercializing the developed industrial agriculture technology in smaller communities and the rural areas of Kansas; and developing investment grade agriculture value added technologies and products.

(c) Subject to the provisions of appropriations acts, the functions of

the agricultural value added center within the agriculture ~~products development division~~ *marketing and promotions program* shall include, but not be limited to, developing a market referral program, matching distribution to buyers in coordination with other state agencies concerned with marketing Kansas products; assisting private entrepreneurs in the establishment of facilities and markets for new agricultural value added endeavors; and introducing coordinated programs to develop marketing skills of existing agricultural value adding processors in Kansas.

(d) (1) It shall be the duty of the agriculture ~~products development division~~ *marketing and promotions program* to perform acts and to do, or cause to be done, those things which are designed to lead to the more advantageous marketing of agricultural products of Kansas. For these purposes the division may:

- (A) Investigate the subject of marketing farm products;
- (B) promote their sales distribution and merchandising;
- (C) furnish information and assistance to the public;
- (D) study and recommend efficient and economical methods of marketing;
- (E) provide for such studies and research as may be deemed necessary and proper;
- (F) gather and diffuse timely and useful information concerning the supply, demand, prevailing prices and commercial movement of farm products including quantity in common storage and cold storage, in cooperation with other public or private agencies;
- (G) conduct market development activities and assist and coordinate participation by companies, commodity organizations, trade organizations, producer organizations and other interested organizations to develop new markets and sales for Kansas agricultural commodities and food products;
- (H) render assistance to any of the entities listed in subsection (G) and development activities and make a reasonable service charge for such services rendered by the division; and
- (I) make agreements with other states and with the United States government, or its agencies, and accept funds from the federal government, or its agencies, or any other source for research studies, investigation, market development and other purposes related to the duties of the division.

(2) The *Kansas* department of ~~commerce~~ *agriculture* shall remit all moneys received under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the market development fund. All expenditures from such fund shall be made for any purpose consistent with this subsection and shall be made in accordance with appropriation acts upon warrants of the director of accounts and

reports issued pursuant to vouchers approved by the secretary of ~~commerce~~ *agriculture* or a person designated by the secretary.

(e) (1) In conjunction with any trademark registered by the *Kansas* department of ~~commerce~~ *agriculture*, the agriculture ~~products development division~~ *marketing and promotions program* is hereby authorized to:

- (A) Promulgate policy regarding the use of any such trademark;
- (B) print, reproduce or use the trademark in or on educational, promotional or other material;
- (C) fix, charge and collect fees for the use of the trademark provided that the fees shall be fixed in an amount necessary to recover all direct costs associated with the production of educational, promotional and other materials associated with a trademark program; and
- (D) enter into any contracts necessary to carry out the purposes of this subsection, which contracts shall not be subject to the bidding requirements of K.S.A. 75-3739, and amendments thereto.

(2) The secretary of ~~commerce~~ *agriculture* shall remit all moneys received under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the trademark fund. All expenditures from such fund shall be made for any purpose consistent with this subsection and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of ~~commerce~~ *agriculture* or a person designated by the secretary.

(f) On or before February 1 of each year, the agriculture ~~products development division~~ *marketing and promotions program* shall present an oral and written report to the house and senate agriculture committees concerning the performance indicators, performance outcomes, activities and functions of the ~~division~~ *program* for the previous year. Such report shall include a budget of how moneys appropriated or otherwise authorized to be expended from the state general fund or any special revenue fund for the agriculture ~~products development division~~ *marketing and promotions program* of the *Kansas* department of ~~commerce~~ *agriculture* for the previous fiscal year were spent and a projected budget of moneys appropriated or otherwise authorized to be expended from the state general fund or any special revenue fund for the agriculture ~~products development division~~ *marketing and promotions program* of the *Kansas* department of ~~commerce~~ *agriculture* for the current fiscal year. Such report shall further include the full-time equivalent number of positions financed from appropriations and allocated for the agriculture ~~products development division~~ *marketing and promotions program* of the *Kansas* department of ~~commerce~~ *agriculture* for each fiscal year. ~~In the report~~

~~to the 1997 legislature, the division's report shall include a mission statement for the reorganized division.~~

New Sec. 122. In addition to the powers and duties conferred in K.S.A. 2011 Supp. 74-5,126, and amendments thereto, the Kansas department of agriculture division of conservation shall have all the powers, duties and functions delegated pursuant to K.S.A. 2011 Supp. 74-5,126, and amendments thereto. It shall also employ an administrative officer and such technical experts as it may require and shall determine their qualifications and duties. Such officer and experts shall be in the unclassified service of the Kansas civil services act and shall receive annual salaries fixed by the division and approved by the state finance council. All other agents and employees, permanent or temporary, required by the division of conservation, shall be within the classified services of the Kansas civil service act. The division may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to one or more agents or employees, such powers and duties as it deems proper. It shall be supplied with suitable office accommodations at the state capital, and shall be furnished with the necessary supplies and equipment. Upon request of the division, for the purpose of carrying out any of its functions, the supervision officer of any state agency or of any state institution of learning, insofar as may be possible under available appropriations and having due regard to the needs of the agency to which the request is directed, shall assign or detail to the division members of the staff or personnel of such agency or institution of learning and make such special reports, surveys or studies as the division may request.

Sec. 123. K.S.A. 2-1903 is hereby amended to read as follows: 2-1903. As used in this act:

(1) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this act.

(3) "Commission" or "state conservation commission" means the ~~agency~~ *conservation program policy board* created in K.S.A. 2-1904, and amendments thereto.

(4) "State" means the state of Kansas.

(5) "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporation or otherwise, of the government of this state.

(6) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United

States department of agriculture and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(7) "Government" or "governmental" includes the government of this state, the government of the United States and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "*Division*" or "*division of conservation*" means the agency established in K.S.A. 2011 Supp. 74-5,126, and amendments thereto.

Sec. 124. K.S.A. 2-1904 is hereby amended to read as follows: 2-1904.

(a) There is hereby established, to serve as ~~an agency~~ a conservation program policy board of the state and to perform the functions conferred upon it in this act, the state conservation commission. The state conservation commission shall succeed to all the powers, duties and property of the state soil conservation committee. The commission shall consist of nine members as follows:

(1) The director of the cooperative extension service and the director of the state agricultural experiment station located at Manhattan, Kansas, or such persons' designees shall serve, *ex officio*, as members of the commission.

(2) The commission shall request the secretary of agriculture of United States of America to appoint one person and the secretary of the Kansas department of agriculture to appoint one person, each of whom shall be residents of the state of Kansas to serve as members of the commission. These members shall hold office for four years and until a successor is appointed and qualifies, with terms commencing on the second Monday in January beginning in 1973.

(3) Five members of the state commission shall be elected by the conservation district supervisors at a time and place to be designated by the state conservation commission. The method of electing such members to be conducted as follows: The state is to be divided into five separate areas. Area No. I to include the following counties: Cheyenne, Rawlins, Decatur, Norton, Phillips, Smith, Osborne, Rooks, Graham, Sheridan, Thomas, Sherman, Wallace, Logan, Gove, Trego, Ellis and Russell. Area No. II to include: Greeley, Wichita, Scott, Lane, Ness, Rush, Pawnee, Hodgeman, Finney, Kearny, Hamilton, Edwards, Ford, Gray, Haskell, Grant, Stanton, Morton, Stevens, Seward, Meade, Clark, Comanche and Kiowa. Area No. III to include: Jewell, Republic, Mitchell, Cloud, Lincoln, Ottawa, Ellsworth, Saline, Rice, McPherson, Reno, Harvey, Kingman, Sedgwick, Sumner, Harper, Barber, Pratt, Barton and Stafford. Area No. IV to include: Washington, Marshall, Nemaha, Brown, Doniphan, Clay, Riley, Pottawatomie, Jackson, Atchison, Jefferson, Leavenworth, Wyandotte, Johnson, Douglas, Shawnee, Wabaunsee, Geary, Dickinson, Morris, Osage, Franklin and Miami. Area No. V to include: Marion, Chase, Lyon, Coffey, Anderson, Linn, Bourbon, Allen, Woodson, Greenwood, Butler, Elk, Wilson, Neosho, Crawford, Cowley, Chautauqua,

Montgomery, Labette and Cherokee. Areas II and IV will elect in even number years and Areas I, III and V shall elect in odd number years for two year terms. The elected commission members from Areas I, III and V shall take office on January 1, of the even number years. The remaining two elected members of the state commission from Areas II and IV shall take office on January 1, of the odd number years. The method of election is to be by area caucus of the district supervisors of each of the five separate areas of Kansas. The commission shall give each district notice of the time and place of such annual election meeting by letter if a member is to be elected to the commission from that area that year. The selection of a successor to fill an unexpired term shall be by appointment by the commission. The successor who is appointed to fill the unexpired term shall be a resident of the same area as that of the predecessor.

(b) The commission shall keep a record of its official actions, shall adopt a seal which seal shall be judicially noticed, and may perform such acts, hold such public hearings and adopt rules and regulations necessary for the execution of its functions under this act.

(c) *In addition to the powers and duties conferred in this section, the state conservation commission may employ an administrative officer and such technical experts as it may require and shall determine their qualifications and duties. Such officer and experts shall be in the unclassified service of the Kansas civil service act and shall receive annual salaries fixed by the commission and approved by the state finance council. All other agents and employees, permanent or temporary, required by the state conservation commission, shall be within the classified service of the Kansas civil service act. The commission may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairperson, to one or more of its members or to one or more agents or employees, such powers and duties as it deems proper. It shall be supplied with suitable office accommodations at the state capital, and shall be furnished with the necessary supplies and equipment. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning, insofar as may be possible under available appropriations and having due regard to the needs of the agency to which the request is directed, shall assign or detail to the commission members of the staff or personnel of such agency or institution of learning and make such special reports, surveys or studies as the commission may request shall have the powers and duties not delegated to the Kansas department of agriculture division of conservation pursuant to K.S.A. 2011 Supp. 74-5,126, and amendments thereto.*

(d) The commission shall designate its chairperson and, from time to time, may change such designation. A majority of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Members of

the state conservation commission attending meetings of such commission or attending a subcommittee meeting thereof authorized by such commission shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. The commission shall provide for keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted.

(e) ~~In addition to the duties and powers hereinafter conferred upon~~ The state conservation commission, ~~it shall~~ *together with the Kansas department of agriculture division of conservation shall make conservation program policy decisions, including modification of current conservation programs, creation of new conservation programs and budget recommendations.*

(f) *The Kansas department of agriculture division of conservation in consultation with the state conservation commission shall have the following duties and powers:*

(1) To offer such assistance as may be appropriate to the supervisors of conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

(2) to keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experience of all other districts organized hereunder and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) to coordinate the programs of the several conservation districts organized hereunder;

(4) to secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state, in the work of such districts and to contract with or to accept donations, grants, gifts and contributions in money, services or otherwise from the United States or any of its agencies or from the state or any of its agencies in order to carry out the purposes of this act;

(5) to disseminate information throughout the state concerning the activities and programs of the conservation districts organized hereunder and to encourage the formation of such districts in areas where their organization is desirable;

(6) to cooperate with and give assistance to watershed districts and other special purpose districts in the state of Kansas for the purpose of cooperating with the United States through the secretary of agriculture in the furtherance of conservation pursuant to the provisions of the watershed protection and flood prevention act, as amended;

(7) to cooperate in and carry out, in accordance with state policies, activities and programs to conserve and develop the water resources of the state and maintain and improve the quality of such water resources;

(8) to enlist the cooperation and collaboration of state, federal, re-

gional, interstate, local, public and private agencies with the conservation districts; and

(9) to facilitate arrangements under which conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of natural resources.

Sec. 125. K.S.A. 2-1907 is hereby amended to read as follows: 2-1907. The governing body of the district shall consist of five supervisors who are qualified electors residing within the district. The supervisors who are first elected shall serve for terms of one, two and three years according to the following plan: The two persons receiving the highest number of votes in the election shall hold office for three years; the two persons receiving the next highest number of votes shall hold such office for a term of two years and the remaining supervisor shall hold office for a term of one year. In the event of a tie vote, such terms shall be decided by lot. Nothing in this section shall be construed as affecting the length of the term of supervisors holding office on January 1, 1995. Successors to such persons shall be elected for terms of three years. An annual meeting of all qualified electors of the district shall be held in the month of January or February. Notice of the time and place of such meeting shall be given by such supervisors by publishing a notice in the official county paper once each week for two consecutive weeks prior to the week in which such meeting is to be held. At such meeting the supervisors shall make full and due report of their activities and financial affairs since the last annual meeting and shall conduct an election by secret ballot of all of the qualified electors of the district there present for the election of supervisors whose terms have expired. Whenever a vacancy occurs in the membership of the governing body the remaining supervisors of the district shall appoint a qualified elector of the district to fill the office for the unexpired term. The supervisors shall designate a chairperson and may from time to time change such designation. A supervisor shall hold office until a successor has been elected or appointed and has qualified. A majority of the supervisors shall constitute a quorum and the concurrence of a majority of the supervisors in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for services, but may be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of duties. The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the county attorney of the county in which a major portion of the district lies, or the attorney general for such legal services as they may require. The supervisors may delegate to their chairperson, to one or more supervisors, or to one or more agents, or employees such powers

and duties as they may deem proper. The supervisors shall furnish to the ~~state conservation commission~~ *Kansas department of agriculture division of conservation*, upon request, copies of such rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this act. The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts and receipts and disbursements. Any supervisor may be removed by the state conservation commission upon notice and hearing in accordance with the provisions of the Kansas administrative procedure act, for neglect of duty or malfeasance in office, but for no other reason. The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

Sec. 126. K.S.A. 2011 Supp. 2-1907c is hereby amended to read as follows: 2-1907c. On or before September 1 of each year, each conservation district shall submit to the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* a certification of the amount of money to be furnished by the county commissioners for conservation district activities for the ensuing calendar year. Such amount shall be the same as authorized for such purposes in each approved county budget. For the purpose of providing state financial assistance to conservation districts, the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* in the regular budget request, as a line item for the forthcoming fiscal year, shall submit a special request for an amount equal to the sum of the allocations of each county to each conservation district, but in no event to exceed the sum of \$25,000 per district. This \$25,000 limitation shall be applicable for fiscal year 2008, and thereafter, subject to appropriations therefor. The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* as soon as practicable after July 1 of the following year shall disburse such moneys as may be appropriated by the state for this purpose to each conservation district to match funds allocated by the commissioners of each county. Distribution shall be prorated in proportion to county allocations in the event that appropriations are insufficient for complete matching of funds. Municipal accounting procedures shall be used in the distribution of and in the expenditure of all funds.

Sec. 127. K.S.A. 2011 Supp. 2-1915 is hereby amended to read as follows: 2-1915. (a) Appropriations may be made for grants out of funds

in the treasury of this state for terraces, terrace outlets, check dams, dikes, ponds, ditches, critical area planting, grassed waterways, tailwater recovery irrigation systems, precision land forming, range seeding, detention and grade stabilization structures and other enduring water conservation practices installed on public lands and on privately owned lands and, the control and eradication of *sericea lespedeza* as provided in subsection (n) of K.S.A. 2-1908, and amendments thereto, on public lands and on privately owned lands. Except as provided by the multipurpose small lakes program act, any such grant shall not exceed 80% of the total cost of any such practice.

(b) A program for protection of riparian and wetland areas shall be developed by the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* and implemented by the conservation districts. The conservation districts shall prepare district programs to address resource management concerns of water quality, erosion and sediment control and wildlife habitat as part of the conservation district long-range and annual work plans. Preparation and implementation of conservation district programs shall be accomplished with assistance from appropriate state and federal agencies involved in resource management.

(c) Subject to the provisions of K.S.A. 2-1919, and amendments thereto, any holder of a water right, as defined by subsection (g) of K.S.A. 82a-701, and amendments thereto, who is willing to voluntarily return all or a part of the water right to the state shall be eligible for a grant not to exceed 80% of the total cost of the purchase price for such water right. The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall administer this cost-share program with funds appropriated by the legislature for such purpose. The chief engineer shall certify to the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* that any water right for which application for cost-share is received under this section is eligible in accordance with the criteria established in K.S.A. 2-1919, and amendments thereto.

(d) (1) Subject to appropriation acts therefor, the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall develop the Kansas water quality buffer initiative for the purpose of restoring riparian areas using best management practices. The executive director of the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall ensure that the initiative is complementary to the federal conservation reserve program.

(2) There is hereby created in the state treasury the Kansas water quality buffer initiative fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director of the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* or the executive director's designee. Money credited to the fund shall be used for the purpose of

making grants to install water quality best management practices pursuant to the initiative.

(3) The county or district appraiser shall identify and map riparian buffers consisting of at least one contiguous acre per parcel of real property located in the appraiser's county. Notwithstanding any other provisions of law, riparian buffers shall be valued by the county or district appraiser as tame grass land, native grass land or waste land, as appropriate. As used in this subsection (3), "riparian buffer" means an area of stream-side vegetation that: (A) Consists of tame or native grass and may include forbs and woody plants; (B) is located along a perennial or intermittent stream, including the stream bank and adjoining floodplain; and (C) is a minimum of 66 feet wide and a maximum of 180 feet wide.

(e) The *Kansas department of agriculture division of conservation* with the approval of the state conservation commission shall adopt rules and regulations to administer such grant and protection programs.

(f) Any district is authorized to make use of any assistance whatsoever given by the United States, or any agency thereof, or derived from any other source, for the planning and installation of such practices. The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* may enter into agreements with other state and federal agencies to implement the Kansas water quality buffer initiative.

Sec. 128. K.S.A. 2011 Supp. 2-1930 is hereby amended to read as follows: 2-1930. (a) There is hereby established the water right transition assistance pilot project program. The program shall be administered by the ~~state conservation commission~~ *Kansas department of agriculture division of conservation*. The Kansas department of agriculture, division of water resources and recognized local governing agencies, including groundwater management districts, shall cooperate in program implementation. The program shall be administered for the purpose of reducing consumptive use in the target or high priority areas of the state by issuing water right transition grants for privately held water rights.

(b) (1) The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* may receive and expend funds from the federal or state government, or private source for the purpose of carrying out the provisions of this section. The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* and the participating groundwater management districts shall carry over unexpended funds from one fiscal year to the next.

(2) Federal and state funds shall not exceed \$1,500,000 per year.

(3) ~~State conservation commission~~ *Kansas department of agriculture division of conservation* expenditures for permanent partial water right retirements shall not exceed 30% of the total amount of funds for the water right transition assistance pilot project program.

(c) The ~~state conservation commission~~ *Kansas department of agri-*

*culture division of conservation* may enter into water right transition assistance pilot project program contracts with landowners that will result in the permanent retirement of part or all of landowner historic consumptive use water rights by action of the chief engineer as provided for in subsection (f) of this section.

(d) All applications for permanent water right retirements shall be considered for funding.

(e) Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program. When prioritizing among water right applications for acceptance under the water right transition assistance pilot project, where rights with similar hydrologic impacts are considered, priority should be given to the senior right as determined under the Kansas water appropriation act.

(f) Water rights enrolled in the water right transition assistance pilot project program for permanent retirement shall require the written consent of all landowners and authorized agents to voluntarily request dismissal and forfeiture of priority of the enrolled water right. Upon enrollment of the water right into the water right transition assistance pilot project program, the chief engineer of the Kansas department of agriculture division of water resources shall concurrently dismiss and terminate the water right in accordance with the terms of the contract.

(g) (1) ~~The state conservation commission~~ *Kansas department of agriculture division of conservation* shall make water right transition grants available only in areas that have been designated as target or high priority areas by the groundwater management districts and the chief engineer of the Kansas department of agriculture division of water resources or priority areas outside the groundwater management districts as designated by the chief engineer of the Kansas department of agriculture division of water resources.

(2) Two of the target or high priority areas shall be the prairie dog creek area located in hydrologic unit code 10250015 and the rattlesnake creek subbasin located in hydrologic unit code 11030009.

(h) Contracts accepted under the water right transition assistance program shall result in a net reduction in consumptive use equivalent to the amount of historic consumptive use of the water right or rights enrolled in the program based on the average historic consumptive water use. Except as provided for in subsections (i) and (j), once a water right transition assistance pilot project program grant has been provided, the land authorized to be irrigated by the water right or water rights associated with that grant shall not be irrigated permanently. Water right transition assistance pilot project program contracts shall be subject to such terms, conditions and limitations as may be necessary to ensure that such

reduction in consumptive use occurs and can be adequately monitored and enforced.

“Historic consumptive water use” means the average amount of water consumed by crops as a result of the lawful beneficial use of water for irrigation during four of the six preceding calendar years, with the highest and lowest years removed from the analysis. For purposes of this program, historic consumptive water use will be determined by multiplying the average reported water use for the four selected years by a factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drip irrigation systems, but not to exceed the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12. The applicant may also submit an engineering study that determines the average historic consumptive water use as an alternative method if it is demonstrated to be more accurate for the water right or water rights involved.

(i) Enrollment in the water right transition assistance pilot project program shall not subsequently prohibit irrigation of the land that, prior to enrollment, was authorized by the water right or water rights if irrigation can be lawfully allowed by another water right or permit pursuant to the rules and regulations and consideration of any future changes to other water rights that may be proposed to be transferred to such land.

(j) If more than one water right overlaps the place of use authorized by the water right proposed to be enrolled in the water right transition assistance pilot project program, then all overlapping water rights shall be enrolled in water right transition assistance pilot project program or the landowners shall take the necessary lawful steps to eliminate the overlap with the water right to be enrolled. The burden shall be on the landowner to provide sufficient information to substantiate that the proposed use of water by the resulting exercise of all water rights involved will result in the net reduction amount of historic consumptive water use by the water right or water rights to be enrolled. The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* may require such documentation to be provided by someone with special knowledge or experience related to water rights and such operations.

(k) The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall adopt rules and regulations as necessary for the administration of this section. When adopting such rules and regulations the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall consider cropping, system design, metered water use and all other pertinent information that will permit a verifiable reduction in annual water consumptive use and permit alternative crop or other use of the land so that the landowner’s economic opportunities are taken into account.

(l) The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall report annually to the senate standing

committee on natural resources and the house standing committee on environment on the economic impact studies being conducted on the reduction of water consumption and the financial impact on the communities within the program areas. Such studies shall include comparative data for areas and communities outside the program areas.

(m) The water right transition assistance pilot project program shall expire five years from the effective date of the fiscal year for which state moneys are appropriated thereof and approval of program rules and regulations.

(n) Water right transition assistance grants for water rights to remain unused for the contract period shall constitute due and sufficient cause for nonuse pursuant to K.S.A. 82a-718, and amendments thereto, pursuant to the determination of the chief engineer for the duration of the water right transition assistance pilot project program contract.

(o) The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall hold at least two meetings in each water right transition assistance pilot project program area prior to entering into any water right transition assistance pilot project program contract for the permanent retirement of part or all of landowner historic consumptive use water rights. Such meetings shall inform the public of the possible economic and hydrologic impacts of the program. The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall provide notice of such meetings through publication in local newspapers of record and in the Kansas register.

Sec. 129. K.S.A. 2011 Supp. 2-1931 is hereby amended to read as follows: 2-1931. (a) Any person who commits any of the following may incur a civil penalty as provided by this section:

(1) Any violation of the Kansas water right transition assistance pilot project program act or any rule and regulation adopted thereunder; and

(2) any violation of term, condition or limitation defined and or imposed within the contractual agreement between the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* and the water right owner.

(b) Any participant who violates any section of a water right transition assistance pilot project program contract shall be subject to either one or both of the following:

(1) A civil penalty of not less than \$100 nor more than \$1,000 per violation. Each day shall constitute a separate violation for purposes of this section; and

(2) repayment of the grant amount in its entirety plus a penalty at six percent of the full grant amount.

(c) Any penalties or reimbursements received under this act shall be reappropriated for use in the water right transition assistance pilot project program.

Sec. 130. K.S.A. 24-1211 is hereby amended to read as follows: 24-1211. In not less than 12 months, nor more than 13 months after the recording of the certificates of incorporation, and annually thereafter, a meeting shall be held for the election of directors whose terms expire and also to render a report on the financial condition and activities of the district including the estimated construction date of all proposed projects to be initiated within the next five years and the board's determination as to whether each of these projects is still cost effective and in the current public interest. Notice of the annual meeting shall be given at least 10 days prior to the date thereof by one publication in a newspaper of general circulation in each of the counties of which said watershed district is a part. Elections shall be by ballot. Qualified voters in attendance shall be entitled to vote at any such meeting. The directors shall fill any vacancy occurring on the board prior to the expiration of the term of any director by electing a substitute director to serve for the unexpired term.

The number of directors of a district or the date of the annual meeting, or both, may be changed at an annual meeting if notice of the proposition of making such change or changes is given at the annual meeting immediately preceding the annual meeting at which such change or changes are considered. If the number of directors is proposed to be changed, the proposition shall be introduced in the same manner as other items of business and shall clearly show the changes in representation of subwatersheds, if any, and in the length of terms of the directors. It shall be the duty of the board of directors to include the proposition in the notice of the annual meeting at which such changes are being considered. If a majority of those voting are favorable, the election of directors shall be in conformance with the adopted proposal and all powers shall be exercised by the newly constituted board beginning immediately after the annual meeting. Copies of the minutes of the annual meeting and report on the financial condition and activities of the district shall be furnished to the ~~state conservation commission~~ *Kansas department of agriculture division of conservation*.

Sec. 131. K.S.A. 24-1212 is hereby amended to read as follows: 24-1212. Regular meetings of the board of directors shall be held no less than once each quarter on such day and place as is selected by the board of directors. Notice of such meeting shall be mailed to each director at least five days prior to the date thereof, and special meetings may be held at any time upon waiver of notice of such meeting by all directors or may be called by the president or any two directors at any time. Notice in writing, signed by the persons calling any special meeting, shall be mailed to each director at least two days prior to the time fixed for such special meeting. A majority of the directors shall constitute a quorum for the transaction of business and in the absence of any of the duly elected officers of the district a quorum at any meeting may select a director to

act as such officer *pro tem*. Each meeting of the board, whether regular or special, shall be open to the public. Copies of the minutes of regular and special meetings shall be furnished to the ~~state conservation commission~~ *Kansas department of agriculture division of conservation*.

Sec. 132. K.S.A. 49-603 is hereby amended to read as follows: 49-603. As used in this act:

(a) "Director" means the executive director of the ~~commission~~ *Kansas department of agriculture division of conservation* or a designee.

(b) "Affected land" means the area of land from which overburden has been removed or upon which overburden has been deposited, or both, but shall not include crushing areas, stockpile areas or roads.

(c) "Commission" means the state conservation commission.

(d) "Mine" means any underground or surface mine developed and operated for the purpose of extracting rocks, minerals and industrial materials, other than coal, oil and gas. Mine does not include borrow areas created for construction purposes.

(e) "Operator" means any person who engages in surface mining or operation of an underground mine or mines.

(f) "Overburden" means all of the earth and other materials which lie above the natural deposits of material being mined or to be mined.

(g) "Peak" means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(h) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining.

(i) "Ridge" means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(j) (1) "Surface mining" means the mining of material, except for coal, oil and gas, for sale or for processing or for consumption in the regular operation of a business by removing the overburden lying above natural deposits and mining directly from the natural deposits exposed, or by mining directly from deposits lying exposed in their natural state, or the surface effects of underground mining. Surface mining shall include dredge operations lying outside the high banks of streams and rivers.

(2) Removal of overburden and mining of limited amounts of any materials shall not be considered surface mining when done only for the purpose and to the extent necessary to determine the location, quantity or quality of the natural deposit, if the materials removed during exploratory excavation or mining are not sold, processed for sale or consumed in the regular operation of a business.

(k) "Topsoil" means the natural medium located at the land surface with favorable characteristics for growth of vegetation, which is normally the A or B, or both, soil horizon layers of the four soil horizons.

(l) “Active site” means a site where surface mining is being conducted.

(m) “Inactive site” means a site where surface mining is not being conducted but where overburden has been disturbed in the past for the purpose of conducting surface mining and an operator anticipates conducting further surface mining operations in the future.

(n) “Materials” means natural deposits of gypsum, clay, stone, sandstone, sand, shale, silt, gravel, volcanic ash or any other minerals of commercial value found on or in the earth with the exception of coal, oil and gas and those located within cut and fill portions of road rights-of-way.

(o) “Reclamation” means the reconditioning of the area of land affected by surface mining to a usable condition for agricultural, recreational or other use.

(p) “Stockpile” means the finished products of the mining of gypsum, clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash or other minerals and removal from its natural position and deposited elsewhere for future use in the normal operation as a business.

(q) “Underground mining” means the extraction of rocks, minerals and industrial materials, other than coal, oil and gas, from the earth by developing entries or shafts from the surface to the seam or deposit before recovering the product by underground extraction methods.

(r) “Person” means any individual, firm, partnership, corporation, government or other entity.

(s) “Division” or “Kansas department of agriculture division of conservation” means the agency established by K.S.A. 2011 Supp. 74-5,126, and amendments thereto.

Sec. 133. K.S.A. 2011 Supp. 82a-220 is hereby amended to read as follows: 82a-220. (a) As used in this act:

(1) “Conservation project” means any project or activity that the director of the Kansas water office determines will assist in restoring, protecting, rehabilitating, improving, sustaining or maintaining the banks of the Arkansas, Kansas or Missouri rivers from the effects of erosion;

(2) “director” means the director of the Kansas water office; and

(3) “state property” means real property currently owned in full or in part by the state in the Arkansas, Kansas or Missouri rivers in Kansas, in and along the bed of the river to the ordinary high water mark on the banks of such rivers.

(b) (1) The director is hereby authorized to negotiate and grant easements on state property for construction and maintenance of conservation projects with cooperating landowners in such projects for the expected life of the project and with such terms and conditions as the director, after consultation with the Kansas department of agriculture, the Kansas department of health and environment, the Kansas department of wildlife and parks, parks and tourism and the ~~state conservation commission Kan-~~

*sas department of agriculture division of conservation*, may deem appropriate.

(2) Notice of the easement shall be given to the county or counties in which the easement is proposed and to any municipality or other governmental entity that, in the opinion of the director, holds a riparian interest in the river and may have an interest in the project or results thereof. Those persons or entities receiving notice shall have a period, not to exceed 30 days, to provide comment on the proposed easement to the director.

(3) In the event such an easement is proposed to be granted on state property owned or managed by any other agency of the state, the director shall give notice of the proposed easement and project to that agency and shall jointly negotiate any easement so granted.

(4) A copy of all easements so entered shall be filed by the director with the office of the secretary of state and the office of the register of deeds for the county or counties in which the easement is located.

(c) The director shall adopt rules and regulations necessary to carry out the provisions of this act.

Sec. 134. K.S.A. 82a-326 is hereby amended to read as follows: 82a-326. When used in this act:

(a) "Water development project" means any project or plan which may be allowed or permitted pursuant to K.S.A. 24-126, 24-1213, 82a-301 *et seq.*, and amendments thereto, or the multipurpose small lakes program act, and amendments thereto;

(b) "environmental review agencies" means the:

(1) Kansas department of wildlife ~~and parks~~, *parks and tourism*;

(2) Kansas forest service;

(3) state biological survey;

(4) Kansas department of health and environment;

(5) state historical society;

(6) ~~state conservation commission~~ *Kansas department of agriculture division of conservation*; and

(7) state corporation commission.

Sec. 135. K.S.A. 2011 Supp. 82a-903 is hereby amended to read as follows: 82a-903. In accordance with the policies and long-range goals and objectives established by the legislature, the office shall formulate on a continuing basis a comprehensive state water plan for the management, conservation and development of the water resources of the state. Such state water plan shall include sections corresponding with water planning areas as determined by the office. The Kansas water office and the Kansas water authority shall seek advice from the general public and from committees consisting of individuals with knowledge of and interest in water issues in the water planning areas. The plan shall set forth the recommendations of the office for the management, conservation and devel-

opment of the water resources of the state, including the general location, character, and extent of such existing and proposed projects, programs, and facilities as are necessary or desirable in the judgment of the office to accomplish such policies, goals and objectives. The plan shall specify standards for operation and management of such projects, programs, and facilities as are necessary or desirable. The plan shall be formulated and used for the general purpose of accomplishing the coordinated management, conservation and development of the water resources of the state. The division of water resources of the Kansas department of agriculture, state geological survey, the division of environment of the department of health and environment, department of wildlife and parks, ~~state conservation commission~~, *parks and tourism*, *Kansas department of agriculture division of conservation* and all other interested state agencies shall cooperate with the office in formulation of such plan.

Sec. 136. K.S.A. 2011 Supp. 82a-1602 is hereby amended to read as follows: 82a-1602. In order to provide public water supply storage and water related recreational facilities in the state there is hereby established a multipurpose small lakes program. The program shall be administered by the ~~state conservation commission~~ *Kansas department of agriculture division of conservation*. Except as otherwise provided by this act, *the Kansas department of agriculture division of conservation, with the approval of the state conservation commission* shall adopt all rules and regulations necessary to implement the provisions of this act.

Sec. 137. K.S.A. 2011 Supp. 82a-1603 is hereby amended to read as follows: 82a-1603. When used in this act:

(a) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(b) "Class I funded project" means a proposed new project or renovation of an existing project located within the boundaries of an organized watershed district which is receiving or is eligible to receive financial participation from the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* for the flood control storage portion of the project.

(c) "Class II funded project" means a proposed new project or renovation of an existing project which is receiving or is eligible to receive financial participation from the federal government.

(d) "Class III funded project" means a proposed new project or renovation of an existing project located outside the boundaries of an organized watershed district which is not receiving or is not eligible to receive financial participation from the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* or the federal government except as provided in K.S.A. 82a-1606, and amendments thereto.

(e) "Flood control storage" means storage space in reservoirs to hold flood waters.

(f) “Future use public water supply storage” means storage space which the Kansas water office determines will be needed within the next 20 years for use by public water supply users in an area but for which there is no current sponsor.

(g) “General plan” means a preliminary engineering report describing the characteristics of the project area, the nature and methods of dealing with the soil and water problems within the project area, and the projects proposed to be undertaken by the sponsor within the project area. Such plan shall include maps, descriptions and other data as may be necessary for the location, identification and establishment of the character of the work to be undertaken; a cost-benefit analysis of alternatives to the project, including but not limited to, nonstructural flood control options and water conservation and reuse to reduce need for new water supply storage; and any other data and information as the chief engineer may require.

(h) “Land right” means real property as that term is defined by the laws of the state of Kansas and all rights thereto and interest therein and shall include any road, highway, bridge, street, easement or other right-of-way thereon.

(i) “Multipurpose small lake project” means a dam and lake containing: (1) Flood control storage; and (2) either public water supply storage or recreation features or both.

(j) “Public water supply” means a water supply for municipal, industrial or domestic use.

(k) “Public water supply storage” means storage of water for municipal, industrial or domestic use.

(l) “Recreation feature” means water storage and related facilities for activities such as swimming, fishing, boating, camping or other related activities.

(m) “Renovation” means repair or restoration of an existing lake which contains water storage space for use as a public water supply and which has either recreational purposes or flood control purposes, or both.

(n) “Sponsor” means: (1) Any political subdivision of the state which has the power of taxation and the right of eminent domain; (2) any public wholesale water supply district; or (3) any rural water district.

(o) “Water user” means any city, rural water district, wholesale water district or any other political subdivision of the state which is in the business of furnishing municipal or industrial water to the public.

Sec. 138. K.S.A. 82a-1607 is hereby amended to read as follows: 82a-1607. Sponsors shall apply to the state conservation commission for participation in the multipurpose small lakes program. The review and approval process of the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall be established by rules and regulations which shall be consistent with the state water plan. Following

review, *the Kansas department of agriculture division of conservation with the approval of the state conservation commission* shall request appropriations for specific projects from the legislature. Any funds appropriated to carry out the provisions of this act shall be administered by the ~~state conservation commission~~ *Kansas department of agriculture division of conservation*.

Sec. 139. K.S.A. 82a-1608 is hereby amended to read as follows: 82a-1608. (a) If state financial participation is approved for a multipurpose small lake project, the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall require a local nonpoint source management plan for the watersheds draining into the proposed lake. Such plan shall be submitted to and approved by the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* before any state funds may be used for the proposed project.

(b) If public water supply storage is included in such a project, the sponsor shall have a water conservation plan which has been submitted to and approved by the chief engineer.

(c) Any funding provided by the state shall include money necessary to pay for cost-sharing expenses incurred for nonpoint source management pursuant to the plan required by subsection (a).

Sec. 140. K.S.A. 82a-1609 is hereby amended to read as follows: 82a-1609. (a) Before the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* requests any appropriation for any multipurpose small lake project, the chief engineer shall review the cost-benefit analysis of alternatives to the project and shall:

(1) Submit the general plan to the appropriate state environmental review agencies pursuant to K.S.A. 82a-325, 82a-326 and 82a-327, and amendments thereto, for review and comment as provided by those sections; and

(2) publish notice of the review in the Kansas register, make the general plan available to the public and receive public comments on the proposed project for a period of 30 days following publication of the notice.

(b) If, in the review, a reasonable, less expensive alternative to the proposed project is identified and the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* nevertheless requests an appropriation for the proposed project, the ~~commission~~ *division* shall submit its reasons for proceeding with participation in the project, together with substantiating documentation, with the budget estimate and program statement for such project.

(c) This section shall be part of and supplemental to the multipurpose small lakes program act.

Sec. 141. K.S.A. 82a-1702 is hereby amended to read as follows: 82a-1702. (a) The state shall provide financial assistance to certain public

corporations for part of the costs or reimbursement of part of the costs of installation of water development projects, which derive general benefits to the state as a whole, or to a section thereof beyond the boundaries of such public corporation.

(b) Any public corporation shall be eligible for state financial assistance for a part of the costs it becomes actually and legally obligated to pay for all lands, easements, and rights-of-way for the water development projects in the event the state conservation commission shall find that: (1) Such public corporation has made application for approval of such financial assistance with the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* in such form and manner as the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* may require, which application each public corporation is hereby authorized to make; (2) such works will confer general flood control benefits beyond the boundaries of such public corporation in excess of 20% of the total flood control benefits of the works; (3) such works are consistent with the state water plan; (4) such public corporation will need such financial assistance for actual expenditures within the fiscal year next following; and (5) the legislature has appropriated funds for the payment of such sum. The payment authorized hereunder shall be limited to an amount equal to the total costs the public corporation shall become actually and legally obligated to spend for lands, easements, and rights-of-way for such water resource development works, multiplied by the ratio that the flood control benefits conferred beyond the boundaries of the public corporation bear to the total flood control benefits of the project. Such findings shall each be made at and in such manner as is provided by procedural rules and regulations which shall be adopted by *the Kansas department of agriculture division of conservation with the approval of the state conservation commission*.

(c) Any public corporation receiving financial assistance under this section shall apply those sums toward the satisfaction of the legal obligations for the specific lands, easements, and rights-of-way for which it receives them or toward the reimbursement of those accounts from which those legal obligations were satisfied, in whole or in part, and it shall return to the state any sums that are not in fact so applied. In ascertaining costs of lands, easements, and rights-of-way under this section, the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall not consider any costs which relate to land treatment measures nor any costs for which federal aid for construction costs is granted pursuant to the watershed protection and flood prevention acts or pursuant to any other federal acts.

Sec. 142. K.S.A. 82a-1703 is hereby amended to read as follows: 82a-1703. The governing body of each public corporation eligible for state financial assistance under the provisions of this act shall make application

for state payment each year to the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* in such form and manner as the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* may prescribe by its rules and regulations. Each year the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall determine what persons are eligible to receive financial assistance from the state, and the amounts thereof, pursuant to this act. In the event the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall determine that any such application, including the amounts thereof, is proper and in compliance with this act and is supported by a resolution as provided in K.S.A. 82a-1704, and amendments thereto, the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* may submit a request therefor as a part of its annual budget requests and estimates. Each such request shall be separately stated and identified. The budget item for each project shall contain the name of the project, the name of the public corporation to which the item relates, the county or counties in which such public corporation is located, the identification of the agreement or resolution supporting the request, and the amount of state payment requested therefor.

Sec. 143. K.S.A. 82a-1704 is hereby amended to read as follows: 82a-1704. In order that any public corporation eligible for state payments under the provisions of this act may receive payment from the state, the governing body of the public corporation shall adopt and transmit to the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* an appropriate resolution requesting the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* to approve payment to the requesting body of a sum or sums to be named within the limits of and for the purposes defined in this act. The resolution shall show the total cost allocated to the requesting body for providing the lands, easements, and rights-of-way for the works of improvement of the requesting body and shall pledge that all money received from the state under authority of this act will be applied solely to the purposes specified in this act.

Sec. 144. K.S.A. 2011 Supp. 82a-2007 is hereby amended to read as follows: 82a-2007. Subject to appropriations, there shall be an additional employee at the ~~state conservation commission~~ *Kansas department of agriculture division of conservation* to work on total maximum daily load compliance and to coordinate with the department and other appropriate federal and state agencies to further implement voluntary incentive based conservation programs to protect water quality.

Sec. 145. K.S.A. 2011 Supp. 82a-2101 is hereby amended to read as follows: 82a-2101. (a) On and after January 1, 2002, there is hereby imposed a clean drinking water fee at the rate of \$.03 per 1,000 gallons of

water sold at retail by a public water supply system and delivered through mains, lines or pipes. Such fee shall be paid, administered, enforced and collected in the manner provided for the fee imposed by subsection (a)(1) of K.S.A. 82a-954, and amendments thereto. The price to the consumer of water sold at retail by any such system shall not include the amount of such fee.

(b) (1) A public water supply system may elect to opt out of the fee imposed by this section by notifying, before October 1, 2001, the Kansas water office and the department of revenue of the election to opt out. Except as provided by subsection (b)(2), such election shall be irrevocable. Such public water supply system shall continue to pay all applicable sales tax on direct and indirect purchases of tangible personal property and services purchased by such system.

(2) On and after January 1, 2005, any public water supply system which elected to opt out of the fee imposed by subsection (a) may elect to collect such fee as provided by subsection (a) and direct and indirect purchases of tangible personal property and services by such system shall be exempt from sales tax as provided by K.S.A. 79-3606, and amendments thereto. Such election shall be irrevocable.

(c) The director of taxation shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received or collected from the fee imposed pursuant to this section. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it as follows:

(1)  $\frac{5}{106}$  of such amount shall be credited to the state highway fund and the remainder to the state general fund; and

(2) on and after July 1, 2007,  $\frac{5}{106}$  of such amount shall be credited to the state highway fund and the remaining amount shall be credited to the state water plan fund created by K.S.A. 82a-951, and amendments thereto, for use as follows: (A) Not less than 15% shall be used to provide on-site technical assistance for public water supply systems, as defined in K.S.A. 65-162a, and amendments thereto, to aid such systems in conforming to responsible management practices and complying with regulations of the United States environmental protection agency and rules and regulations of the department of health and environment; and (B) the remainder shall be used to renovate and protect lakes which are used directly as a source of water for such public water supply systems, so long as where appropriate, watershed restoration and protection practices are planned or in place.

(d) The ~~state conservation commission~~ *Kansas department of agriculture division of conservation* shall promulgate rules and regulations in coordination with the Kansas water office establishing the project application evaluation criteria for the use of such moneys under subsection (c)(2)(B).

Sec. 146. K.S.A. 2-909, 2-1903, 2-1904, 2-1907, 24-1211, 24-1212, 47-122a, 47-230, 47-239, 47-414, 47-414a, 47-416, 47-416a, 47-417, 47-418a, 47-420, 47-422, 47-428, 47-429, 47-432, 47-433, 47-434, 47-435, 47-441, 47-442, 47-446, 47-448, 47-605, 47-607, 47-607a, 47-607d, 47-608, 47-610, 47-613, 47-616, 47-618, 47-619, 47-620, 47-622, 47-626, 47-627, 47-629, 47-629a, 47-629b, 47-629c, 47-631, 47-632, 47-632a, 47-633a, 47-634, 47-635, 47-646a, 47-650, 47-651, 47-653, 47-653a, 47-653b, 47-653d, 47-653e, 47-653f, 47-653g, 47-653h, 47-654, 47-655, 47-657, 47-658a, 47-658b, 47-660, 47-666, 47-667, 47-673, 47-1001, 47-1001d, 47-1501, 47-1506, 47-1511, 47-1701, 47-1725, 47-1735, 47-1804, 47-1808, 47-1832, 49-603, 65-171i, 66-1319, 74-551, 74-4002, 74-4003, 74-50,161, 75-1901, 75-1903, 75-3141, 75-3142, 82a-326, 82a-1607, 82a-1608, 82a-1609, 82a-1702, 82a-1703 and 82a-1704 and K.S.A. 2011 Supp. 2-907, 2-1907c, 2-1915, 2-1930, 2-1931, 2-1932, 2-3709, 32-951, 47-417a, 47-437, 47-611, 47-612, 47-624, 47-672, 47-674, 47-816, 47-1001e, 47-1008, 47-1011a, 47-1201, 47-1218, 47-1302, 47-1303, 47-1304, 47-1307, 47-1503, 47-1706a, 47-1709, 47-1721, 47-1731, 47-1805, 47-1809, 47-1831, 47-2101, 48-3502, 65-5721, 74-552, 74-553, 74-555, 74-567, 74-50,156, 74-50,157, 74-50,158, 74-50,159, 74-50,160, 74-50,162, 74-50,163, 75-37,121, 82a-220, 82a-903, 82a-1602, 82a-1603, 82a-2007 and 82a-2101 are hereby repealed.

Sec. 147. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 25, 2012.

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## CHAPTER 141

### HOUSE BILL No. 2502

AN ACT concerning agriculture; relating to dairy production facilities and establishment procedures; swine production facilities and establishment procedures; amending K.S.A. 17-5903, 17-5904, 17-5907 and 17-5908 and K.S.A. 2011 Supp. 79-32,154 and repealing the existing sections.

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

Section 1. K.S.A. 17-5903 is hereby amended to read as follows: 17-5903. As used in this act:

(a) "Corporation" means a domestic or foreign corporation organized for profit or nonprofit purposes.

(b) "Nonprofit corporation" means a corporation organized not-for-profit and which qualifies under section 501(c)(3) of the federal internal revenue code of 1986 as amended.

(c) "Limited partnership" has the meaning provided by K.S.A. 56-1a01, and amendments thereto.

(d) “Limited agricultural partnership” means a limited partnership founded for the purpose of farming and ownership of agricultural land in which:

- (1) The partners do not exceed 10 in number;
- (2) the partners are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and
- (3) at least one of the general partners is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one partner is meeting the requirement of this provision and such partner dies, the requirement of this provision does not apply for the period of time that the partner’s estate is being administered in any district court in Kansas.

(e) “Corporate partnership” means a partnership, as defined in K.S.A. 56a-101, and amendments thereto, which has within the association one or more corporations or one or more limited liability companies.

(f) “Feedlot” means a lot, yard, corral, or other area in which livestock fed for slaughter are confined. The term includes within its meaning agricultural land in such acreage as is necessary for the operation of the feedlot.

(g) “Agricultural land” means land suitable for use in farming.

(h) “Farming” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming does not include the production of timber, forest products, nursery products or sod, and farming does not include a contract to provide spraying, harvesting or other farm services.

(i) “Fiduciary capacity” means an undertaking to act as executor, administrator, guardian, conservator, trustee for a family trust, authorized trust or testamentary trust or receiver or trustee in bankruptcy.

(j) “Family farm corporation” means a corporation:

(1) Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

(2) all of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

(3) at least one of the stockholders is a person residing on the farm or actively engaged in the labor or management of the farming operation. A stockholder who is an officer of any corporation referred to in this subsection and who is one of the related stockholders holding a majority

of the voting stock shall be deemed to be actively engaged in the management of the farming corporation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

(k) "Authorized farm corporation" means a Kansas corporation, other than a family farm corporation, all of the incorporators of which are Kansas residents, family farm corporations or family farm limited liability agricultural companies or any combination thereof, and which is founded for the purpose of farming and the ownership of agricultural land in which:

- (1) The stockholders do not exceed 15 in number; and
- (2) the stockholders are all natural persons, family farm corporations, family farm limited liability agricultural companies or persons acting in a fiduciary capacity for the benefit of natural persons, family farm corporations, family farm limited liability agricultural companies or nonprofit corporations; and
- (3) if all of the stockholders are natural persons, at least one stockholder must be a person residing on the farm or actively engaged in labor or management of the farming operation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

(l) "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact and in any similar capacity.

(m) "Family trust" means a trust in which:

- (1) A majority of the equitable interest in the trust is held by and the majority of the beneficiaries are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related; and
- (2) all the beneficiaries are natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations.

(n) "Authorized trust" means a trust other than a family trust in which:

- (1) The beneficiaries do not exceed 15 in number;
- (2) the beneficiaries are all natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations; and

(3) the gross income thereof is not exempt from taxation under the laws of either the United States or the state of Kansas.

For the purposes of this definition, if one of the beneficiaries dies, and more than one person succeeds, by bequest, to the deceased beneficiary's interest in the trust, all of such persons, collectively, shall be deemed to be one beneficiary, and a husband and wife, and their estates, collectively, shall be deemed to be one beneficiary.

(o) "Testamentary trust" means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Kansas probate code.

(p) "Poultry confinement facility" means the structures and related equipment used for housing, breeding, laying of eggs or feeding of poultry in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined poultry from exposure to disease. As used in this subsection, "poultry" means chickens, turkeys, ducks, geese or other fowl.

(q) "Rabbit confinement facility" means the structures and related equipment used for housing, breeding, raising, feeding or processing of rabbits in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined rabbits from exposure to disease.

(r) "Swine marketing pool" means an association whose membership includes three or more business entities or individuals formed for the sale of hogs to buyers but shall not include any trust, corporation, limited partnership or corporate partnership, or limited liability company other than a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust.

(s) "Swine production facility" means the land, structures and related equipment ~~owned or leased by a corporation or limited liability company and~~ used for housing, breeding, farrowing or feeding of swine. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production and to avoid nitrate buildup and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

(t) "Limited liability company" has the meaning provided by K.S.A. 17-7663, and amendments thereto.

(u) "Limited liability agricultural company" means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

- (1) The members do not exceed 10 in number; and
- (2) the members are all natural persons, family farm corporations,

family farm limited liability agriculture companies, persons acting in a fiduciary capacity for the benefit of natural persons, family farm corporations, family farm limited liability agricultural companies or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and

(3) if all of the members are natural persons, at least one member must be a person residing on the farm or actively engaged in labor or management of the farming operation. If only one member is meeting the requirement of this provision and such member dies, the requirement of this provision does not apply for the period of time that the member's estate is being administered in any district court in Kansas.

(v) "Dairy production facility" means the land, structures and related equipment used for housing, breeding, raising, feeding or milking dairy cows. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined cows from exposure to disease.

(w) "Family farm limited liability agricultural company" means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

(1) The majority of the members are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

(2) the members are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

(3) at least one of the members is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one member is meeting the requirement of this provision and such member dies, the requirement of this provision does not apply for the period of time that the member's estate is being administered in any district court in Kansas.

(x) "Hydroponics" means the growing of vegetables, flowers, herbs, or plants used for medicinal purposes, in a growing medium other than soil.

Sec. 2. K.S.A. 17-5904 is hereby amended to read as follows: 17-5904.

(a) No corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in

this state. The restrictions provided in this section do not apply to the following:

- (1) A *bona fide* encumbrance taken for purposes of security.
- (2) Agricultural land when acquired as a gift, either by grant or devise, by a *bona fide* educational, religious or charitable nonprofit corporation.
- (3) Agricultural land acquired by a corporation or a limited liability company in such acreage as is necessary for the operation of a nonfarming business. Such land may not be used for farming except under lease to one or more natural persons, a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust. The corporation shall not engage, either directly or indirectly, in the farming operation and shall not receive any financial benefit, other than rent, from the farming operation.
- (4) Agricultural land acquired by a corporation or a limited liability company by process of law in the collection of debts, or pursuant to a contract for deed executed prior to the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or procedure, except that provisions of K.S.A. 9-1102, and amendments thereto, shall apply to any bank which acquires agricultural land.
- (5) A municipal corporation.
- (6) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a nonprofit corporation.
- (7) Agricultural land owned or leased or held under a lease purchase agreement as described in K.S.A. 12-1741, and amendments thereto, by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if: (A) Any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act; (B) any such entity was in compliance with the provisions of K.S.A. 17-5901, prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901, prior to its repeal shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901, prior to its repeal; or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901, prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.
- (8) Agricultural land held or leased by a corporation or a limited li-

ability company for use as a feedlot, a poultry confinement facility or rabbit confinement facility.

(9) Agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products or sod.

(10) Agricultural land used for *bona fide* educational research or scientific or experimental farming.

(11) Agricultural land used for the commercial production and conditioning of seed for sale or resale as seed or for the growing of alfalfa by an alfalfa processing entity if such land is located within 30 miles of such entity's plant site.

(12) Agricultural land owned or leased by a corporate partnership or limited corporate partnership in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, limited liability agricultural companies, family trusts, authorized trusts or testamentary trusts.

(13) Any corporation, either domestic or foreign, or any limited liability company, organized for coal mining purposes which engages in farming on any tract of land owned by it which has been strip mined for coal.

(14) Agricultural land owned or leased by a limited partnership prior to the effective date of this act.

(15) Except as provided by K.S.A. 17-5908, as it existed before the effective date of this act, and K.S.A. 1998 Supp. 17-5909, agricultural land held or leased by a corporation or a limited liability company for use as a swine production facility in any county which, before the effective date of this act, has voted favorably pursuant to K.S.A. 17-5908, as it existed before the effective date of this act, either by county resolution or by the electorate.

(16) Agricultural land held or leased by a corporation ~~or~~, trust, limited liability company, *limited partnership or corporate partnership* for use as a swine production facility in any county where the voters, after the effective date of this act, have voted pursuant to K.S.A. 17-5908, and amendments thereto, to allow establishment of swine production facilities within the county.

(17) Agricultural land held or leased by a corporation ~~or a~~, trust, limited liability company, *limited partnership or corporate partnership* for use as a dairy production facility in any county which has voted favorably pursuant to K.S.A. 17-5907, and amendments thereto, either by county resolution or by the electorate.

(18) Agricultural land held or leased by a corporation or a limited liability company used in a hydroponics setting.

(b) Production contracts entered into by a corporation, trust, limited liability company, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall

not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.

(c) Any corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be subject to a civil penalty of not more than \$50,000 and shall divest itself of any land acquired in violation of this section within one year after judgment is entered in the action. The district courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section.

(d) Civil penalties sued for and recovered by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

Sec. 3. K.S.A. 17-5907 is hereby amended to read as follows: 17-5907.

(a) (1) The board of county commissioners, by resolution, may permit *or deny* a dairy production facility, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county *by a corporation, trust, limited liability company, limited partnership or corporate partnership*. Such resolution shall be published once each week for two consecutive weeks in the official county newspaper. The resolution shall take effect 60 days after final publication unless a valid petition in opposition to the same is filed.

(2) If within 60 days of the final publication of the resolution, a valid protest petition to submit the resolution to the qualified voters of the county is signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected and is filed with the county election officer, the county election officer shall submit the question, as established in subsection (c), of whether a dairy production facility shall be allowed to be established in such county at the next ~~countywide~~ *state, county or special* election.

(b) (1) The board of county commissioners, upon a petition filed in accordance with paragraph (b)(2), shall submit to the qualified electors of the county a proposition to permit a dairy production facility, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county *by a corporation, trust, limited liability company, limited partnership or corporate partnership*.

(2) A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the county election

officer. The petition shall be signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition:

“We request an election to determine whether a corporation, trust, limited liability company, limited partnership or corporate partnership; ~~other than a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust~~ shall be allowed to, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in \_\_\_\_\_ county for the purpose of establishing a dairy production facility.”

(3) Upon the submission of a valid petition calling for an election pursuant to this subsection, the county election officer shall submit the question, as established in subsection (c), of whether a dairy production facility shall be allowed to be established in such county at the next countywide election which occurs more than 60 days after the petition is filed with the county election officer.

(c) In any election established pursuant to this section, the following shall appear on the ballot:

“Shall a corporation, trust, limited liability company, limited partnership or corporate partnership; ~~other than a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust~~ be allowed to, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in \_\_\_\_\_ county for the purpose of establishing a dairy production facility?”

(d) If a majority of the votes cast and counted are in opposition to allowing dairy production facilities to be established in such county, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that dairy production facilities are not allowed to be established in such county.

(e) If a majority of the votes cast and counted is in favor of the proposition, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that dairy production facilities are allowed to be established in such county.

(f) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

Sec. 4. K.S.A. 17-5908 is hereby amended to read as follows: 17-5908.

(a) (1) The board of county commissioners, by resolution, may ~~submit to~~

~~the qualified voters of the county a proposition to allow permit or deny a swine production facilities facility, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county by a corporation, trust, limited liability company, limited partnership or corporate partnership. Upon adoption of such resolution, the county election officer shall submit the question of whether swine production facilities shall be allowed to be established in such county at the next state or county wide regular or special election. Such resolution shall be published once each week for two consecutive weeks in the official county newspaper. The resolution shall take effect 60 days after final publication unless a valid petition in opposition to the same is filed.~~

(2) ~~If within 60 days of the final publication of the resolution, a valid protest petition to submit the resolution to the qualified voters of the county is signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected and is filed with the county election officer, the county election officer shall submit the question, as established in subsection (c), of whether a swine production facility shall be allowed to be established in such county at the next state, county or special election.~~

(b) (1) The board of county commissioners, upon a petition filed in accordance with paragraph (b)(2), shall submit to the qualified ~~voters~~ ~~electors~~ of the county a proposition to ~~allow permit a~~ swine production ~~facilities~~ ~~facility~~, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county ~~corporation, trust, limited liability company, limited partnership or corporate partnership.~~

(2) A petition to submit a proposition to the qualified voters of a county pursuant to this ~~subsection (b)~~ ~~section~~ shall be filed with the county election officer. The petition shall be signed by qualified ~~voters~~ ~~electors~~ of the county equal in number to not less than 5% of the ~~voters~~ ~~electors~~ of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition:

~~“We request an election to determine whether ~~corporate swine production facilities~~ a corporation, trust, limited liability company, limited partnership or corporate partnership shall be allowed to be established, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in \_\_\_\_\_ county, pursuant to K.S.A. 17-5904 for the purpose of establishing a swine production facility.”~~

(3) Upon the submission of a valid petition calling for an election pursuant to this subsection, the county election officer shall submit the question, ~~as established in subsection (c)~~, of whether a swine production ~~facilities~~ ~~facility~~ shall be allowed to be established in such county at the next ~~state or countywide~~ ~~regular or special~~ election which occurs more than 60 days after the petition is filed with the county election officer.

(c) *In any election established pursuant to this section, the following shall appear on the ballot:*

*“Shall a corporation, trust, limited liability company, limited partnership or corporate partnership be allowed to, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in \_\_\_\_\_ county for the purpose of establishing a swine production facility?”*

(d) If a majority of the votes cast and counted are in opposition to allowing swine production facilities to be established in such county, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that swine production facilities are not allowed to be established in such county.

~~(d)~~(e) If a majority of the votes cast and counted is in favor of the proposition, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that swine production facilities are allowed to be established in such county.

~~(e)~~(f) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county; ~~except that the county election officer shall publish in the official county newspaper a notice of such election once each week for two consecutive weeks, the first publication to be not less than 21 days before the election, and such notice shall state the date and time of the election and the proposition that will appear on the ballot.~~

Sec. 5. K.S.A. 2011 Supp. 79-32,154 is hereby amended to read as follows: 79-32,154. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) “Facility” shall mean any factory, mill, plant, refinery, warehouse, feedlot, building or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word “building” shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.

(b) “Qualified business facility” shall mean a facility which satisfies the requirements of paragraphs (1) and (2) of this subsection.

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer’s only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise,

and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical revenue producing enterprise, as defined in subsection (i), at such facility.

(c) "Revenue producing enterprise" shall mean:

(1) The assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(2) the storage, warehousing, distribution or sale of any products of agriculture, aquaculture, mining or manufacturing;

(3) the feeding of livestock at a feedlot;

(4) the operation of laboratories or other facilities for scientific, agricultural, aquacultural, animal husbandry or industrial research, development or testing;

(5) the performance of services of any type;

(6) the feeding of aquatic plants and animals at an aquaculture operation;

(7) the administrative management of any of the foregoing activities; or

(8) any combination of any of the foregoing activities.

"Revenue producing enterprise" shall not mean a swine production facility as defined in K.S.A. 17-5903, and amendments thereto, *that is owned or leased by a corporation or limited liability company*.

(d) "Qualified business facility employee" shall mean a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed:

(1) A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the qualified business facility on: (A) A regular, full-time basis; (B) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (C) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of qualified business facility employees during any taxable year shall be determined by dividing by 12 the sum of the number of qualified business facility employees on the last business day of each month of such taxable

year. If the qualified business facility is in operation for less than the entire taxable year, the number of qualified business facility employees shall be determined by dividing the sum of the number of qualified business facility employees on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment, the number of qualified business facility employees employed in the operation of such facility shall be reduced by the average number, computed as provided in this subsection, of individuals employed in the operation of the facility during the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(2) For taxable years commencing after December 31, 1997, in the case of a taxpayer claiming a credit against the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, “qualified business employee” shall not mean any person who is employed in the operation of a qualified business facility in the state due to the merger, acquisition or other reconfiguration of the taxpayer unless such employee’s position represents a net gain of total positions created by the taxpayer and the employee’s position was not in existence at the time of the merger acquisition or other reconfiguration of the taxpayer.

(e) “Qualified business facility investment” shall mean the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer’s business, which constitutes the qualified business facility, or which is used by the taxpayer in the operation of the qualified business facility, during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. The value of such property during such taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business fa-

cility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(f) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility.

(g) "Qualified business facility income" shall mean the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility. If a taxpayer has income derived from the operation of a qualified business facility as well as from other activities conducted within this state, the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility shall be determined by multiplying the taxpayer's Kansas taxable income by a fraction, the numerator of which is the property factor, as defined in paragraph (1), plus the payroll factor, as defined in paragraph (2), and the denominator of which is two. In the case of financial institutions, the property and payroll factors shall be computed utilizing the specific provisions of the apportionment method applicable to financial institutions, if enacted, and the qualified business facility income shall be based upon net income.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in connection with the operation of the qualified business facility during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. The average value of all such property shall be determined as provided in K.S.A. 79-3281 and 79-3282, and amendments thereto.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as qualified business facility employees, as determined under subsection (d), at the qualified business facility, and the denominator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in K.S.A. 79-3283, and amendments thereto.

The formula set forth in this subsection (g) shall not be used for any purpose other than determining the qualified business facility income attributable to a qualified business facility.

(h) “Related taxpayer” shall mean: (1) A corporation, partnership, trust or association controlled by the taxpayer; (2) an individual, corporation, partnership, trust or association in control of the taxpayer; or (3) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer. For the purposes of this act, “control of a corporation” shall mean ownership, directly or indirectly, of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation; “control of a partnership or association” shall mean ownership of at least 80% of the capital or profits interest in such partnership or association; and “control of a trust” shall mean ownership, directly or indirectly, of at least 80% of the beneficial interest in the principal or income of such trust.

(i) “Same or substantially identical revenue producing enterprise” shall mean a revenue producing enterprise in which the products produced or sold, services performed or activities conducted are the same in character and use, are produced, sold, performed or conducted in the same manner and to or for the same type of customers as the products, services or activities produced, sold, performed or conducted in another revenue producing enterprise.

Sec. 6. K.S.A. 17-5903, 17-5904, 17-5907 and 17-5908 and K.S.A. 2011 Supp. 79-32,154 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 25, 2012.

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## CHAPTER 142

Senate Substitute for HOUSE BILL No. 2077<sup>o</sup>

AN ACT concerning employment; creating the professional employer organization registration act.

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

Section 1. The provisions of sections 1 through 11, and amendments thereto, shall be known and may be cited as the professional employer organization registration act.

Sec. 2. As used in sections 1 through 11, and amendments thereto:

(a) “Client” means any person who enters into a professional employer agreement with a professional employer organization.

(b) “Co-employer” means either a professional employer organization or a client.

(c) “Co-employment relationship” means a relationship which is intended to be an ongoing relationship rather than a temporary or project specific relationship, and wherein the rights, duties and obligations of an employer which arise out of an employment relationship have been allocated between the employer and a professional employer organization as co-employers pursuant to a professional employer agreement entered into in accordance with the provisions of sections 1 through 11, and amendments thereto. Under a co-employment relationship:

(1) The professional employer organization is entitled to enforce only those employer rights, and is subject to only those employer obligations, that are specifically allocated to the professional employer organization by the professional employer agreement or by the provisions of sections 1 through 11, and amendments thereto;

(2) the client is entitled to enforce those employer rights, and is obligated to provide and perform those employer obligations, that are allocated to such client by the professional employer agreement or by the provisions of sections 1 through 11, and amendments thereto; and

(3) the client also is entitled to enforce any employer right, and is obligated to perform any obligation of an employer, that is not specifically allocated to the professional employer organization by the professional employer agreement or by the provisions of sections 1 through 11, and amendments thereto.

(d) “Commissioner” means the commissioner of insurance.

(e) (1) “Covered employee” means an individual having a co-employment relationship with a professional employer organization and a client, who has received written notice of the co-employment relationship with the professional employer organization and the client, and such co-employment relationship was entered into pursuant to a professional employer agreement entered into in accordance with the provisions of sections 1 through 11, and amendments thereto.

(2) The term “covered employee” shall include individuals who are officers, directors, shareholders, partners or managers of the client, or members of a limited liability company that is a client, if:

(A) The professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals are covered employees;

(B) such individuals satisfy the provisions of paragraph (1); and

(C) such individuals act as operational managers or perform day-to-day operational services for the client.

(f) “Department” means the department of insurance.

(g) “Person” means any individual, partnership, corporation, limited liability company, association or any other form of legally recognized entity.

(h) “Professional employer agreement” means a written contract entered into between a client and a professional employer organization that provides:

- (1) For the co-employment of covered employees;
- (2) for the allocation of employer rights and obligations between the client and the professional employer organization with respect to covered employees; and
- (3) for the professional employer organization and the client to assume the responsibilities required by the provisions of sections 1 through 11, and amendments thereto.

(i) (1) “Professional employer organization” means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be considered a “professional employer organization” regardless of such person’s use of the term staff leasing company, administrative employer, employee leasing company or any name other than professional employer organization in describing such person’s business.

(2) For purposes of sections 1 through 11, and amendments thereto, the following shall not be considered a “professional employer organization,” or as providing “professional employment services”:

(A) Arrangements wherein a person, whose principal business activity is not entering into professional employer agreements, and which does not hold itself out as a professional employer organization, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the internal revenue code;

(B) independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or such person’s agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; and

(C) providing temporary help services.

(j) “Professional employer group” means two or more professional employer organizations that are majority owned or commonly controlled by the same entity, parent or controlling person.

(k) “Professional employer services” means the service of entering into co-employment relationships.

(l) “Registrant” means a professional employer organization registered under the provisions of sections 1 through 11, and amendments thereto.

(m) “Temporary help services” means services consisting of a person:

- (1) Recruiting and hiring such person’s own employees;
- (2) locating other organizations that need the services of such employees;
- (3) assigning such employees:

(A) To perform work at or services for such other organizations to support or supplement such other organizations' workforces;

(B) to provide assistance in special work situations, including employee absences, skill shortages or seasonal workloads; or

(C) to perform special assignments or projects; and

(4) customarily attempting to reassign such employees to other organizations when such employees finish an assignment.

(n) "Working capital" means current assets less current liabilities, as such terms are used by generally accepted accounting principles.

Sec. 3. (a) Nothing in the provisions of sections 1 through 11, and amendments thereto, or in any professional employer agreement shall:

(1) Affect, modify or amend any collective bargaining agreement, or the rights or obligations of any client, professional employer organization or covered employee under the national labor relations act, 29 U.S.C. § 151 *et seq.*, or the railway labor act, 45 U.S.C. § 151 *et seq.*;

(2) diminish, abolish or remove the rights of covered employees as to a client, or the obligations of such client to a covered employee, whether existing prior to or after the effective date of the professional employer agreement, including, but not limited to, rights and obligations arising from civil rights laws guaranteeing nondiscrimination in employment practices;

(3) affect, modify or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective, nor prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee. A professional employer organization shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the professional employer organization has specifically agreed otherwise in writing; or

(4) create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or by the provisions of sections 1 through 11, and amendments thereto.

(b)(1) Nothing in the provisions of sections 1 through 11, and amendments thereto, or in any professional employer agreement shall affect, modify or amend any local, state or federal licensing, registration or certification requirement applicable to any client or covered employee.

(2) A covered employee who is required to be licensed, registered or certified pursuant to local, state or federal law or rules and regulations shall be deemed to be an employee solely of the client for purposes of any such license, registration or certification requirement.

(3) A professional employer organization shall not be deemed to engage in any occupation, trade, profession or other activity that is subject

to licensing, registration or certification requirements, or is otherwise regulated by a governmental entity solely by entering into and maintaining a co-employment relationship with a client or covered employee who is subject to such requirements or regulations.

(4) A client shall have the sole right to direct and control the professional or licensed activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration or certification of such covered employees or clients.

(c) With respect to a bid, contract, purchase order or agreement entered into with the state or a political subdivision of the state, a client's status or certification as a small, minority-owned, disadvantaged or woman-owned business enterprise, a veteran or service-disabled veteran small business or as a historically underutilized business, shall not be affected because the client has entered into a professional employer agreement with a professional employer organization, or uses the services of a professional employer organization.

(d) (1) With respect to any state or local economic development or incentive program, the client shall have access to such program and the client shall not be adversely affected or disqualified because the client:

- (A) Has entered into a professional employer agreement; or
- (B) uses the services of a professional employer organization.

(2) If a state or local economic development or incentive program has any employee-related requirement necessary to qualify for participation in such program, the employees of the client shall be deemed to be employees for the purpose of satisfying such requirement.

Sec. 4. (a) A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered pursuant to this section.

(b) A person who is not registered pursuant to this section shall not offer or provide professional employer services in this state, and shall not use the names PEO, professional employer organization, staff leasing company, employee leasing company, administrative employer or any other name or title representing professional employer services.

(c) Each applicant for registration shall submit an application to the commissioner in such form and manner as prescribed by the commissioner. The application shall contain the following information:

(1) The name or names under which the professional employer organization conducts business;

(2) the address of the principal place of business of the professional employer organization, and the address of each office the professional employer organization maintains in this state;

(3) the professional employer organization's taxpayer or employer identification number;

(4) a list, by jurisdiction, of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities;

(5) a statement of ownership, which shall include the name and evidence of the business experience of any person that, individually, or acting in concert with one or more other persons, owns or controls, directly or indirectly, 15% or more of the equity interest of the professional employer organization;

(6) a statement of management, which shall include the name and evidence of the business experience of any individual who serves as president, chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

(7) a financial statement setting forth the financial condition of the professional employer organization or professional employer group, which shall comply with the provisions of subsection (h).

(d) (1) Each professional employer organization operating within this state as of the effective date of this act shall complete its initial registration not later than 60 days after the effective date of this act. Such initial registration shall be valid until 60 days from the end of the professional employer organization's first fiscal year that is more than one year after the effective date of this act.

(2) Each professional employer organization not operating within this state as of the effective date of this act shall complete its initial registration prior to initiating operations within this state. If a professional employer organization not registered in this state becomes aware that an existing client, not based in this state, has employees and operations in this state, the professional employer organization shall either decline to provide professional employer services for those employees, or notify the commissioner within five business days of the professional employer organization's knowledge of this fact and file a limited registration application pursuant to subsection (g), or a full registration if there are more than 50 covered employees employed by such client. The commissioner may issue an interim operating permit for the period of time the application is pending if the professional employer organization is currently registered or licensed by another state, and the commissioner determines it is in the best interests of the potential covered employees.

(e) Within 60 days after the end of a registrant's fiscal year, such registrant shall renew its registration by notifying the commissioner of any changes in the information provided in such registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect for the period of time the renewal application is pending.

(f) Professional employer organizations in a professional employer

group may satisfy any reporting and financial requirements of this section on a combined or consolidated basis, provided that each member of the professional employer group guarantees the financial capacity obligations required by section 6, and amendments thereto, of each other member of the professional employer group. In the case of a professional employer group that submits a combined or consolidated audited financial statement, including entities that are not professional employer organizations or that are not in the professional employer group, the controlling entity of the professional employer group under the consolidated or combined statement must guarantee the obligations of the professional employer organizations in the professional employer group.

(g) (1) A professional employer organization is eligible for a limited registration if such professional employer organization:

(A) Submits a written request for limited registration in such form and manner as prescribed by the commissioner;

(B) is domiciled outside this state, and is licensed or registered as a professional employer organization in another state;

(C) does not maintain an office in this state, or directly solicit clients located or domiciled within this state; and

(D) does not have more than 50 covered employees employed or domiciled in this state on any given day.

(2) A limited registration is valid for one year, and may be renewed.

(3) A professional employer organization requesting limited registration under this subsection shall provide the commissioner with such information and documentation as required by the commissioner to show that the professional employer organization qualifies for a limited registration.

(4) The provisions of section 6, and amendments thereto, shall not apply to applicants for limited registration.

(h) At the time of initial registration, the applicant shall submit the most recent audit of the applicant or such applicant's parent holding company, which audit shall not be older than 13 months. Thereafter, a professional employer organization or professional employer group shall file on an annual basis, within 60 days after the end of the professional employer organization's or parent holding company's fiscal year, a succeeding audit. An applicant may apply to the commissioner for an extension of time to submit such audit, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date. For the initial application, if the closing date of the audited financial statements required by this section is older than three months from the date of the application, the application also shall include updated, though unaudited, financial statements for the most recent quarter. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the

jurisdiction in which such accountant is located, and shall be without qualification as to the going concern status of the professional employer organization. A professional employer group may submit combined or consolidated audited financial statements to meet the requirements of this section. A professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least 12 months of operating history shall meet the financial capacity requirements of subsection (f) and present financial statements reviewed by a certified public accountant.

(i) The department shall maintain a list of professional employer organizations registered under this section, and such list shall be readily available to the public by electronic or other means.

(j) The commissioner, to the extent practical, shall permit the acceptance of electronic filings, including applications, documents, reports and other filings required by the commissioner under this section. The commissioner may provide for the acceptance of electronic filings and other assurance documents by an independent and qualified entity approved by the commissioner that provides satisfactory assurance of compliance acceptable to the commissioner consistent with, or in lieu of, the requirements of this section and section 6, and amendments thereto. The commissioner shall permit a professional employer organization to authorize such entity approved by the commissioner to act on the professional employer organization's behalf in complying with the registration requirements of this section, including electronic filings of information and payment of registration fees. Use of such an approved entity shall be optional and not mandatory for a registrant. Nothing in this subsection shall limit or change the commissioner's authority to register or terminate registration of a professional employer organization, or to investigate or enforce any provision of sections 1 through 11, and amendments thereto.

Sec. 5. (a) Upon filing an initial application for registration, a professional employer organization shall pay a fee in an amount not to exceed \$1,000.

(b) Upon filing a renewal application for registration, a professional employer organization shall pay a fee in an amount not to exceed \$500.

(c) Upon filing an initial or a renewal application for limited registration, a professional employer organization shall pay a fee in an amount not to exceed \$500.

(d) Upon filing an initial or a renewal application for registration, a professional employer group shall pay a fee in an amount determined by the commissioner and adopted by rules and regulations.

(e) The commissioner shall adopt rules and regulations establishing the fees to be charged pursuant to this section in such amounts as deemed reasonably necessary by the commissioner for the administration of the

provisions of sections 1 through 11, and amendments thereto, subject to the limitations on fee amounts set forth in subsections (a), (b) and (c).

(f) There is hereby created the professional employer organization fee fund. The commissioner shall remit all moneys received from fees or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the professional employer organization fee fund. All expenditures from the professional employer organization fee fund shall be for the purposes of the administration of the provisions of sections 1 through 11, and amendments thereto, and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner, or the commissioner's designee.

Sec. 6. Except as provided by subsections (g) and (j) of section 4, and amendments thereto, each professional employer organization, or collectively each professional employer group shall either:

(a) Maintain positive working capital upon registration as reflected in the financial statements submitted to the commissioner with the initial registration application and each renewal application; or

(b) for a professional employer organization or professional employer group that does not have sufficient positive working capital as required in subsection (a), submit a bond, irrevocable letter of credit or securities with a minimum market value in an amount equal to the sum of the amount that would be necessary for such professional employer organization or professional employer group to comply with subsection (a) plus \$100,000 to the commissioner at such time as the professional employer organization or professional employer group does not have sufficient working capital. Such bond shall be held by a depository designated by the commissioner securing payment by the professional employer organization of all taxes, wages, benefits or other entitlement due to or with respect to covered employees, if the professional employer organization does not make such payments when due.

Sec. 7. (a) No person shall knowingly enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees, or in which less than half of the payroll of the client in this state is attributable to covered employees.

(b) Except as otherwise provided in sections 1 through 11, and amendments thereto, or in the professional employer agreement, in each co-employment relationship:

(1) The client shall be entitled to exercise all rights and shall be obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship;

(2) the professional employer organization shall be entitled to exer-

cise only those rights and obligated to perform only those duties and responsibilities specifically required by the provisions of sections 1 through 11, and amendments thereto, or in the professional employer agreement. The rights, duties and obligations of the professional employer organization as co-employer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement or as required by the provisions of sections 1 through 11, and amendments thereto, during the term of co-employment by the professional employer organization of such covered employee; and

(3) the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities or to comply with any licensure requirements applicable to the client or to the covered employees.

(c) Except as otherwise provided in sections 1 through 11, and amendments thereto, the co-employment relationship between the client and the professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement. Each professional employer agreement shall include the following:

(1) The allocation of rights, duties and obligations as described in this section;

(2) that the professional employer organization shall have the responsibility to pay wages to covered employees, to withhold, collect, report and remit payroll-related and unemployment taxes and, to the extent the professional employer organization has assumed such responsibility in the professional employer agreement, to make payments for employee benefits for covered employees;

(3) that, in addition to the client's right to hire, discipline and terminate a covered employee, the professional employer organization shall have a right to hire, discipline and terminate a covered employee only as may be necessary to fulfill the professional employer organization's responsibilities under the provisions of sections 1 through 11, and amendments thereto, or the professional employer agreement.

(d) For purposes of this section, wages do not include any obligation between a client and a covered employee for payments beyond, or in addition to, the covered employee's salary, draw or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing or vacation, sick or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement.

(e) With respect to each professional employer agreement entered into by a professional employer organization, such professional employer organization shall provide written notice to each covered employee affected by such agreement. The professional employer organization shall

provide and the client is required to post the following notices in a conspicuous place at the client's worksite:

(1) Notice of the general nature of the co-employment relationship between and among the professional employer organization, the client and such covered employees; and

(2) any notices required by the state relating to unemployment compensation and minimum wages.

(f) Except as otherwise provided in the professional employer agreement:

(1) A client shall be solely responsible for the quality, adequacy or safety of the goods or services produced or sold in the client's business;

(2) a client shall be solely responsible for directing, supervising, training and controlling the work of the covered employees with respect to the business activities of the client and solely responsible for the acts, errors or omissions of the covered employees with regard to such activities;

(3) a client shall not be liable for the acts, errors or omissions of a professional employer organization, or of any covered employee of the client and a professional employer organization when such covered employee is acting under the express direction and control of the professional employer organization;

(4) nothing in this subsection shall limit any contractual liability or obligation specifically provided in a professional employer agreement;

(5) a covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation or any other liability insurance carried by the professional employer organization unless the covered employee is included for such purposes by specific reference in the professional employer agreement and in any applicable prearranged employment contract, insurance contract or bond;

(6) a professional employer organization shall not sell, solicit or negotiate insurance on behalf of a client, covered employee or other employee of a client except through a person or entity licensed to do so pursuant to state law;

(7) a professional employer organization shall sponsor health and workers' compensation plans for its covered employees only on a fully insured basis from an insurance carrier admitted to do business in this state, and if any such health or workers' compensation policies are canceled or non-renewed, the professional employer organization shall so notify all clients affected within seven days that such clients no longer have health or workers' compensation insurance, as applicable on such client's employees;

(8) for purposes of this state or any county, municipality or other political subdivision thereof:

(A) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee, and nothing in the provisions of sections 1 through 11, and amendments thereto, shall be construed to relieve a client of any sales tax liability with respect to such client's goods or services;

(B) any tax or assessment imposed upon professional employer services or any business license or other fee which is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement;

(C) any tax assessed or assessment or mandated expenditure on a *per capita* or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client, and any benefits or monetary consideration that meets the requirements of mandates imposed on a client and that are received by covered employees through the professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates; and

(D) in the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to apply any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

Sec. 8. A client and a professional employer organization shall each be deemed an employer under the laws of this state for purposes of sponsoring retirement and employee welfare benefit plans for its covered employees.

Sec. 9. (a) It shall be a violation of the provisions of sections 1 through 11, and amendments thereto:

(1) For a person to knowingly offer or provide professional employer services or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer or other title representing professional employer services without registering in accordance with section 4, and amendments thereto;

(2) for a person to knowingly provide false or fraudulent information

to the commissioner in conjunction with any registration application, renewal or in any report required under the provisions of sections 4 or 6, and amendments thereto;

(3) for a person to knowingly make a material misrepresentation to the commissioner, or other governmental agency to which such person is required to submit a report or information;

(4) for a professional employer organization or a controlling person of a professional employer organization to be convicted of a crime:

(A) That relates to the operation of a professional employer organization;

(B) that relates to the ability of the professional employer organization or a controlling person of a professional employer organization to operate a professional employer organization; or

(C) pursuant to 18 U.S.C. § 1033; or

(5) for a person to willfully violate any provision of sections 1 through 11, and amendments thereto, or any rule or regulation adopted by the commissioner pursuant thereto.

(b) Upon a finding, and after notice and an opportunity for a hearing, that a professional employer organization, or a controlling person of a professional employer organization, or a person offering professional employer services has committed a violation under this section, the commissioner may:

(1) Deny the application for registration;

(2) revoke, restrict or refuse to renew a registration;

(3) impose a civil fine in an amount not to exceed \$10,000 for each material violation of the provisions of sections 1 through 11, and amendments thereto;

(4) place the registrant on probation for such period of time and subject to such conditions as the commissioner shall specify; or

(5) issue an order to cease and desist those professional employer organization activities and services specified in such order.

(c) The provisions of this section shall be subject to the Kansas judicial review act.

Sec. 10. The commissioner is hereby authorized to and shall adopt such rules and regulations as the commissioner deems necessary to implement and enforce the provisions of sections 1 through 11, and amendments thereto.

Sec. 11. If any provision of sections 1 through 11, and amendments thereto, or any portion thereof, is declared invalid or unconstitutional, such invalidity shall not affect the validity or constitutionality of the remaining provisions of sections 1 through 11, and amendments thereto.

Sec. 12. This act shall take effect and be in force from and after January 1, 2014, and its publication in the statute book.

Approved May 25, 2012.

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CHAPTER 143

HOUSE BILL No. 2464

AN ACT concerning crimes, punishment and criminal procedure; relating to discovery; certain visual depictions; interference with judicial process; amending K.S.A. 2011 Supp. 21-5905 and 22-3212 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 22-3212 is hereby amended to read as follows: 22-3212. (a) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph the following, if relevant: (1) Written or recorded statements or confessions made by the defendant, or copies thereof, which are or have been in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (3) recorded testimony of the defendant before a grand jury or at an inquisition; and (4) memoranda of any oral confession made by the defendant and a list of the witnesses to such confession, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney.

(b) (1) *Except as provided in subsection (j)*, upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution.

(2) Except as provided in subsections (a)(2) and (a)(4), this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses, other than the defendant, except as may be provided by law.

(3) Except as provided in subsection (e), this section does not require the prosecuting attorney to provide unredacted vehicle identification

numbers or personal identifiers of persons mentioned in such books, papers or documents.

(4) As used in this subsection, personal identifiers include, but are not limited to, birthdates, social security numbers, taxpayer identification numbers, drivers license numbers, account numbers of active financial accounts, home addresses and personal telephone numbers of any victims or material witnesses.

(5) If the prosecuting attorney does provide the defendant's counsel with unredacted vehicle identification numbers or personal identifiers, the defendant's counsel shall not further disclose the unredacted numbers or identifiers to the defendant or any other person, directly or indirectly, except as authorized by order of the court.

(6) If the prosecuting attorney provides books, papers or documents to the defendant's counsel with vehicle identification numbers or personal identifiers redacted by the prosecuting attorney, the prosecuting attorney shall provide notice to the defendant's counsel that such books, papers or documents had such numbers or identifiers redacted by the prosecuting attorney.

(7) Any redaction of vehicle identification numbers or personal identifiers by the prosecuting attorney shall be by alteration or truncation of such numbers or identifiers and shall not be by removal.

(c) If the defendant seeks discovery and inspection under subsection (a)(2) or subsection (b), the defendant shall permit the attorney for the prosecution to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at any hearing, and which are material to the case and will not place an unreasonable burden on the defense. Except as to scientific or medical reports, this subsection does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agents or attorneys.

(d) The prosecuting attorney and the defendant shall cooperate in discovery and reach agreement on the time, place and manner of making the discovery and inspection permitted, so as to avoid the necessity for court intervention.

(e) Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, enlarged or deferred or make such other order as is appropriate. Upon motion, the court may permit either party to make such showing, in whole or in part, in the form of a written statement to be inspected privately by the court. If the court enters an order granting relief following such a private showing, the entire

text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(f) Discovery under this section must be completed no later than 21 days after arraignment or at such reasonable later time as the court may permit.

(g) If, subsequent to compliance with an order issued pursuant to this section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under this section, the party shall promptly notify the other party or the party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this section or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) For crimes committed on or after July 1, 1993, the prosecuting attorney shall provide all prior convictions of the defendant known to the prosecuting attorney that would affect the determination of the defendant's criminal history for purposes of sentencing under a presumptive sentencing guidelines system as provided in K.S.A. 21-4701 *et seq.*, prior to their repeal, or the revised Kansas sentencing guidelines act, article 68 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(i) The prosecuting attorney and defendant shall be permitted to inspect and copy any juvenile files and records of the defendant for the purpose of discovering and verifying the criminal history of the defendant.

(j) (1) *In any criminal proceeding, any property or material that constitutes a visual depiction, as defined in subsection (a)(2) of K.S.A. 2011 Supp. 21-5510, and amendments thereto, shall remain in the care, custody and control of either the prosecution, law enforcement or the court.*

(2) *Notwithstanding subsection (b), if the state makes property or material described in this subsection reasonably available to the defendant, the court shall deny any request by the defendant to copy, photograph, duplicate or otherwise reproduce any such property or material submitted as evidence.*

(3) *For the purpose of this subsection, property or material described in this subsection shall be deemed to be reasonably available to the defendant if the prosecution provides ample and liberal opportunity for inspection, viewing and examination of such property or material at a government facility, whether inside or outside the state of Kansas, by the defendant, the defendant's attorney and any individual the defendant may seek to qualify to furnish expert testimony at trial.*

Sec. 2. K.S.A. 2011 Supp. 21-5905 is hereby amended to read as follows: 21-5905. (a) Interference with the judicial process is:

(1) Communicating with any judicial officer in relation to any matter which is or may be brought before such judge, magistrate, master or juror with intent *to improperly to* influence such officer;

(2) committing any of the following acts, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor:

(A) Communicating in any manner a threat of violence to any judicial officer or any prosecutor;

(B) harassing a judicial officer or a prosecutor by repeated vituperative communication; or

(C) picketing, parading or demonstrating near such officer's or prosecutor's residence or place of abode;

(3) picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecutor with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor;

(4) knowingly accepting or agreeing to accept anything of value as consideration for a promise:

(A) Not to initiate or aid in the prosecution of a person who has committed a crime; or

(B) to conceal or destroy evidence of a crime; ~~or~~

(5) *knowingly or intentionally in any criminal proceeding or investigation:*

(A) *Inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document or thing;*

(B) *withholding or unreasonably delaying in producing any testimony, information, document or thing after a court orders the production of such testimony, information, document or thing;*

(C) *altering, damaging, removing or destroying any record, document or thing, with the intent to prevent it from being produced or used as evidence; or*

(D) *making, presenting or using a false record, document or thing with the intent that the record, document or thing, material to such criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master or law enforcement officer; or*

~~(5)~~(6) when performed by a person summoned or sworn as a juror in any case:

(A) Intentionally soliciting, accepting or agreeing to accept from another any benefit as consideration to wrongfully give a verdict for or against any party in any proceeding, civil or criminal;

(B) intentionally promising or agreeing to wrongfully give a verdict for or against any party in any proceeding, civil or criminal; or

(C) knowingly receiving any evidence or information from anyone in

relation to any matter or cause for the trial of which such juror has been or will be sworn, without the authority of the court or officer before whom such juror has been summoned, and without immediately disclosing the same to such court or officer.

(b) Interference with the judicial process as defined in:

(1) Subsection (a)(1) is a severity level 9, nonperson felony;

(2) subsection (a)(2) and (a)(3) is a class A nonperson misdemeanor;

(3) subsection (a)(4) is a:

(A) Severity level 8, nonperson felony if the crime is a felony; or

(B) class A nonperson misdemeanor if the crime is a misdemeanor;

(4) *subsection (a)(5) is a:*

(A) *Severity level 8, nonperson felony if the matter or case involves a felony; or*

(B) *class A nonperson misdemeanor if the matter or case involves a misdemeanor;*

~~(4)(5)~~ subsection ~~(a)(5)(A)-(a)(6)(A)~~ is a severity level 7, nonperson felony; and

~~(5)(6)~~ subsection ~~(a)(5)(B) or (a)(5)(C)-(a)(6)(B) or (a)(6)(C)~~ is a severity level 9, nonperson felony.

(c) Nothing in this section shall limit or prevent the exercise by any court of this state of its power to punish for contempt.

Sec. 3. K.S.A. 2011 Supp. 21-5905 and 22-3212 are hereby repealed.

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

Approved May 25, 2012.

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## CHAPTER 144

Substitute for HOUSE BILL No. 2689

AN ACT concerning alcoholic beverages; amending K.S.A. 41-304, 41-306, 41-306a, 41-307, 41-308, 41-316, 41-320, 41-601, 41-602, 41-701, 41-717, 41-718, 41-803, 41-901, 41-1101, 41-2608, 41-2612, 41-2613, 41-2614, 41-2640, 41-2722, 79-4101, 79-4102, 79-4103, 79-4104, 79-41a01, 79-41a02, 79-41a04, 79-41a06, 79-41a07 and 79-41a08 and K.S.A. 2011 Supp. 41-102, 41-305, 41-308a, 41-308a, as amended by section 11 of this act, 41-310, 41-311, 41-313, 41-317, 41-319, 41-501, 41-710, 41-714, 41-719, 41-719, as amended by section 28 of this act, 41-2601, 41-2622, 41-2623, 41-2629, 41-2645, 75-5133 and 79-41a03 and repealing the existing sections; also repealing K.S.A. 41-333, 41-334, 41-335, 41-336, 41-337, 41-338, 41-339, 41-340 and 41-341.

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

New Section. 1. (a) A license for a public venue shall allow the licensee to:

(1) Offer for sale, sell and serve alcoholic liquor by the individual drink for consumption on the licensed premises;

(2) offer for sale, sell and serve unlimited drinks for a fixed price in designated areas of the licensed premises;

(3) offer for sale and sell all inclusive packages which include unlimited drinks in designated areas of the licensed premises;

(4) offer for sale, sell and serve alcoholic liquor in the original container for consumption on the licensed premises in private suites, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier;

(5) store, in each private suite, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier, alcoholic liquor sold in the original container to a customer in that private suite; and

(6) with the approval of the retailer or distributor, return for a full refund of the original purchase price unopened containers of alcoholic liquor to the retailer or distributor from whom such items were purchased upon the conclusion of an event if the next scheduled event for that premises is more than 90 days from the date of the concluded event.

(b) An applicant or public venue licensee shall specify in the application for a license, or renewal of a license, the premises to be licensed. No public venue licensee may offer for sale, sell or serve any alcoholic liquor in any area not included in the licensed premises.

(c) The term "designated areas" for purposes of this section shall mean an area identified in the license application, which may include suites, that has controlled access and is separated from the general admission by a barrier.

(d) The provisions of this section shall take effect and be in force from and after July 1, 2012.

New Sec. 2. (a) A microdistillery license shall allow:

(1) The manufacture of not more than 50,000 gallons of spirits per year and the storage thereof;

(2) the sale to spirit distributors of spirits, manufactured by the licensee;

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of spirits manufactured by the licensee;

(4) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of spirits manufactured by the licensee, if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

(5) if the licensee is also licensed as a club or drinking establishment, the sale of spirits and other alcoholic liquor for consumption on the li-

censed premises as authorized by the club and drinking establishment act; and

(6) if the licensee is also licensed as a caterer, the sale of spirits and other alcoholic liquor for consumption on unlicensed premises as authorized by the club and drinking establishment act.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a microdistillery licensee, the director may issue not to exceed one microdistillery packaging and warehousing facility license to the microdistillery licensee. A microdistillery packaging and warehousing facility license shall allow:

(1) The transfer, from the licensed premises of the microdistillery to the licensed premises of the microdistillery packaging and warehousing facility, of spirits manufactured by the licensee, for the purpose of packaging or storage, or both;

(2) the transfer, from the licensed premises of the microdistillery packaging and warehousing facility to the licensed premises of the microdistillery, of spirits manufactured by the licensee; or

(3) the removal from the licensed premises of the microdistillery packaging and warehousing facility of spirits manufactured by the licensee for the purpose of delivery to a licensed spirits wholesaler.

(c) A microdistillery may sell spirits in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 11 a.m. and 7 p.m. on Sunday. If authorized by subsection (a), a microdistillery may serve samples of spirits and serve and sell spirits and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor.

(d) The director may issue to the Kansas state fair or any *bona fide* group of distillers a permit to import into this state small quantities of spirits. Such spirits shall be used only for *bona fide* educational and scientific tasting programs and shall not be resold. Such spirits shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of spirit to be imported, the quantity to be imported, the tasting programs for which the spirit is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of spirits pursuant to this subsection and the conduct of tasting programs for which such spirits are imported.

(e) A microdistillery license or microdistillery packaging and warehousing facility license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(f) No microdistillery shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premises supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

(g) Whenever a microdistillery licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and all fees paid for the license in accordance with the Kansas administrative procedure act.

(h) The provisions of this section shall take effect and be in force from and after July 1, 2012.

New Sec. 3. (a) Notwithstanding any other provisions of the Kansas liquor control act to the contrary, any person or entity who is licensed to sell alcoholic liquor in the original package at retail may conduct wine, beer and distilled spirit tastings on the licensed premises, or adjacent premises, monitored and regulated by the division of alcoholic beverage control, as follows:

(1) Wine, beer and spirits for the tastings shall come from the inventory of the licensee. Except as provided by paragraph (2), a person other than the licensee or the licensee's agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this section.

(2) The holder of a supplier's permit or such permit holder's agent or employee may participate in and conduct product tastings of alcoholic beverages at a retail licensee's premises, or adjacent premises, monitored and regulated by the division of alcoholic beverage control, and may open, touch, or pour alcoholic beverages, make a presentation, or answer questions at the tasting. Any alcoholic beverage tasted under this subsection must be purchased from the retailer on whose premises the tasting is held. The retailer may not require the purchase of more alcoholic beverages than are necessary for the tasting. This section does not authorize the supplier or its agent to withdraw or purchase an alcoholic beverage from the holder of a distributor's permit or provide an alcoholic beverage for tasting on a retailer's premises that is not purchased from the retailer.

(3) No charge of any sort may be made for a sample serving.

(4) A person may be served more than one sample. Samples may not be served to a minor. No samples may be removed from the licensed premises.

(5) The act of providing samples to consumers shall be exempt from the requirement of holding a Kansas food service dealer license from the

department of agriculture under the provisions of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

(b) Nothing in this section shall be construed to permit the licensee to sell wine, malt beverages or distilled spirits for on-premises consumption.

(c) The provisions of this section shall take effect and be in force from and after July 1, 2012.

Sec. 4. From and after July 1, 2012, K.S.A. 2011 Supp. 41-102 is hereby amended to read as follows: 41-102. As used in this act, unless the context clearly requires otherwise:

(a) "Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) "Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) "Beer" means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

(d) "Caterer" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(e) "Cereal malt beverage" has the meaning provided by K.S.A. 41-2701, and amendments thereto.

(f) "Club" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(g) "Director" means the director of alcoholic beverage control of the department of revenue.

(h) "Distributor" means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this act or cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2702, and amendments thereto.

(i) "Domestic beer" means beer which contains not more than 10% alcohol by weight and which is manufactured in this state.

(j) "Domestic fortified wine" means wine which contains more than 14%, but not more than 20% alcohol by volume and which is manufactured in this state.

(k) "Domestic table wine" means wine which contains not more than 14% alcohol by volume and which is manufactured without rectification or fortification in this state.

(l) “Drinking establishment” has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(m) “Farm winery” means a winery licensed by the director to manufacture, store and sell domestic table wine and domestic fortified wine.

(n) “Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

(o) (1) “Manufacturer” means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage.

(2) “Manufacturer” does not include a microbrewery, *microdistillery* or a farm winery.

(p) “Microbrewery” means a brewery licensed by the director to manufacture, store and sell domestic beer.

(q) “*Microdistillery*” means a facility which produces spirits from any source or substance that is licensed by the director to manufacture, store and sell spirits.

~~(q)~~(r) “Minor” means any person under 21 years of age.

~~(r)~~(s) “Nonbeverage user” means any manufacturer of any of the products set forth and described in K.S.A. 41-501, and amendments thereto, when the products contain alcohol or wine, and all laboratories using alcohol for nonbeverage purposes.

~~(s)~~(t) “Original package” means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor. Original container does not include a sleeve.

~~(t)~~(u) “Person” means any natural person, corporation, partnership, trust or association.

~~(u)~~(v) “Primary American source of supply” means the manufacturer, the owner of alcoholic liquor at the time it becomes a marketable product or the manufacturer’s or owner’s exclusive agent who, if the alcoholic liquor cannot be secured directly from such manufacturer or owner by American wholesalers, is the source closest to such manufacturer or owner in the channel of commerce from which the product can be secured by American wholesalers.

~~(v)~~(w) (1) “Retailer” means a person who sells at retail, or offers for sale at retail, alcoholic liquors.

(2) “Retailer” does not include a microbrewery, *microdistillery* or a farm winery.

~~(w)~~(x) “Sale” means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

~~(x)~~(y) “Salesperson” means any natural person who:

(1) Procures or seeks to procure an order, bargain, contract or agreement for the sale of alcoholic liquor or cereal malt beverage; or

(2) is engaged in promoting the sale of alcoholic liquor or cereal malt beverage, or in promoting the business of any person, firm or corporation engaged in the manufacturing and selling of alcoholic liquor or cereal malt beverage, whether the seller resides within the state of Kansas and sells to licensed buyers within the state of Kansas, or whether the seller resides without the state of Kansas and sells to licensed buyers within the state of Kansas.

~~(y)~~(z) “Secretary” means the secretary of revenue.

~~(z)~~(aa) (1) “Sell at retail” and “sale at retail” refer to and mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licensed caterers or holders of temporary permits.

(2) “Sell at retail” and “sale at retail” do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

~~(aa)~~(bb) “To sell” includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

~~(bb)~~(cc) “Sleeve” means a package of two or more 50-milliliter (3.2-fluid-ounce) containers of spirits.

~~(cc)~~(dd) “Spirits” means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

~~(dd)~~(ee) “Supplier” means a manufacturer of alcoholic liquor or cereal malt beverage or an agent of such manufacturer, other than a salesperson.

~~(ee)~~(ff) “Temporary permit” has the meaning provided by K.S.A. 41-2601, and amendments thereto.

~~(ff)~~(gg) “Wine” means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

Sec. 5. From and after July 1, 2012, K.S.A. 41-304 is hereby amended to read as follows: 41-304. Licenses issued by the director shall be of the following classes: (a) Manufacturer’s license; (b) spirits distributor’s license; (c) wine distributor’s license; (d) beer distributor’s license; (e) retailer’s license; (f) microbrewery license; (g) *microdistillery license*; (h) farm winery license; and ~~(h)~~(i) nonbeverage user’s license.

Sec. 6. From and after July 1, 2012, K.S.A. 2011 Supp. 41-305 is hereby amended to read as follows: 41-305. (a) A manufacturer's license shall allow the manufacture and storage of alcoholic liquor and cereal malt beverage and the sale of alcoholic liquor and cereal malt beverage to distributors and nonbeverage users licensed in this state and to such persons outside this state as permitted by law.

(b) *A manufacturer's license also shall allow the serving free of charge on the licensed premises of samples of alcoholic liquor manufactured by the licensee, provided the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments. Samples shall be served by the licensee, or an employee or agent thereof. No sample shall be served to an individual who is a minor. No individual shall remove all or any portion of a sample from the licensed premises. Nothing in this subsection shall be construed to permit the licensee to sell any alcoholic liquor for consumption on the premises.*

(c) A person holding a farm winery license issued pursuant to K.S.A. 41-308a, and amendments thereto, may also be issued a manufacturer's license; provided, that no alcoholic liquor or cereal malt beverage manufactured by such licensee shall be sold by such licensee at its licensed premises or at any of such licensee's winery outlets.

Sec. 7. From and after July 1, 2012, K.S.A. 41-306 is hereby amended to read as follows: 41-306. A spirits distributor's license, shall allow:

(a) The wholesale purchase, importation and storage of spirits, but all such spirits so purchased or imported which are manufactured in the United States shall be purchased from the primary American source of supply or from another licensed spirits distributor, except that a licensed spirits distributor may purchase confiscated spirits at a sheriff's sale.

(b) The sale of spirits to:

(1) Spirits distributors licensed in this state;

(2) retailers licensed in this state, except that such distributor shall sell a brand of spirits only to those retailers whose licensed premises are located in the geographic territory within which such distributor is authorized to sell such brand, as designated in the notice or notices filed with the director pursuant to K.S.A. 41-410, and amendments thereto; and

(3) such persons located outside such territory or outside this state as permitted by law.

(c) The purchase of spirits in barrels, casks or other bulk containers and the bottling thereof before resale, but all bottles or containers filled with such spirits shall be sealed, labeled and otherwise made to comply with all laws and rules and regulations governing the preparation and bottling of spirits by manufacturers and with all federal rules, regulations and laws.

(d) The storage and delivery to a retailer licensed under the Kansas

liquor control act or a retailer licensed under K.S.A. 41-2702, and amendments thereto, on the distributor's licensed premises, of alcoholic liquor or cereal malt beverage of another licensed distributor authorized by law to sell such alcoholic liquor or cereal malt beverage to such retailer, in accordance with an agreement entered into with such other distributor and approved by the director.

(e) *The storage and delivery to a public venue licensed under the club and drinking establishment act of alcoholic liquor purchased by the public venue licensee from a retailer authorized by law to sell such alcoholic liquor to such public venue licensee.*

Sec. 8. From and after July 1, 2012, K.S.A. 41-306a is hereby amended to read as follows: 41-306a. A wine distributor's license shall allow:

(a) The wholesale purchase, importation and storage of wine, but all wine so purchased or imported which is manufactured in the United States shall be purchased from the primary American source of supply or from another licensed wine distributor, except that a licensed wine distributor may purchase confiscated wine at a sheriff's sale.

(b) The sale of wine to:

(1) Wine distributors licensed in this state;

(2) retailers licensed in this state, except that such distributor shall sell a brand of wine only to those retailers whose licensed premises are located in the geographic territory within which such distributor is authorized to sell such brand, as designated in the notice or notices filed with the director pursuant to K.S.A. 41-410, and amendments thereto; and

(3) such persons located outside such territory or outside this state as permitted by law.

(c) The sale of wine, but only in barrels, casks and other bulk containers, to:

(1) Licensed caterers; and

(2) *public venues*, clubs and drinking establishments licensed in this state, except that such distributor shall sell a brand of wine only to such *public venues*, clubs and drinking establishments the licensed premises of which are located in the geographic territory within which such distributor is authorized to sell such brand, as designated in the notice or notices filed with the director pursuant to K.S.A. 41-410, and amendments thereto.

(d) The purchase of wine in barrels, casks or other bulk containers and the bottling thereof before resale, but all bottles or containers filled with such wine shall be sealed, labeled and otherwise made to comply with all laws and rules and regulations governing the preparation and bottling of wine by manufacturers and with all federal rules, regulations and laws.

(e) The storage and delivery to a retailer licensed under the Kansas liquor control act or a retailer licensed under K.S.A. 41-2702, and amendments thereto, on the distributor's licensed premises, of alcoholic liquor or cereal malt beverage of another licensed distributor authorized by law to sell such alcoholic liquor or cereal malt beverage to such retailer, in accordance with an agreement entered into with such other distributor and approved by the director.

(f) This section shall be part of and supplemental to the Kansas liquor control act.

Sec. 9. From and after July 1, 2012, K.S.A. 41-307 is hereby amended to read as follows: 41-307. A beer distributor's license shall allow:

(a) The wholesale purchase, importation and storage of beer.

(b) The sale of beer to:

- (1) Licensed caterers;
- (2) beer distributors licensed in this state;
- (3) retailers, *public venues*, clubs and drinking establishments, licensed in this state, except that such distributor shall sell a brand of beer only to those retailers, *public venues*, clubs and drinking establishments of which the licensed premises are located in the geographic territory within which such distributor is authorized to sell such brand, as designated in the notice or notices filed with the director pursuant to K.S.A. 41-410, and amendments thereto; and

(4) such persons located outside such territory or outside this state as permitted by law.

(c) The sale of cereal malt beverage to:

- (1) Beer distributors licensed in this state;
- (2) clubs and drinking establishments, licensed in this state, and retailers licensed under K.S.A. 41-2702, and amendments thereto, except that such distributor shall sell a brand of cereal malt beverage only to those such clubs, drinking establishments and retailers of which the licensed premises are located in the geographic territory within which such distributor is authorized to sell such brand, as designated in the notice or notices filed with the director pursuant to K.S.A. 41-410, and amendments thereto; and

(3) such persons located outside such territory or outside this state as permitted by law.

(d) The purchase of cereal malt beverage in kegs or other bulk containers and the bottling or canning thereof in accordance with law.

(e) The storage and delivery to a retailer licensed under the Kansas liquor control act or a retailer licensed under K.S.A. 41-2702, and amendments thereto, on the distributor's licensed premises, of alcoholic liquor or cereal malt beverage of another licensed distributor authorized by law to sell such alcoholic liquor or cereal malt beverage to such retailer, in

accordance with an agreement entered into with such other distributor and approved by the director.

(f) *The storage and delivery, with proper invoicing in accordance with rules and regulations adopted by the secretary, on the premises of a public venue licensee, of beer sold to or available for purchase by the public venue during an event.*

Sec. 10. From and after July 1, 2012, K.S.A. 41-308 is hereby amended to read as follows: 41-308. (a) *Except as provided in section 3, and amendments thereto*, a retailer's license shall allow the licensee to sell and offer for sale at retail and deliver in the original package, as therein prescribed, alcoholic liquor for use or consumption off-~~of~~ and away from the premises specified in such license. A retailer's license shall permit sale and delivery of alcoholic liquor only on the licensed premises and shall not permit sale of alcoholic liquor for resale in any form, except that a licensed retailer may:

(1) Sell alcoholic liquor to a temporary permit holder for resale by such permit holder; and

(2) sell and deliver alcoholic liquor to a caterer or to the licensed premises of a *public venue*, club or drinking establishment, if such premises are in the county where the retailer's premises are located or in an adjacent county, for resale by such *public venue*, club, establishment or caterer.

(b) The holder of a retailer's license shall not sell, offer for sale, give away or permit to be sold, offered for sale or given away in or from the premises specified in such license any service or thing of value whatsoever except alcoholic liquor in the original package, except that a licensed retailer may:

(1) Charge a delivery fee for delivery to a *public venue*, club, drinking establishment or caterer pursuant to subsection (a);

(2) sell lottery tickets and shares to the public in accordance with the Kansas lottery act, if the retailer is selected as a lottery retailer;

(3) include in the sale of alcoholic liquor any goods included by the manufacturer in packaging with the alcoholic liquor, subject to the approval of the director; and

(4) distribute to the public, without charge, consumer advertising specialties bearing advertising matter, subject to rules and regulations of the secretary limiting the form and distribution of such specialties so that they are not conditioned on or an inducement to the purchase of alcoholic liquor.

(c) No licensed retailer shall furnish any entertainment in such premises or permit any pinball machine or game of skill or chance to be located in or on such premises.

(d) A retailer's license shall allow the licensee to store alcoholic liquor in refrigerators, cold storage units, ice boxes or other cooling devices, and

the licensee may sell such alcoholic liquor to consumers in a chilled condition.

Sec. 11. K.S.A. 2011 Supp. 41-308a is hereby amended to read as follows: 41-308a. (a) A farm winery license shall allow:

(1) The manufacture of domestic table wine and domestic fortified wine in a quantity not exceeding 100,000 gallons per year and the storage thereof;

(2) the sale of wine, manufactured by the licensee, to licensed wine distributors, retailers, clubs, drinking establishments, holders of temporary permits as authorized by K.S.A. 41-2645, and amendments thereto, and caterers;

(3) the sale, on the licensed premises *and at special events monitored and regulated by the division of alcoholic beverage control* in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(4) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of wine manufactured by the licensee or imported under subsection ~~(f)~~(e), if the *licensed* premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

(5) *the sale of wine manufactured by the licensee for consumption on the licensed premises, provided, the licensed premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments. Wine sold pursuant to this paragraph shall not be subject to the provisions of the club and drinking establishment act, K.S.A. 41-2601 et seq., and amendments thereto, and no drinking establishment license shall be required to make such sales;*

~~(5)~~(6) if the licensee is also licensed as a club or drinking establishment, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act;

~~(6)~~(7) if the licensee is also licensed as a caterer, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the unlicensed premises as authorized by the club and drinking establishment act;

~~(7)~~(8) the sale and shipping, in the original unopened container, to consumers outside this state of wine manufactured by the licensee, provided that the licensee complies with applicable laws and rules and regulations of the jurisdiction to which the wine is shipped; and

~~(8)~~(9) the sale and shipping of wine within this state pursuant to a permit issued pursuant to K.S.A. 2011 Supp. 41-350, and amendments thereto.

(b) Upon application and payment of the fee prescribed by K.S.A.

41-310, and amendments thereto, by a farm winery licensee, the director may issue not to exceed three winery outlet licenses to the farm winery licensee. A winery outlet license shall allow:

(1) The sale, on the licensed premises *and at special events monitored and regulated by the division of alcoholic beverage control* in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(2) the serving on the licensed premises of samples of wine manufactured by the licensee or imported under subsection ~~(4)(e)~~, if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments; and

(3) the manufacture of domestic table wine and domestic fortified wine and the storage thereof; provided, that the aggregate quantity of wine produced by the farm winery licensee, including all winery outlets, shall not exceed 100,000 gallons per year.

(c) Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director's findings and judgment. The label of domestic wine and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas.

(d) A farm winery or winery outlet may sell domestic wine and domestic fortified wine in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of ~~domestic wine, domestic fortified wine and~~ wine *manufactured by the licensee and wine* imported under subsection (e) and serve and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (e) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

(e) The director may issue to the Kansas state fair or any *bona fide* group of grape growers or wine makers a permit to import into this state small quantities of wines. Such wine shall be used only for *bona fide* educational and scientific tasting programs and shall not be resold. Such wine shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of wine to be imported, the quantity to be imported, the tasting programs for which the wine is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the

importation of wine pursuant to this subsection and the conduct of tasting programs for which such wine is imported.

(f) A farm winery license or winery outlet license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(g) No farm winery or winery outlet shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premise supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

(h) Whenever a farm winery or winery outlet licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and order forfeiture of all fees paid for the license, after a hearing before the director for that purpose in accordance with the provisions of the Kansas administrative procedure act.

(i) This section shall be part of and supplemental to the Kansas liquor control act.

Sec. 12. From and after July 1, 2012, K.S.A. 2011 Supp. 41-308a, as amended by section 11 of this act, is hereby amended to read as follows: 41-308a. (a) A farm winery license shall allow:

(1) The manufacture of domestic table wine and domestic fortified wine in a quantity not exceeding 100,000 gallons per year and the storage thereof;

(2) the sale of wine, manufactured by the licensee, to licensed wine distributors, retailers, *public venues*, clubs, drinking establishments, holders of temporary permits as authorized by K.S.A. 41-2645, and amendments thereto, and caterers;

(3) the sale, on the licensed premises and at special events monitored and regulated by the division of alcoholic beverage control in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(4) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of wine manufactured by the licensee or imported under subsection (e), if the licensed premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

(5) the sale of wine manufactured by the licensee for consumption

on the licensed premises, provided, the licensed premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments. Wine sold pursuant to this paragraph shall not be subject to the provisions of the club and drinking establishment act, K.S.A. 41-2601 *et seq.*, and amendments thereto, and no drinking establishment license shall be required to make such sales;

(6) if the licensee is also licensed as a club or drinking establishment, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act;

(7) if the licensee is also licensed as a caterer, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the unlicensed premises as authorized by the club and drinking establishment act;

(8) the sale and shipping, in the original unopened container, to consumers outside this state of wine manufactured by the licensee, provided that the licensee complies with applicable laws and rules and regulations of the jurisdiction to which the wine is shipped; and

(9) the sale and shipping of wine within this state pursuant to a permit issued pursuant to K.S.A. 2011 Supp. 41-350, and amendments thereto.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a farm winery licensee, the director may issue not to exceed three winery outlet licenses to the farm winery licensee. A winery outlet license shall allow:

(1) The sale, on the licensed premises and at special events monitored and regulated by the division of alcoholic beverage control in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(2) the serving on the licensed premises of samples of wine manufactured by the licensee or imported under subsection (e), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments; and

(3) the manufacture of domestic table wine and domestic fortified wine and the storage thereof; provided, that the aggregate quantity of wine produced by the farm winery licensee, including all winery outlets, shall not exceed 100,000 gallons per year.

(c) Not less than ~~60%~~ 30% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director's findings and judgment. ~~The label of domestic wine and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas. The production requirement of this subsection shall be determined based on the annual production of domestic table wine and domestic fortified wine by the farm winery.~~

(d) A farm winery or winery outlet may sell domestic wine and domestic fortified wine in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of wine manufactured by the licensee and wine imported under subsection (e) and serve and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (e) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

(e) The director may issue to the Kansas state fair or any *bona fide* group of grape growers or wine makers a permit to import into this state small quantities of wines. Such wine shall be used only for *bona fide* educational and scientific tasting programs and shall not be resold. Such wine shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of wine to be imported, the quantity to be imported, the tasting programs for which the wine is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of wine pursuant to this subsection and the conduct of tasting programs for which such wine is imported.

(f) A farm winery license or winery outlet license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(g) No farm winery or winery outlet shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premise supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

(h) Whenever a farm winery or winery outlet licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and order forfeiture of all fees paid for the license, after a hearing before the director for that purpose in accordance with the provisions of the Kansas administrative procedure act.

(i) This section shall be part of and supplemental to the Kansas liquor control act.

Sec. 13. From and after July 1, 2012, K.S.A. 2011 Supp. 41-310 is hereby amended to read as follows: 41-310. (a) At the time application is made to the director for a license of any class, the applicant shall pay the fee provided by this section.

(b) The fee for a manufacturer's license to manufacture alcohol and spirits shall be \$5,000.

(c) The fee for a manufacturer's license to manufacture beer and cereal malt beverage shall be:

- (1) For 1 to 100 barrel daily capacity or any part thereof, \$400.
- (2) For 100 to 150 barrel daily capacity, \$800.
- (3) For 150 to 200 barrel daily capacity, \$1,400.
- (4) For 200 to 300 barrel daily capacity, \$2,000.
- (5) For 300 to 400 barrel daily capacity, \$2,600.
- (6) For 400 to 500 barrel daily capacity, \$2,800.
- (7) For 500 or more barrel daily capacity, \$3,200.

As used in this subsection, "daily capacity" means the average daily barrel production for the previous 12 months of manufacturing operation. If no basis for comparison exists, the licensee shall pay in advance for operation during the first term of the license a fee of \$2,000.

(d) The fee for a manufacturer's license to manufacture wine shall be \$1,000.

(e) (1) The fee for a microbrewery license, *a microdistillery license* or a farm winery license shall be \$500.

(2) The fee for a winery outlet license shall be \$100.

(3) The fee for a microbrewery packaging and warehousing facility license shall be \$200.

(4) *The fee for a microdistillery packaging and warehousing facility license shall be \$200.*

(f) The fee for a spirits distributor's license for the first and each additional distributing place of business operated in this state by the licensee and wholesaling and jobbing spirits shall be \$2,000.

(g) The fee for a wine distributor's license for the first and each additional distributing place of business operated in this state by the licensee and wholesaling and jobbing wine shall be \$2,000.

(h) The fee for a beer distributor's license, for the first and each additional wholesale distributing place of business operated in this state by the licensee and wholesaling or jobbing beer and cereal malt beverage shall be \$2,000.

(i) The fee for a nonbeverage user's license shall be:

- (1) For class 1, \$20.
- (2) For class 2, \$100.
- (3) For class 3, \$200.
- (4) For class 4, \$400.
- (5) For class 5, \$1,000.

(j) In addition to the license fees prescribed by subsections (b), (c), (d), (f), (g), (h) and (i):

(1) Any city in which the licensed premises are located may levy and collect a biennial occupation or license tax on the licensee in an amount not exceeding the amount of the license fee required to be paid under this act to obtain the license, but no city shall impose an occupation or privilege tax on the licensee in excess of that amount; and

(2) any township in which the licensed premises are located may levy and collect a biennial occupation or license tax on the licensee in an amount not exceeding the amount of the license fee required to be paid under this act to obtain the license, but no township shall impose an occupation or privilege tax on the licensee in excess of that amount; the township board of the township is authorized to fix and impose the tax and the tax shall be paid by the licensee to the township treasurer, who shall issue a receipt therefor to the licensee and shall cause the tax paid to be placed in the general fund of the township.

(k) The fee for a retailer's license shall be \$500.

(l) In addition to the license fee prescribed by subsection (k):

(1) Any city in which the licensed premises are located may levy and collect a biennial occupation or license tax on the licensee in an amount not less than \$200 nor more than \$600, but no other occupation or excise tax or license fee shall be levied by any city against or collected from the licensee; and

(2) any township in which the licensed premises are located may levy and collect a biennial occupation or license tax on the licensee in an amount not less than \$200 nor more than \$600; the township board of the township is authorized to fix and impose the tax and the tax shall be paid by the licensee to the township treasurer, who shall issue a receipt therefor to the licensee and shall cause the tax paid to be placed in the general fund of the township.

(m) The license term for a license shall commence on the date the license is issued by the director and shall end two years after that date. The director may, at the director's sole discretion and after examination of the circumstances, extend the license term of any license for not more than 30 days beyond the date such license would expire pursuant to this section. Any extension of the license term by the director pursuant to this section shall automatically extend the due date for payment by the licensee of any occupation or license tax levied by a city or township pursuant to this section by the same number of days the director has extended the license term.

Sec. 14. From and after July 1, 2012, K.S.A. 2011 Supp. 41-311 is hereby amended to read as follows: 41-311. (a) No license of any kind shall be issued pursuant to the liquor control act to a person:

(1) Who has not been a citizen of the United States for at least 10

years, except that the spouse of a deceased retail licensee may receive and renew a retail license notwithstanding the provisions of this subsection (a)(1) if such spouse is otherwise qualified to hold a retail license and is a United States citizen or becomes a United States citizen within one year after the deceased licensee's death;

(2) who has been convicted of a felony under the laws of this state, any other state or the United States;

(3) who has had a license revoked for cause under the provisions of the liquor control act, the beer and cereal malt beverage keg registration act or who has had any license issued under the cereal malt beverage laws of any state revoked for cause except that a license may be issued to a person whose license was revoked for the conviction of a misdemeanor at any time after the lapse of 10 years following the date of the revocation;

(4) who has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(5) who has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(6) who is not at least 21 years of age;

(7) who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the director;

(8) who intends to carry on the business authorized by the license as agent of another;

(9) who at the time of application for renewal of any license issued under this act would not be eligible for the license upon a first application, except as provided by subsection (a)(12);

(10) who is the holder of a valid and existing license issued under article 27 of chapter 41 of the Kansas Statutes Annotated unless the person agrees to and does surrender the license to the officer issuing the same upon the issuance to the person of a license under this act, except that a retailer licensed pursuant to K.S.A. 41-2702, and amendments thereto, shall be eligible to receive a retailer's license under the Kansas liquor control act;

(11) who does not own the premises for which a license is sought, or does not, at the time of application, have a written lease thereon;

(12) whose spouse would be ineligible to receive a license under this act for any reason other than citizenship, residence requirements or age, except that this subsection (a)(12) shall not apply in determining eligibility for a renewal license;

(13) whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and

such felony or other crime was committed during the time that the spouse held a license under this act; or

(14) who does not provide any data or information required by K.S.A. 2011 Supp. 41-311b, and amendments thereto.

(b) No retailer's license shall be issued to:

(1) A person who is not a resident of this state;

(2) a person who has not been a resident of this state for at least four years immediately preceding the date of application;

(3) a person who has a beneficial interest in a manufacturer, distributor, farm winery or microbrewery licensed under this act, except that the spouse of an applicant for a retailer's license may own and hold a farm winery license, microbrewery license, or both, if the spouse does not hold a retailer's license issued under this act;

(4) a person who has a beneficial interest in any other retail establishment licensed under this act, except that the spouse of a licensee may own and hold a retailer's license for another retail establishment;

(5) a copartnership, unless all of the copartners are qualified to obtain a license;

(6) a corporation; or

(7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

(c) No manufacturer's license shall be issued to:

(1) A corporation, if any officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a manufacturer's license for any reason other than citizenship and residence requirements;

(2) a copartnership, unless all of the copartners shall have been residents of this state for at least five years immediately preceding the date of application and unless all the members of the copartnership would be eligible to receive a manufacturer's license under this act;

(3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license;

(4) an individual who is not a resident of this state;

(5) an individual who has not been a resident of this state for at least five years immediately preceding the date of application; or

(6) a person who has a beneficial interest in a distributor, retailer, farm winery or microbrewery licensed under this act, except as provided in K.S.A. 41-305, and amendments thereto.

(d) No distributor's license shall be issued to:

(1) A corporation, if any officer, director or stockholder of the corporation would be ineligible to receive a distributor's license for any rea-

son. It shall be unlawful for any stockholder of a corporation licensed as a distributor to transfer any stock in the corporation to any person who would be ineligible to receive a distributor's license for any reason, and any such transfer shall be null and void, except that: (A) If any stockholder owning stock in the corporation dies and an heir or devisee to whom stock of the corporation descends by descent and distribution or by will is ineligible to receive a distributor's license, the legal representatives of the deceased stockholder's estate and the ineligible heir or devisee shall have 14 months from the date of the death of the stockholder within which to sell the stock to a person eligible to receive a distributor's license, any such sale by a legal representative to be made in accordance with the provisions of the probate code; or (B) if the stock in any such corporation is the subject of any trust and any trustee or beneficiary of the trust who is 21 years of age or older is ineligible to receive a distributor's license, the trustee, within 14 months after the effective date of the trust, shall sell the stock to a person eligible to receive a distributor's license and hold and disburse the proceeds in accordance with the terms of the trust. If any legal representatives, heirs, devisees or trustees fail, refuse or neglect to sell any stock as required by this subsection, the stock shall revert to and become the property of the corporation, and the corporation shall pay to the legal representatives, heirs, devisees or trustees the book value of the stock. During the period of 14 months prescribed by this subsection, the corporation shall not be denied a distributor's license or have its distributor's license revoked if the corporation meets all of the other requirements necessary to have a distributor's license;

(2) a copartnership, unless all of the copartners are eligible to receive a distributor's license;

(3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license; or

(4) a person who has a beneficial interest in a manufacturer, retailer, farm winery or microbrewery licensed under this act.

(e) No nonbeverage user's license shall be issued to a corporation, if any officer, manager or director of the corporation or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a nonbeverage user's license for any reason other than citizenship and residence requirements.

(f) No microbrewery license, *microdistillery license* or farm winery license shall be issued to a:

- (1) Person who is not a resident of this state;
- (2) person who has not been a resident of this state for at least one year immediately preceding the date of application;
- (3) person who has a beneficial interest in a manufacturer or distrib-

utor licensed under this act, except as provided in K.S.A. 41-305, and amendments thereto;

(4) person, copartnership or association which has a beneficial interest in any retailer licensed under this act or under K.S.A. 41-2702, and amendments thereto, except that the spouse of an applicant for a microbrewery or farm winery license may own and hold a retailer's license if the spouse does not hold a microbrewery or farm winery license issued under this act;

(5) copartnership, unless all of the copartners are qualified to obtain a license;

(6) corporation, unless stockholders owning in the aggregate 50% or more of the stock of the corporation would be eligible to receive such license and all other stockholders would be eligible to receive such license except for reason of citizenship or residency; or

(7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

(g) The provisions of subsections (b)(1), (b)(2), (c)(3), (c)(4), (d)(3), (f)(1), (f)(2) and K.S.A. 2011 Supp. 41-311b, and amendments thereto, shall not apply in determining eligibility for the 10th, or a subsequent, consecutive renewal of a license if the applicant has appointed a citizen of the United States who is a resident of Kansas as the applicant's agent and filed with the director a duly authenticated copy of a duly executed power of attorney, authorizing the agent to accept service of process from the director and the courts of this state and to exercise full authority, control and responsibility for the conduct of all business and transactions within the state relative to alcoholic liquor and the business licensed. The agent must be satisfactory to and approved by the director, except that the director shall not approve as an agent any person who:

(1) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has had a license issued under the alcoholic liquor or cereal malt beverage laws of this or any other state revoked for cause, except that a person may be appointed as an agent if the person's license was revoked for the conviction of a misdemeanor and 10 years have lapsed since the date of the revocation;

(3) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(4) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes; or

(5) is less than 21 years of age.

Sec. 15. From and after July 1, 2012, K.S.A. 2011 Supp. 41-313 is hereby amended to read as follows: 41-313. (a) No corporation, either organized under the laws of this state, any other state or a foreign country, shall be issued a manufacturer's, distributor's, microbrewery, *microdistillery* or farm winery license unless the corporation has first procured a certificate of authority from the secretary of state to do business in this state as provided by law, appointed a citizen of the United States, and resident of Kansas, as its agent and filed with the director a duly authenticated copy of a duly executed power of attorney, authorizing the agent to accept service of process from the director and the courts of this state and to exercise full authority of the corporation and full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to alcoholic liquor and the business licensed. The agent must be satisfactory to and approved by the director with respect to the agent's character. The agent shall at all times be maintained by the corporation.

In addition, any corporation organized under the laws of any other state or foreign country, as a condition precedent to the issuance to it of any license, shall file with the secretary of state of the state of Kansas, a duly authorized and executed power of attorney, authorizing the secretary of state to accept service of process from the director and the courts of this state and to accept service of any notice or order provided for in this act, and all such acts by the secretary of state shall be fully binding upon the corporation.

(b) Every nonresident applicant on applying for a license or permit under this act, and as a condition precedent to obtaining such license or permit, shall file with the secretary of state of this state its written consent, irrevocable, that any action or garnishment proceeding may be commenced against such applicant in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the resident agent specified in subsection (a), and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the applicant. The written consent shall state that the courts of this state have jurisdiction over the person of such applicant and are the proper and convenient forum for such action and shall waive the right to request a change of jurisdiction or venue to a court outside this state and that all actions arising under this act and commenced by the applicant shall be brought in this state's courts as the proper and convenient forum. Such consent shall be executed by the applicant and if a corporation, by the president and secretary of the corporate applicant, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the president and secretary to execute the same.

Sec. 16. From and after July 1, 2012, K.S.A. 41-316 is hereby amended to read as follows: 41-316. Licenses to manufacturers, distributors, microbreweries, *microdistilleries*, farm wineries and nonbeverage users of alcoholic liquors shall be issued and renewed by the director to qualified applicants upon written application, receipt of bond properly executed and payment in advance of the state registration fee and the license fee.

Sec. 17. From and after July 1, 2012, K.S.A. 2011 Supp. 41-317 is hereby amended to read as follows: 41-317. (a) Applications for all licenses under this act shall be completed and submitted to the director in a manner prescribed by the director. Each applicant shall submit an application fee of \$50 for each initial application and \$10 for each renewal application to defray the cost of processing the application.

(b) Each applicant shall submit to the division of alcoholic beverage control the full amount of the application fee and:

(1) The full amount of the license fee required to be paid for the kind of license specified in the application; or

(2) one-half of the full amount of the license fee required to be paid for the kind of license specified in the application.

(c) If the applicant elects to pay only one-half of the license fee pursuant to subsection (b)(2), the remaining one-half of the license fee plus 10% of such remaining balance shall be due and payable one year from the date of issuance of the license. Notwithstanding any other provision of law, failure to pay the full amount due under this paragraph on the date it is due shall result in the automatic cancellation of such license for the remainder of the license term. The director may, at the director's sole discretion and after examination of the circumstances, extend the date payment is due pursuant to this paragraph for not more than 30 days beyond the date such payment is originally due.

(d) Any license fee paid by an applicant shall be returned to the applicant if the application is denied.

(e) Payment of all fees required to be paid pursuant to this section may be made by personal, certified or cashier's check, United States post office money order, debit or credit card or cash, or by electronic payment authorized by the applicant in a manner prescribed by the director.

(f) All fees received by the director pursuant to this section shall be remitted by the director to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(g) Every applicant for a manufacturer's, distributor's, nonbeverage user's, microbrewery, *microdistillery*, farm winery, retailer's or special order shipping license shall file with the application a joint and several bond on a form prescribed by the director and executed by good and

sufficient corporate sureties licensed to do business within the state of Kansas to the director, in the following amounts:

- (1) For a manufacturer, \$25,000;
- (2) for a spirits distributor, \$15,000 or an amount equal to the highest monthly liability of the distributor for taxes imposed by the Kansas liquor control act for any of the 12 months immediately prior to renewal of the distributor's license, whichever amount is greater;
- (3) for a beer or wine distributor, \$5,000 or an amount equal to the highest monthly liability of the distributor for taxes imposed by the Kansas liquor control act for any of the 12 months immediately prior to renewal of the distributor's license, whichever amount is greater;
- (4) for a retailer, \$2,000;
- (5) for nonbeverage users, \$200 for class 1, \$500 for class 2, \$1,000 for class 3, \$5,000 for class 4 and \$10,000 for class 5;
- (6) for a microbrewery, *microdistillery* or a farm winery, \$2,000; and
- (7) for a winery holding a special order shipping license, \$750, unless the winery has already complied with subsection (g)(6).

If a distributor holds or applies for more than one distributor's license, only one bond for all such licenses shall be required, which bond shall be in an amount equal to the highest applicable bond.

(h) All bonds required by this section shall be conditioned on the licensee's compliance with the provisions of this act and payment of all taxes, fees, fines and forfeitures which may be assessed against the licensee.

Sec. 18. From and after July 1, 2012, K.S.A. 2011 Supp. 41-319 is hereby amended to read as follows: 41-319. (a) Except as provided by subsection (b), within 30 days after an application is filed for a retailer's, microbrewery, *microdistillery* or farm winery license and within 20 days after an application is filed for a manufacturer's, distributor's or nonbeverage user's license, the director shall enter an order either refusing or granting the license. If the director does not enter an order within the time prescribed, the license applied for shall be deemed to have been refused. The director, with the written consent of the applicant for a license, may delay entering an order on an application for an additional period of not to exceed 30 days.

(b) In order to complete any national criminal history record check of an applicant who submitted any application after January 31, 2001, and if the applicant is not a resident of the state of Kansas on the date of submission of such application or has not been a resident for at least one year immediately preceding the date of submission of such application the director shall enter an order either refusing or granting the license within 90 days after such application is filed. If the director does not enter an order within the time prescribed, the license applied for shall be deemed to have been refused. The director, with the written consent of

the applicant for a license, may delay entering an order on an application for an additional period of not to exceed 30 days.

Sec. 19. From and after July 1, 2012, K.S.A. 41-320 is hereby amended to read as follows: 41-320. (a) All proceedings for the suspension and revocation of licenses of manufacturers, distributors, retailers, microbreweries, *microdistilleries*, farm wineries and nonbeverage users shall be before the director, and the proceedings shall be in accordance with the provisions of the Kansas administrative procedure act. Except as provided in subsection (b), no license shall be suspended or revoked except after a hearing by the director.

(b) When proceedings for the suspension or revocation of a distributor's license are filed and the distributor has been issued more than one license for distributing places of business in this state, any order of the director suspending or revoking the license at any one place of business shall suspend or revoke all licenses issued to the distributor. When one person is the holder of stock in two or more corporations licensed as distributors under the provisions of this act, any order of the director suspending or revoking the license of any such corporation shall operate as a suspension or revocation of the license of all corporations licensed as distributors in which the person is a stockholder.

Sec. 20. From and after July 1, 2012, K.S.A. 2011 Supp. 41-501 is hereby amended to read as follows: 41-501. (a) As used in this section and K.S.A. 41-501a, and amendments thereto:

(1) "Gallon" means wine gallon.

(2) "Federal area" means any lands or premises which are located within the exterior boundaries of this state and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States.

(3) "Malt product" means malt syrup, malt extract, liquid malt or wort.

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquor, cereal malt beverage or malt products in this state or a federal area at a rate of \$.18 per gallon on beer and cereal malt beverage; \$.20 per gallon on all wort or liquid malt; \$.10 per pound on all malt syrup or malt extract; \$.30 per gallon on wine containing 14% or less alcohol by volume; \$.75 per gallon on wine containing more than 14% alcohol by volume; and \$2.50 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt beverage. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor or cereal malt beverage is manufactured and sold in this state or a federal area, the tax shall be paid by the man-

ufacturer, microbrewery, *microdistillery* or farm winery producing it. If the alcoholic liquor or cereal malt beverage is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor or cereal malt beverage is manufactured in this state. If not to exceed one gallon, or metric equivalent, per person of alcoholic liquor has been purchased by a private citizen outside the borders of the United States and is brought into this state by the private citizen in such person's personal possession for such person's own personal use and not for sale or resale, such import is lawful and no tax payment shall be due thereon.

(c) Manufacturers, microbreweries, *microdistilleries*, farm wineries or distributors at wholesale of alcoholic liquor or cereal malt beverage shall be exempt from the payment of the gallonage tax imposed on alcoholic liquor and cereal malt beverage, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director requires, that the liquor or cereal malt beverage was manufactured in this state but was shipped out of the state for sale and consumption outside the state.

(d) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided for by this section.

(e) The tax provided for by this section is not imposed upon:

(1) Any alcohol or wine, whether manufactured in or imported into this state, when sold to a nonbeverage user licensed by the state, for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, anti-septic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or scientific, chemical, experimental or mechanical purposes; or

(2) the privilege of engaging in any business of interstate commerce or otherwise, which business may not be made the subject of taxation by this state under the constitution and statutes of the United States.

(f) The tax imposed by this section shall be in addition to all other taxes imposed by the state of Kansas or by any municipal corporation or political subdivision thereof.

(g) Retail sales of alcoholic liquor, sales of beer to consumers by microbreweries and sales of wine to consumers by farm wineries shall not be subject to the tax imposed by the Kansas retailers' sales tax act but shall be subject to the enforcement tax provided for in this act.

(h) Notwithstanding any ordinance to the contrary, no city shall impose an occupation or privilege tax on the business of any person, firm or corporation licensed as a manufacturer, distributor, microbrewery, *microdistillery*, farm winery, retailer or nonbeverage user under this act and

doing business within the boundaries of the city except as specifically authorized by K.S.A. 41-310, and amendments thereto.

(i) The director shall collect the taxes imposed by this section and shall account for and remit all moneys collected from the tax to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 1/10 of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and shall credit the balance of the moneys collected to the state general fund.

(j) If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon the manufacturer or distributor shall be reduced by the amount of the taxes which have been paid under this section as to the alcoholic liquor so used.

(k) The tax provided for by this section is not imposed upon alcohol or wine used by any school or college for scientific, chemical, experimental or mechanical purposes or by hospitals, sanatoria or other institutions caring for the sick. Any school, college, hospital, sanatorium or other institution caring for the sick may import alcohol or wine for scientific, chemical, experimental, mechanical or medicinal purposes by making application to the director for a permit to import it and receiving such a permit. Application for the permit shall be on a form prescribed and furnished by the director, and a separate permit shall be required for each purchase of alcohol or wine. A fee of \$2 shall accompany each application. All permits shall be issued in triplicate to the applicant and shall be under the seal of the office of the director. Two copies of the permit shall be forwarded by the applicant to the microbrewery, *microdistillery*, farm winery, manufacturer or distributor from which the alcohol or wine is purchased, and the microbrewery, *microdistillery*, farm winery, manufacturer or distributor shall return to the office of the director one copy of the permit with its shipping affidavit and invoice. Within 10 days after receipt of any alcohol or wine, the school, college, hospital or sanatorium ordering it shall file a report in the office of the director upon forms furnished by the director, showing the amount of alcohol or wine received, the place where it is to be stored, from whom it was received, the purpose for which it is to be used and such other information as required by the director. Any school, college, hospital, sanatorium or institution caring for the sick, which complies with the provisions of this subsection, shall not be required to have any other license to purchase alcohol or wine from a microbrewery, *microdistillery*, farm winery, manufacturer or distributor.

Sec. 21. From and after July 1, 2012, K.S.A. 41-601 is hereby amended to read as follows: 41-601. Every manufacturer, distributor, microbrewery which sells any beer to a beer distributor at wholesale, *microdistillery which sells any spirits to a spirits distributor at wholesale* and farm winery which sells any wine to a distributor at wholesale shall between the 1st and 15th day of each calendar month, make return under oath to the director of all alcoholic liquor manufactured and sold by the manufacturer, distributor, microbrewery, *microdistillery* or farm winery in the course of business during the preceding calendar month. In the case of a distributor, the return shall also show: (a) The total amount of liquor purchased by the distributor during the preceding calendar month, the names of the distillers or distributors from whom purchased, the quantity of each brand and the price paid therefor; and (b) the names and locations of the retailers to whom alcoholic liquor was sold by the distributor during the preceding calendar month, the quantity of each brand and the price charged therefor. The return shall be made upon forms prescribed and furnished by the director and shall contain such other information as the director reasonably requires.

Sec. 22. From and after July 1, 2012, K.S.A. 41-602 is hereby amended to read as follows: 41-602. It is the duty of each manufacturer, distributor, microbrewery which sells any beer to a beer distributor, *microdistillery which sells any spirits to a spirits distributor* and farm winery which sells any wine to a distributor to keep complete and accurate records of all sales of liquor, wine or beer and complete and accurate records of all alcoholic liquors produced, manufactured, compounded or imported. The director, in the director's discretion, may prescribe reasonable and uniform methods for keeping records by manufacturers, distributors, microbreweries, *microdistilleries* and farm wineries as contemplated by K.S.A. 41-401 through 41-409, and amendments thereto.

Sec. 23. From and after July 1, 2012, K.S.A. 41-701 is hereby amended to read as follows: 41-701. (a) Except as provided in subsection (d), no spirits distributor shall sell or attempt to sell any spirits within this state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed spirits distributor; or

(2) a licensed retailer, as authorized by K.S.A. 41-306, and amendments thereto.

(b) Except as provided in subsection (d), no wine distributor shall sell or attempt to sell any wine within this state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed wine distributor;

(2) a licensed caterer; or

(3) a retailer, *public venue*, club or drinking establishment, licensed in this state, as authorized by K.S.A. 41-306a, *and amendments thereto*.

(c) Except as provided by subsection (d), no beer distributor shall sell or attempt to sell any beer or cereal malt beverage within this state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed beer distributor;

(2) a licensed caterer; or

(3) a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702, and amendments thereto, or a club or drinking establishment, licensed in this state, as authorized by K.S.A. 41-307, and amendments thereto.

(d) (1) If any spirits distributor refuses to sell spirits which such distributor is authorized to sell or refuses to provide any service in connection therewith to any licensed retailer as authorized by K.S.A. 41-306, and amendments thereto, it shall be lawful for any other licensed spirits distributor to sell such spirits to such retailer.

(2) If any wine distributor refuses to sell wine which such distributor is authorized to sell or refuses to furnish service in connection therewith to any licensed retailer, as authorized by K.S.A. 41-306a, *and amendments thereto*, it shall be lawful for any other licensed wine distributor to sell such wine to such retailer.

(3) If any beer distributor refuses to sell beer or cereal malt beverage which such distributor is authorized to sell or provide service in connection therewith to any retailer licensed under this act or under K.S.A. 41-2702, and amendments thereto, as authorized by K.S.A. 41-307, and amendments thereto, it shall be lawful for any other licensed beer distributor to sell such beer or cereal malt beverage to such retailer.

(e) No manufacturer of alcoholic liquor or cereal malt beverage shall sell or attempt to sell any alcoholic liquor or cereal malt beverage within this state except to a licensed manufacturer, licensed distributor or licensed nonbeverage user.

(f) No supplier, wholesaler, distributor, manufacturer or importer shall by oral or written contract or agreement, expressly or impliedly fix, maintain, coerce or control the resale price of alcoholic liquor, beer or cereal malt beverage to be resold by such wholesaler, distributor, manufacturer or importer.

(g) Any supplier, wholesaler, distributor or manufacturer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$500 and not more than \$1,000, to which may be added not to exceed six months' imprisonment. In addition, any supplier, wholesaler, distributor, manufacturer or importer violating the provisions of this section relating to fixing, maintaining or controlling the resale price of alcoholic liquor, beer or cereal malt beverage shall be liable in a civil action to treble the amount of any damages awarded plus reasonable attorney fees for the damaged party.

Sec. 24. From and after July 1, 2012, K.S.A. 2011 Supp. 41-710 is hereby amended to read as follows: 41-710. (a) No retailer's license shall be issued for premises unless such premises comply with all applicable zoning regulations.

(b) No microbrewery license, *microdistillery license* or farm winery license shall be issued for premises which are zoned for any purpose except agricultural, commercial or business purposes.

(c) No retailer's, microbrewery, *microdistillery* or farm winery license shall be issued for premises which:

(1) Are located within 200 feet of any public or parochial school or college or church, except that if any such school, college or church is established within 200 feet of any licensed premises after the premises have been licensed, the premises shall be an eligible location for retail licensing; or

(2) do not conform to all applicable building regulations.

Sec. 25. From and after July 1, 2012, K.S.A. 2011 Supp. 41-714 is hereby amended to read as follows: 41-714. (a) Any advertising of a farm winery, *microdistillery* or microbrewery shall be subject to approval by the director prior to its dissemination.

(b) The secretary of revenue may adopt, in accordance with K.S.A. 41-210, and amendments thereto, rules and regulations necessary to regulate and control the advertising, in any form, and display of alcoholic liquor.

Sec. 26. From and after July 1, 2012, K.S.A. 41-717 is hereby amended to read as follows: 41-717. (a) (1) Except as provided by subsection (a)(2), no person shall sell or furnish at retail and no microbrewery, *microdistillery* or farm winery shall sell to any consumer any alcoholic liquor on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise; or in payment for any services rendered. If any person extends credit in violation of this subsection, the debt attempted to be created shall not be recoverable at law.

(2) A licensed retailer may sell alcoholic liquor and nonalcoholic malt beverage to a consumer, a licensed microbrewery may sell domestic beer to a consumer, *a licensed microdistillery may sell domestic spirits to a consumer* and a licensed farm winery may sell domestic wine to a consumer on credit pursuant to a credit card which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the credit card.

(b) No microbrewery, *microdistillery*, farm winery or retailer of alcoholic liquor shall accept a check for payment for alcoholic liquors sold by the winery or retailer to a consumer, other than the personal check of the person making the purchase.

Sec. 27. From and after July 1, 2012, K.S.A. 41-718 is hereby amended to read as follows: 41-718. (a) No person except a manufacturer,

distributor, microbrewery, *microdistillery*, farm winery or wholesaler shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor.

(b) No person shall have in the person's possession for sale at retail any bottles, casks or other containers containing alcoholic liquor, except in original packages.

Sec. 28. From and after July 1, 2012, K.S.A. 2011 Supp. 41-719 is hereby amended to read as follows: 41-719. (a) (1) Except as otherwise provided herein and in K.S.A. 8-1599, and amendments thereto, no person shall drink or consume alcoholic liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

(2) Alcoholic liquor may be consumed at a special event held on public streets, alleys, roads, sidewalks or highways when a temporary permit has been issued pursuant to K.S.A. 41-2645, and amendments thereto, for such special event. Such special event must be approved, by ordinance or resolution, by the local governing body of any city, county or township where such special event is being held. No alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads or highways at any such special event.

(3) No person shall remove any alcoholic liquor from inside the boundaries of a special event as designated by the governing body of any city, county or township. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(4) No person shall possess or consume alcoholic liquor inside the premises licensed as a special event that was not sold or provided by the licensee holding the temporary permit for such special event.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by the club and drinking establishment act;

(2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(3) in a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale

of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(4) in a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place; or

(5) on the premises of a *manufacturer*, microbrewery, *microdistillery* or farm winery, if authorized by K.S.A. 41-305, ~~41-308a-01~~, 41-308b or *section 2*, and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto.

(2) In any state-owned or operated building or structure, and on the surrounding premises, which is furnished to and occupied by any state officer or employee as a residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated, and amendments thereto, or established by a city.

(4) On the state fair grounds on the day of any race held thereon pursuant to the Kansas parimutuel racing act.

(5) On the state fairgrounds, if: (A) The alcoholic liquor is domestic beer or wine or wine imported under subsection (e) of K.S.A. 41-308a, and amendments thereto, and is consumed only for purposes of judging competitions; (B) the alcoholic liquor is wine or beer and is sold and consumed during the days of the Kansas state fair on premises leased by the state fair board to a person who holds a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto, authorizing the sale and serving of such wine or beer, or both; or (C) the alcoholic liquor is consumed on nonfair days in conjunction with *bona fide* scheduled events involving not less than 75 invited guests and the state fair board, in its discretion, authorizes the consumption of the alcoholic liquor, subject to any conditions or restrictions the board may require.

(6) In the state historical museum provided for by K.S.A. 76-2036, and amendments thereto, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(7) On the premises of any state-owned historic site under the jurisdiction and supervision of the state historical society, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(8) In a lake resort within the meaning of K.S.A. 32-867, and amendments thereto, on state-owned or leased property.

(9) In the Hiram Price Dillon house or on its surrounding premises, subject to limitations established in policies adopted by the legislative coordinating council, as provided by K.S.A. 75-3682, and amendments thereto.

(10) On the premises of any Kansas national guard regional training center or armory, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(11) On property exempted from this subsection (c) pursuant to subsection (d), (e), (f), (g) or (h).

(d) Any city may exempt, by ordinance, from the provisions of subsection (c) specified property the title of which is vested in such city.

(e) The board of county commissioners of any county may exempt, by resolution, from the provisions of subsection (c) specified property the title of which is vested in such county.

(f) The state board of regents may exempt from the provisions of subsection (c) the Sternberg museum on the campus of Fort Hays state university, or other specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(g) The board of regents of Washburn university may exempt from the provisions of subsection (c) the Mulvane art center and the Bradbury Thompson alumni center on the campus of Washburn university, and other specified property the title of which is vested in such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(h) The board of trustees of a community college may exempt from the provisions of subsection (c) specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(i) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both.

(j) For the purposes of this section, "special event" means a picnic, bazaar, festival or other similar community gathering, which has been approved by the local governing body of any city, county or township.

Sec. 29. From and after January 1, 2013, K.S.A. 2011 Supp. 41-719, as amended by section 28 of this act, is hereby amended to read as follows: 41-719. (a) (1) Except as otherwise provided herein and in K.S.A. 8-1599, and amendments thereto, no person shall drink or consume alcoholic

liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

(2) Alcoholic liquor may be consumed at a special event held on public streets, alleys, roads, sidewalks or highways when a temporary permit has been issued pursuant to K.S.A 41-2645, and amendments thereto, for such special event. Such special event must be approved, by ordinance or resolution, by the local governing body of any city, county or township where such special event is being held. No alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads or highways at any such special event.

(3) No person shall remove any alcoholic liquor from inside the boundaries of a special event as designated by the governing body of any city, county or township. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(4) No person shall possess or consume alcoholic liquor inside the premises licensed as a special event that was not sold or provided by the licensee holding the temporary permit for such special event.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by the club and drinking establishment act;

(2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(3) in a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(4) in a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place; or

(5) on the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by K.S.A. 41-305, 41-308a, 41-308b or section 2, and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions

of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto.

(2) In any state-owned or operated building or structure, and on the surrounding premises, which is furnished to and occupied by any state officer or employee as a residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated, and amendments thereto, or established by a city.

(4) On the state fair grounds on the day of any race held thereon pursuant to the Kansas parimutuel racing act.

(5) On the state fairgrounds, if: (A) The alcoholic liquor is domestic beer or wine or wine imported under subsection (e) of K.S.A. 41-308a, and amendments thereto, and is consumed only for purposes of judging competitions; (B) the alcoholic liquor is wine or beer and is sold and consumed during the days of the Kansas state fair on premises leased by the state fair board to a person who holds a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto, authorizing the sale and serving of such wine or beer, or both; or (C) the alcoholic liquor is consumed on nonfair days in conjunction with *bona fide* scheduled events involving not less than 75 invited guests and the state fair board, in its discretion, authorizes the consumption of the alcoholic liquor, subject to any conditions or restrictions the board may require.

(6) In the state historical museum provided for by K.S.A. 76-2036, and amendments thereto, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(7) On the premises of any state-owned historic site under the jurisdiction and supervision of the state historical society, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(8) In a lake resort within the meaning of K.S.A. 32-867, and amendments thereto, on state-owned or leased property.

(9) In the Hiram Price Dillon house or on its surrounding premises, subject to limitations established in policies adopted by the legislative coordinating council, as provided by K.S.A. 75-3682, and amendments thereto.

(10) On the premises of any Kansas national guard regional training center or armory, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(11) *On the premises of any land or waters owned or managed by the department of wildlife, parks and tourism, except as otherwise prohibited*

*by rules and regulations of the department adopted by the secretary pursuant to K.S.A. 32-805, and amendments thereto.*

(12) On property exempted from this subsection (c) pursuant to subsection (d), (e), (f), (g) or (h).

(d) Any city may exempt, by ordinance, from the provisions of subsection (c) specified property the title of which is vested in such city.

(e) The board of county commissioners of any county may exempt, by resolution, from the provisions of subsection (c) specified property the title of which is vested in such county.

(f) The state board of regents may exempt from the provisions of subsection (c) the Sternberg museum on the campus of Fort Hays state university, or other specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(g) The board of regents of Washburn university may exempt from the provisions of subsection (c) the Mulvane art center and the Bradbury Thompson alumni center on the campus of Washburn university, and other specified property the title of which is vested in such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(h) The board of trustees of a community college may exempt from the provisions of subsection (c) specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(i) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both.

(j) For the purposes of this section, "special event" means a picnic, bazaar, festival or other similar community gathering, which has been approved by the local governing body of any city, county or township.

Sec. 30. From and after July 1, 2012, K.S.A. 41-803 is hereby amended to read as follows: 41-803. (a) It shall be unlawful for any person to own, maintain, operate or conduct, either directly or indirectly, an open saloon.

(b) As used in this section, "open saloon" means any place, public or private, where alcoholic liquor is sold or offered or kept for sale by the drink or in any quantity of less than 100 milliliters (3.4 fluid ounces) or sold or offered or kept for sale for consumption on the premises where sold, but does not include any premises where the sale of liquor is authorized by the club and drinking establishment act or, on and after January 1, 1988, any *manufacturer*, microbrewery, *microdistillery* or farm

winery, if authorized by K.S.A. 41-305, 41-308a ~~or K.S.A.~~ 41-308b or section 2, and amendments thereto.

(c) Any violation of the provisions of this section is a misdemeanor punishable by a fine of not more than \$500 and by imprisonment for not more than 90 days.

Sec. 31. From and after July 1, 2012, K.S.A. 41-901 is hereby amended to read as follows: 41-901. (a) No person shall manufacture, import for distribution as a distributor at wholesale or distribute or sell alcoholic liquor or cereal malt beverage at any place within the state without having first obtained a valid license therefor under the provisions of this act or under K.S.A. 41-2702, and amendments thereto. No person shall obtain a license to carry on the business authorized by the license as agent for another, obtain a license by fraud or make any false statement or otherwise violate any of the provisions of this act in obtaining any license hereunder. No person having obtained a license hereunder shall violate any of the provisions of this act with respect to the manufacture, possession, distribution or sale of alcoholic liquor or cereal malt beverage; or with respect to the maintenance of the licensed premises.

(b) Violation of subsection (a) shall be punishable as follows, except where other penalties are specifically provided by law:

- (1) For a first offense, by a fine of not more than \$500; and
- (2) for a second or subsequent offense, by a fine of not more than \$1,000 or by imprisonment for not more than six months, or both.

(c) Each day any person engages in business as a manufacturer, distributor, microbrewery, *microdistillery*, farm winery or retailer in violation of the provisions of this act shall constitute a separate offense.

(d) Any license obtained to carry on the business as agent for another or any license obtained by fraud or by false statements shall be revoked by the director. When a license has been revoked for obtaining a license to carry on the business authorized by the license as agent for another, or obtained a license by fraud or by any false statement, all alcoholic liquor in the possession of the person who procured the license shall be forfeited and sold and the proceeds of the sale shall be paid to the county treasurer of the county where the alcoholic liquor was located. During the pendency of any appeal from any order revoking a license, the director may obtain an order from the district court of the county where the alcoholic liquor is located, restraining the sale or disposal of the alcoholic liquor. When an order revoking any license is issued by the director, the director shall forthwith forward by registered mail a certified copy of the order revoking the license under the seal of the director to the county attorney of the county where the alcoholic liquor is located.

Within 15 days after the order of revocation becomes final, the county attorney shall institute, against the person who procured the license, a civil action under the code of civil procedure in the district court of the

county in the name of the state of Kansas on the relation of the county attorney to forfeit all alcoholic liquor. Summons shall be served as provided by the code of civil procedure upon the person who procured the license. Upon the return day of the summons issued or as soon after as convenient to the court, an order shall be entered by the court forfeiting the alcoholic liquor to the state of Kansas and ordering it to be sold by the sheriff of the county in which the forfeiture occurred. The order shall fix the time and place of sale and the method and manner in which the sale shall be held, together with notice of the sale as the court directs. After payment of all costs of the action, including a reasonable fee for the county attorney, the balance remaining shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto.

Sec. 32. From and after July 1, 2012, K.S.A. 41-1101 is hereby amended to read as follows: 41-1101. (a) No distributor licensed under this act shall purchase any alcoholic liquor from any manufacturer, owner of alcoholic liquor at the time it becomes a marketable product, exclusive agent of such manufacturer or owner, microbrewery, *microdistillery*, farm winery or distributor of alcoholic liquor bottled in a foreign country either within or without this state, unless the manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor files with the director a written statement sworn to by the manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor or, in case of a corporation, one of its principal officers, agreeing to sell any of the brands or kinds of alcoholic liquor manufactured or distributed by the manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor to any distributor licensed in this state and having a franchise to distribute the alcoholic liquor pursuant to K.S.A. 41-410, and amendments thereto, and to make such sales to all such licensed distributors in this state at the same current price and without discrimination. Each manufacturer, owner, exclusive agent, microbrewery, *microdistillery* or farm winery shall provide to each distributor written notice not less than 45 days before any change in the current price of any spirits or wine which such manufacturer, owner, exclusive agent, microbrewery, *microdistillery* or farm winery sells to such distributor. If any manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor making the agreement violates the agreement by refusing to sell such alcoholic liquor to any such franchised licensed distributor in this state or discriminates in current prices among such franchised licensed distributors making or attempting to make purchases of alcoholic liquor from the manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor, the director shall notify, by registered mail, each such franchised licensed distributor in this state of the violation. Thereupon, it shall be unlawful for a franchised licensed distributor in this state to purchase any alcoholic liquor from the

manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor. If thereafter such a franchised licensed distributor purchases any alcoholic liquor from the manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor, such franchised distributor's license shall be revoked by the director. If any manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor of alcoholic liquor bottled in a foreign country, making any agreement hereunder, does not have a sufficient supply of alcoholic liquor of any of the brands or kinds which the manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor manufactures or distributes to supply the demands of all licensed distributors having a franchise to distribute such alcoholic liquor, the manufacturer, owner, exclusive agent, microbrewery, *microdistillery*, farm winery or distributor may ration such alcoholic liquor and apportion the available supply among such franchised licensed distributors purchasing or attempting to purchase it, in accordance with a plan which shall be subject to the approval of the director.

(b) No retailer licensed under this act shall purchase any alcoholic liquor from any distributor licensed under this act unless the distributor files with the director a written statement sworn to by the distributor, or in case of a corporation by one of its principal officers, agreeing to sell any of the brands or kinds of alcoholic liquor distributed by the distributor and to provide service in connection therewith to any licensed retailer whose licensed premises are located within the geographic territory of the distributor's franchise for the alcoholic liquor, unless written approval to do otherwise is obtained from the director, and to make such sales to all such licensed retailers at the same current bottle, sleeve and case price and without discrimination. For purposes of this subsection the "same current bottle, sleeve and case price" for spirits and wine means a price effective for a specified period as designated by the distributor on or before the first day of each month. If any distributor making the agreement violates the agreement by refusing to sell or provide service to any such licensed retailer in this state without written approval of the director or discriminates in current prices among such licensed retailers making or attempting to make purchases of alcoholic liquor from the distributor, the director may revoke the license of the distributor. If any licensed distributor making any agreement hereunder does not have a sufficient supply of alcoholic liquor of any of the brands or kinds which the distributor distributes to supply the demands of all such licensed retailers, the distributor may ration such alcoholic liquor and apportion the available supply among such licensed retailers purchasing or attempting to purchase the same, in accordance with a plan which shall be subject to the approval of the director.

(c) No club or drinking establishment licensed in this state shall purchase any wine or beer from any distributor licensed under this act unless

the distributor files with the director a written statement sworn to by the distributor, or in case of a corporation by one of its principal officers, agreeing to sell any of the brands or kinds of wine or beer distributed by the distributor to those clubs and drinking establishments to which the distributor is authorized to sell such wine or beer and to which the distributor desires to sell such wine or beer, unless written approval to do otherwise is obtained from the director and to make such sales to all such licensed clubs or drinking establishments at the same current bottle and case price and without discrimination. If any distributor making the agreement violates the agreement by refusing to sell to any such licensed club or drinking establishment in this state without written approval of the director or discriminates in current prices among such licensed clubs or drinking establishments making or attempting to make purchases of wine or beer from the distributor, the director may revoke the license of the distributor. If any licensed distributor making any agreement hereunder does not have a sufficient supply of wine or beer of any of the brands or kinds which the distributor distributes to supply the demands of all such licensed clubs or drinking establishments, the distributor may ration such wine or beer and apportion the available supply among such licensed clubs or drinking establishments purchasing or attempting to purchase the same, in accordance with a plan which shall be subject to the approval of the director.

For the purposes of this subsection, a delivery charge shall not be considered a part of the price of wine or beer sold by a distributor.

(d) No retailer licensed under K.S.A. 41-2701 *et seq.*, and amendments thereto, shall purchase any cereal malt beverage from any distributor licensed under this act unless the distributor files with the director a written statement sworn to by the distributor, or in case of a corporation by one of its principal officers, agreeing to sell any of the brands or kinds of cereal malt beverage distributed by the distributor to those retailers to which the distributor is authorized to sell such cereal malt beverage, unless written approval to do otherwise is obtained from the director, and to make such sales to all such licensed retailers at the same current price and without discrimination. If any distributor making the agreement violates the agreement by refusing to sell to any such licensed retailer in this state without written approval of the director or discriminates in current prices among such licensed retailers making or attempting to make purchases of cereal malt beverage from the distributor, the director may revoke the license of the distributor. If any licensed distributor making any agreement hereunder does not have a sufficient supply of cereal malt beverage of any of the brands or kinds which the distributor distributes to supply the demands of all such licensed retailers, the distributor may ration such cereal malt beverage and apportion the available supply among such licensed retailers purchasing or attempting to purchase the

same, in accordance with a plan which shall be subject to the approval of the director.

(e) No distributor shall sell alcoholic liquor or cereal malt beverage to a retailer licensed under the Kansas liquor control act, to a club, drinking establishment or caterer licensed under the club and drinking establishment act or to a retailer licensed under K.S.A. 41-2702, and amendments thereto, at a discount for multiple case lots.

Sec. 33. From and after July 1, 2012, K.S.A. 2011 Supp. 41-2601 is hereby amended to read as follows: 41-2601. As used in the club and drinking establishment act:

(a) The following terms shall have the meanings provided by K.S.A. 41-102, and amendments thereto: (1) "Alcoholic liquor"; (2) "director"; (3) "original package"; (4) "person"; (5) "sale"; and (6) "to sell."

(b) "Beneficial interest" shall not include any interest a person may have as owner, operator, lessee or franchise holder of a licensed hotel or motel on the premises of which a club or drinking establishment is located.

(c) "Caterer" means an individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

(d) "Cereal malt beverage" has the meaning provided by K.S.A. 41-2701, and amendments thereto.

(e) "Class A club" means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a *bona fide* nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them.

(f) "Class B club" means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(g) "Club" means a class A or class B club.

~~(h) "Minibar" means a closed cabinet, whether nonrefrigerated or wholly or partially refrigerated, access to the interior of which is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.~~

~~(i)~~(h) "Drinking establishment" means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold. *Drinking establishment includes a railway car.*

~~(j)~~(i) "Food" means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used

or intended for use or for sale, in whole or in part, for human consumption.

~~(k)~~(j) “Food service establishment” has the meaning provided by K.S.A. 36-501, and amendments thereto.

~~(l)~~(k) “Hotel” has the meaning provided by K.S.A. 36-501, and amendments thereto.

(l) *“Individual drink” means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term “individual drink” includes beverages containing not more than: (1) Eight ounces of wine; (2) thirty-two ounces of beer or cereal malt beverage; or (3) four ounces of a single spirit or a combination of spirits.*

(m) *“Minibar” means a closed cabinet, whether nonrefrigerated or wholly or partially refrigerated, access to the interior of which is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.*

~~(n)~~(n) “Minor” means a person under 21 years of age.

~~(o)~~(o) “Morals charge” means a charge involving prostitution; procuring any person; soliciting of a child under 18 years of age for any immoral act involving sex; possession or sale of narcotics, marijuana, amphetamines or barbiturates; rape; incest; gambling; illegal cohabitation; adultery; bigamy; or a crime against nature.

~~(p)~~(p) “Municipal corporation” means the governing body of any county or city.

(q) *“Public venue” means an arena, stadium, hall or theater, used primarily for athletic or sporting events, live concerts, live theatrical productions or similar seasonal entertainment events, not operated on a daily basis, and containing:*

(1) *Not less than 4,000 permanent seats; and*

(2) *not less than two private suites, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier.*

(r) *“Railway car” means a locomotive drawn conveyance used for the transportation and accommodation of human passengers that is confined to a fixed rail route and which derives from sales of food for consumption on the railway car not less than 30% of its gross receipts from all sales of food and beverages in a 12-month period.*

~~(s)~~(s) “Restaurant” means:

(1) In the case of a club, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed club premises not less than 50% of its gross receipts from all sales of food and beverages on such premises in a 12-month period;

(2) in the case of a drinking establishment subject to a food sales requirement under K.S.A. 41-2642, and amendments thereto, a licensed

food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its gross receipts from all sales of food and beverages on such premises in a 12-month period; and

(3) in the case of a drinking establishment subject to no food sales requirement under K.S.A. 41-2642, and amendments thereto, a licensed food service establishment.

~~(r)~~(t) “RV resort” means premises where a place to park recreational vehicles, as defined in K.S.A. 75-1212, and amendments thereto, is offered for pay, primarily to transient guests, for overnight or longer use while such recreational vehicles are used as sleeping or living accommodations.

~~(r)~~(u) “Secretary” means the secretary of revenue.

~~(s)~~(v) “Temporary permit” means a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto.

Sec. 34. From and after July 1, 2012, K.S.A. 41-2608 is hereby amended to read as follows: 41-2608. (a) Any *public venue*, club or drinking establishment license issued pursuant to this act shall be for one particular premises which shall be stated in the application and in the license. *Not more than one premises licensed under the club and drinking establishment act shall exist at a single legal address.*

(b) No license shall be issued for a *public venue*, club or drinking establishment unless the city, township or county zoning code allows a club or drinking establishment at that location.

Sec. 35. From and after July 1, 2012, K.S.A. 41-2612 is hereby amended to read as follows: 41-2612. Every holder of a license for a club or drinking establishment shall cause such license to be framed and hung in plain view in a conspicuous place on the licensed premises. *In the case of a railway car, the license shall be posted at its main office which shall be stated in the application.*

Sec. 36. From and after July 1, 2012, K.S.A. 41-2613 is hereby amended to read as follows: 41-2613. The right of immediate entry to and inspection of any premises licensed as a *public venue*, club or drinking establishment or any premises where alcoholic liquor is sold by a holder of a temporary permit, or any premises subject to the control of any licensee or temporary permit holder, by any duly authorized officer or agent of the director, or by any law enforcement officer, shall be a condition on which every license or temporary permit is issued, and the application for, and acceptance of, any license or temporary permit shall conclusively be deemed to be the consent of the applicant and licensee or permit holder to such immediate entry and inspection. Such right of immediate entry and inspection shall be at any time when the premises are occupied and is not limited to hours when the club or drinking establishment is open for business. Such consent shall not be revocable

during the term of the license or temporary permit. Refusal of such entry shall be grounds for revocation of the license or temporary permit.

Sec. 37. From and after July 1, 2012, K.S.A. 41-2614 is hereby amended to read as follows: 41-2614. (a) Except as provided by subsection (c), no *public venue*, club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(b) No caterer shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day at an event catered by such caterer.

(c) A hotel of which the entire premises are licensed as a drinking establishment or as a drinking establishment/caterer may allow at any time the serving, mixing and consumption of alcoholic liquor and cereal malt beverage from a minibar in a guest room by guests registered to stay in such room, and guests of guests registered to stay in such room.

Sec. 38. From and after July 1, 2012, K.S.A. 2011 Supp. 41-2622 is hereby amended to read as follows: 41-2622. (a) At the time application is made to the director for a license pursuant to the club and drinking establishment act, the applicant shall pay the following license fee in the manner provided by K.S.A. 41-2606, and amendments thereto:

(1) For a class A club which is a *bona fide* nonprofit fraternal or war veterans' club, as defined by rules and regulations of the secretary, \$500;

(2) for a class A club which is a *bona fide* nonprofit social club, as defined by rules and regulations of the secretary, and which has not more than 500 members, \$1,000;

(3) for a class A club which is a *bona fide* nonprofit social club, as defined by rules and regulations of the secretary, and which has more than 500 members, \$2,000;

(4) for a class B club, \$2,000;

~~(5) for a drinking establishment, \$1,000;~~

~~(6) for a hotel of which the entire premises are licensed as a drinking establishment, \$3,000;~~

~~(7)(5) for a caterer, \$1,000;~~

~~(8) for a drinking establishment/caterer, \$1,500; and~~

~~(9) for a drinking establishment/caterer, if the drinking establishment is a hotel of which the entire premises are licensed as a drinking establishment, \$3,500.~~

~~(b) On and after July 1, 2011, at the time an application is submitted to the director for a drinking establishment license pursuant to the club and drinking establishment act, the applicant shall pay the following license fee in the manner provided by K.S.A. 41-2606, and amendments thereto:~~

~~(1)(6) for a drinking establishment, \$2,000;~~

~~(2)~~(7) for a hotel of which the entire premises are licensed as a drinking establishment, \$6,000;

~~(3)~~(8) for a drinking establishment/caterer, \$3,000; ~~and~~

~~(4)~~(9) for a drinking establishment/caterer, if the drinking establishment is a hotel of which the entire premises are licensed as a drinking establishment, \$7,000;

(10) for a public venue with a maximum capacity of not more than 10,000 persons, \$5,000;

(11) for a public venue with a maximum capacity of not more than 25,000 persons, \$7,500; and

(12) for a public venue with a maximum capacity exceeding 25,000 persons, \$10,000.

~~(c)~~(b) In addition to the fee provided by ~~subsections (a) and (b)~~ subsection (a), any city where the licensed premises of a club or drinking establishment are located or, if such licensed premises are not located in a city, the board of county commissioners of the county where the licensed premises are located may levy and collect a biennial occupation or license tax from the licensee in an amount equal to not less than \$200 nor more than \$500.

(c) In addition to the fee provided by subsection (a), any city where the licensed premises of a public venue is located or, if such licensed premises is not located in a city, the board of county commissioners of the county where the licensed premises is located may levy and collect a biennial occupation or license tax from the licensee in an amount not more than \$1,000.

(d) No occupational or excise tax or license fee other than that authorized by subsection (b) or (c) shall be levied by any city or county against or collected from a licensed *public venue*, club or drinking establishment.

(e) The director shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Of each such deposit, 50% shall be credited to the state general fund, and the remaining 50% shall be credited to the other state fees fund of the department of social and rehabilitation services. In addition to other purposes for which expenditures may be made from the other state fees fund of the department of social and rehabilitation services, expenditures may be made by the secretary of social and rehabilitation services for the purpose of implementing the powers and duties of the secretary under the provisions of K.S.A. 65-4006 and 65-4007, and amendments thereto.

Sec. 39. From and after July 1, 2012, K.S.A. 2011 Supp. 41-2623 is hereby amended to read as follows: 41-2623. (a) No license shall be issued under the provisions of this act to:

(1) Any person described in subsection (a)(1), (2), (4), (5), (6), (7), (8), (9), (12) or (13) of K.S.A. 41-311, and amendments thereto, except that the provisions of subsection (a)(7) of such section shall not apply to nor prohibit the issuance of a license for a class A club to an officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof.

(2) A person who has had the person's license revoked for cause under the provisions of this act.

(3) A person who has not been a resident of this state for a period of at least one year immediately preceding the date of application.

(4) A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquors or a beneficial interest in any other club, drinking establishment or caterer licensed hereunder, except that:

(A) A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more other clubs or drinking establishments licensed hereunder if such other clubs or establishments are located in hotels.

(B) A license for a club or drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants.

(C) A caterer's license may be issued to a person who has a beneficial interest in a club or drinking establishment and a license for a club or drinking establishment may be issued to a person who has a beneficial interest in a caterer.

(D) A license for a class A club may be granted to an organization of which an officer, director or board member is a distributor or retailer licensed under the liquor control act if such distributor or retailer sells no alcoholic liquor to such club.

(E) Any person who has a beneficial interest in a microbrewery, *microdistillery* or farm winery licensed pursuant to the Kansas liquor control act may be issued any or all of the following: (1) Class B club license; (2) drinking establishment license; and (3) caterer's license.

(5) A copartnership, unless all of the copartners are qualified to obtain a license.

(6) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and residence requirements.

(7) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 5% of the common or preferred stock, of a corporation which:

(A) Has had a license revoked under the provisions of the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(8) A corporation organized under the laws of any state other than this state.

(9) A trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) of K.S.A. 41-311, and amendments thereto, shall not apply in determining whether a beneficiary would be eligible for a license.

(b) No club or drinking establishment license shall be issued under the provisions of the club and drinking establishment act to:

(1) A person who does not own the premises for which a license is sought, or does not, at the time the application is submitted, have a written lease thereon, except that an applicant seeking a license for a premises which is owned by a city or county, or is a stadium, arena, convention center, theater, museum, amphitheater or other similar premises may submit an executed agreement to provide alcoholic beverage services at the premises listed in the application in lieu of a lease.

(2) A person who is not a resident of the county in which the premises sought to be licensed are located.

Sec. 40. From and after July 1, 2012, K.S.A. 2011 Supp. 41-2629 is hereby amended to read as follows: 41-2629. (a) A class B club ~~license~~, *drinking establishment*, *public venue* or caterer's license shall be issued for a term not to exceed two years after issuance, except as otherwise provided by law, unless sooner suspended or revoked as provided in this act.

~~(b) Prior to July 1, 2011, a drinking establishment license shall be issued for a term not to exceed one year after issuance, except as otherwise provided by law, unless sooner suspended or revoked as provided by this act. On and after July 1, 2011, a drinking establishment license shall be issued for a term not to exceed two years after issuance, except as otherwise provided by law, unless sooner suspended or revoked as provided by this act.~~

~~(c)~~(b) The director may, at the director's sole discretion and after examination of the circumstances, extend the license term of any license for not more than 30 days beyond such date the license would expire pursuant to this section. Any extension of the license term by the director pursuant to this section shall automatically extend the due date for payment by the licensee of any occupation or license tax levied by a city or township pursuant to K.S.A. 41-2622, and amendments thereto, by the same number of days the director has extended the license term.

~~(d)~~(c) A class B ~~license club~~, *drinking establishment license*, *public*

*venue* or caterer's license shall be purely a personal privilege and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. A class B club license, drinking establishment license, *public venue* or caterer's license shall not descend by the laws of testate or intestate devolution but shall cease or expire upon the death of the licensee subject to the following provision subsection (d).

~~(c)~~(d) An executor, administrator or representative of the estate of any deceased holder of a class B club, drinking establishment, *public venue* or caterer's license, or the trustee of any insolvent or bankrupt class B club, drinking establishment, *public venue* or caterer's license may continue the licensee's business under order of the appropriate court and may exercise the privilege of the deceased, insolvent or bankrupt licensee after the death of such licensee or after such insolvency or bankruptcy until the expiration of such license, but in no case longer than one year after the death, insolvency or bankruptcy of such licensee.

~~(f)~~(e) When the licensee pays the full amount of the license fee upon application and is prevented from operating under such license in accordance with the provisions of this act for the entire second year of the license term, a refund shall be made of one-half of the license fee paid by such licensee. The secretary shall adopt, in accordance with K.S.A. 41-210, and amendments thereto, rules and regulations providing for the authorization of refunds of one-half of the license fee paid when the licensee does not use such license for the entire second year of the license term as a result of the cancellation of the license upon the request of the licensee for voluntary reasons.

Sec. 41. From and after July 1, 2012, K.S.A. 41-2640 is hereby amended to read as follows: 41-2640. (a) No club, drinking establishment, caterer or holder of a temporary permit, nor any person acting as an employee or agent thereof, shall:

(1) Offer or serve any free cereal malt beverage or alcoholic liquor in any form to any person;

(2) offer or serve to any person ~~a~~*an individual* drink at a price that is less than the acquisition cost of the *individual* drink to the licensee or permit holder;

(3) sell, offer to sell or serve to any person an unlimited number of *individual* drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;

~~(4) sell, offer to sell or serve any drink to any person at any time at a price less than that charged all other purchasers of drinks on that day;~~

~~(5) increase the volume of alcoholic liquor contained in a drink or the~~

size of a drink of cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;

~~(6)~~(4) encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of *individual* drinks as prizes; or

~~(7)~~(5) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through ~~(6)~~(4).

(b) *No public venue, nor any person acting as an employee or agent thereof, shall:*

(1) *Offer or serve any free cereal malt beverage or alcoholic liquor in any form to any person;*

(2) *offer or serve to any person a drink or original container of alcoholic liquor or cereal malt beverage at a price that is less than the acquisition cost of the drink or original container of alcoholic liquor or cereal malt beverage to the licensee;*

(3) *sell or serve alcoholic liquor in glass containers to customers in the general admission area;*

(4) *sell or serve more than two drinks per customer at any one time in the general admission area;*

(5) *encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of drinks as prizes; or*

(6) *advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (b)(1) through (5).*

~~(b)~~(c) ~~Nothing in subsection (a) shall be construed to prohibit~~ A public venue club, drinking establishment, caterer or holder of a temporary permit ~~from may:~~

(1) ~~Offering~~ Offer free food or entertainment at any time; ~~or~~

(2) ~~selling or delivering~~ sell or deliver wine by the bottle or carafe;

(3) *sell, offer to sell and serve individual drinks at different prices throughout any day; or*

(4) *sell or serve beer or cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.*

~~(c)~~(d) Violation of any provision of this section is a misdemeanor punishable as provided by K.S.A. 41-2633, and amendments thereto.

~~(d)~~(e) Violation of any provision of this section shall be grounds for suspension or revocation of the licensee's license as provided by K.S.A. 41-2609, and amendments thereto, and for imposition of a civil fine on the licensee or temporary permit holder as provided by K.S.A. 41-2633a, and amendments thereto.

~~(e)~~(f) Every licensed club and drinking establishment shall make available at any time upon request a price list showing the club's or drink-

ing establishment's current prices per *individual* drink for all *individual* drinks.

~~(f) As used in this section, "drink" means an individual serving of any beverage containing alcoholic liquor or an individual serving of cereal malt beverage.~~

Sec. 42. From and after July 1, 2012, K.S.A. 2011 Supp. 41-2645 is hereby amended to read as follows: 41-2645. (a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of such permit.

(b) The director may issue a temporary permit to any one or more persons or organizations applying for such a permit, in accordance with rules and regulations of the secretary. The permit shall be issued in the names of the persons or organizations to which it is issued.

(c) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued, which fee shall be paid by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount thereof. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises where the city, county or township zoning code allows use for which the permit is issued. No temporary permit shall be issued for premises which are not located in a county where the qualified electors of the county:

(1) (A) Approved, by a majority vote of those voting thereon, to adopt the proposition amending section 10 of article 15 of the constitution of the state of Kansas at the general election in November, 1986; or (B) have approved a proposition to allow the sale of liquor by the individual drink in public places within the county at an election pursuant to K.S.A. 41-2646, and amendments thereto; and

(2) have not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.

(e) (1) A temporary permit may be issued for the consumption of

alcoholic liquor on a city, county or township street, alley, road, sidewalk or highway for a special event; provided, that such street, alley, road, sidewalk or highway is closed to motor vehicle traffic by the governing body of such city, county or township for such special event, a written request for such consumption and possession of such alcoholic liquor has been made to the local governing body and the special event is approved by the governing body of such city, county or township by ordinance or resolution. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(2) Drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event.

(3) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(4) For the purposes of this section, "special event" shall have the same meaning given that term in K.S.A. 41-719, and amendments thereto.

(f) (1) ~~Except as otherwise provided in this subsection, a temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit, except that the director may issue one temporary permit, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of only wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose. Not more than four temporary permits may be issued to any one applicant in a calendar year.~~

*(2) The director may issue one temporary permit, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of only wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose.*

*(3) The director may issue a temporary permit for a special event approved by the governing body of a city, county or township pursuant to subsection (e)(1), which may, at the director's discretion, be valid for the entire period of such special event, but in no event shall such permit be issued for a period of time that exceeds 30 consecutive days.*

(g) All proceeds from an event for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(h) *Upon written permission from the director and within three business days after the end of an event conducted pursuant to a temporary permit, the holder of a temporary permit may sell back to the licensee from whom alcoholic liquor was purchased any alcoholic liquor sold to the holder of the temporary permit for such event.*

~~(h)(i)~~ (i) A temporary permit shall not be transferable or assignable.

~~(i)(j)~~ (j) The director may refuse to issue a temporary permit to any person or organization which has violated any provision of the Kansas liquor control act, the drinking establishment act or K.S.A. 79-41a01 *et seq.*, and amendments thereto.

Sec. 43. From and after July 1, 2012, K.S.A. 41-2722 is hereby amended to read as follows: 41-2722. (a) No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverage for consumption on the licensed premises shall:

(1) Offer or serve any free cereal malt beverage to any person;

(2) offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee;

(3) sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;

~~(4) sell, offer to sell or serve any drink to any person at any time at a price less than that charged the general public on that day, except at private functions not open to the general public;~~

~~(5) increase the size of a drink of cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;~~

~~(6) encourage or permit, on the licensed premises, any game or contest which involves drinking cereal malt beverage or the awarding of drinks as prizes; or~~

~~(7)(5)~~ (5) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through ~~(6)(4)~~.

~~(b) Nothing in subsection (a) shall be construed to prohibit~~ A retailer ~~from offering~~ may:

(1) Offer free food or entertainment at any time;

(2) *sell, offer to sell and serve individual drinks at different prices throughout any day; or*

(3) *sell or serve cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.*

(c) Violation of any provisions of this section is a misdemeanor punishable as provided by K.S.A. 41-2711, and amendments thereto.

(d) Violation of any provision of this act shall be grounds for suspension or revocation of the retailer's license as provided by K.S.A. 41-2708, and amendments thereto.

(e) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages.

(f) ~~As used in this section, "drink" means an individual serving of cereal malt beverage.~~

~~(g)~~ This section shall be part of and supplemental to K.S.A. 41-2701 through 41-2721, and amendments thereto.

Sec. 44. From and after July 1, 2012, K.S.A. 2011 Supp. 75-5133 is hereby amended to read as follows: 75-5133. (a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions, shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax, in accordance with proper judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

(b) The secretary of revenue or the secretary's designee may:

(1) Publish statistics, so classified as to prevent identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or the attorney general's designee;

(3) provide the post auditor access to all such excise tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto;

(4) disclose taxpayer information from excise tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) provide information from returns and reports filed under article 42 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, to county appraisers as is necessary to insure proper valuations of property. Information from such returns and reports may also be exchanged with any other state agency administering and collecting conservation or other taxes and fees imposed on or measured by mineral production;

(6) provide, upon request by a city or county clerk or treasurer or

finance officer of any city or county receiving distributions from a local excise tax, monthly reports identifying each retailer doing business in such city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month, and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number;

(7) provide information from returns and applications for registration filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-3601, and amendments thereto, to a city or county treasurer or clerk or finance officer to explain the basis of statistics contained in reports provided by subsection (b)(6);

(8) disclose the following oil and gas production statistics received by the department of revenue in accordance with K.S.A. 79-4216 *et seq.*, and amendments thereto: Volumes of production by well name, well number, operator's name and identification number assigned by the state corporation commission, lease name, leasehold property description, county of production or zone of production, name of purchaser and purchaser's tax identification number assigned by the department of revenue, name of transporter, field code number or lease code, tax period, exempt production volumes by well name or lease, or any combination of this information;

(9) release or publish liquor brand registration information provided by suppliers, farm wineries, *microdistilleries* and microbreweries in accordance with the liquor control act. The information to be released is limited to: Item number, universal numeric code, type status, product description, alcohol percentage, selling units, unit size, unit of measurement, supplier number, supplier name, distributor number and distributor name;

(10) release or publish liquor license information provided by liquor licensees, distributors, suppliers, farm wineries, *microdistilleries* and microbreweries in accordance with the liquor control act. The information to be released is limited to: County name, owner, business name, address, license type, license number, license expiration date and the process agent contact information;

(11) release or publish cigarette and tobacco license information obtained from cigarette and tobacco licensees in accordance with the Kansas cigarette and tobacco products act. The information to be released is limited to: County name, owner, business name, address, license type and license number;

(12) provide environmental surcharge or solvent fee, or both, information from returns and applications for registration filed pursuant to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary of health and environment or the secretary's designee for the sole

purpose of ensuring that retailers collect the environmental surcharge tax or solvent fee, or both;

(13) provide water protection fee information from returns and applications for registration filed pursuant to K.S.A. 82a-954, and amendments thereto, to the secretary of the state board of agriculture or the secretary's designee and the secretary of the Kansas water office or the secretary's designee for the sole purpose of verifying revenues deposited to the state water plan fund;

(14) provide to the secretary of commerce copies of applications for project exemption certificates sought by any taxpayer under the enterprise zone sales tax exemption pursuant to subsection (cc) of K.S.A. 79-3606, and amendments thereto;

(15) disclose information received pursuant to the Kansas cigarette and tobacco act and subject to the confidentiality provisions of this act to any criminal justice agency, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, or to any law enforcement officer, as defined in K.S.A. 2011 Supp. 21-5111, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation;

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department; and

(17) provide information concerning remittance by sellers, as defined in K.S.A. 2011 Supp. 12-5363, and amendments thereto, of prepaid wireless 911 fees from returns to the local collection point administrator, as defined in K.S.A. 2011 Supp. 12-5363, and amendments thereto, for purposes of verifying seller compliance with collection and remittance of such fees.

(c) Any person receiving any information under the provisions of subsection (b) shall be subject to the confidentiality provisions of subsection (a) and to the penalty provisions of subsection (d).

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general. The district attorney or county attorney and the attorney general shall have authority to prosecute any violation of this section if the offender is a city or county clerk or treasurer or finance officer of a city or county.

Sec. 45. From and after July 1, 2012, K.S.A. 79-4101 is hereby amended to read as follows: 79-4101. (a) For the purpose of providing revenue which may be used by the state, counties and cities in the enforcement of the provisions of this act, from and after the effective date of this act, for the privilege of engaging in the business of selling alcoholic liquor by retailers, *microbreweries*, *microdistilleries* or farm wineries to

consumers in this state or selling alcoholic liquor or cereal malt beverage by distributors to clubs, drinking establishments, *public venues* or caterers in this state, there is hereby levied and there shall be collected and paid a tax at the rate of 8% upon the gross receipts received from: (1) The sale of alcoholic liquor by retailers, microbreweries, *microdistilleries* or farm wineries to consumers within this state; and (2) the sale of alcoholic liquor or cereal malt beverage by distributors to clubs, drinking establishments, *public venues* or caterers in this state.

(b) The tax imposed by this section shall be in addition to the license fee imposed on distributors, retailers, microbreweries, *microdistilleries* and farm wineries by K.S.A. 41-310, and amendments thereto.

Sec. 46. From and after July 1, 2012, K.S.A. 79-4102 is hereby amended to read as follows: 79-4102. The tax levied under K.S.A. 79-4101, and amendments thereto, shall be paid by the consumer or user to the retailer, microbrewery, *microdistillery* or farm winery or by the club, drinking establishment, *public venue* or caterer to the distributor. It shall be the duty of each retailer, microbrewery, *microdistillery*, farm winery or distributor in this state to collect from the purchaser the full amount of the tax imposed by this act, or an amount equal as nearly as possible or practicable, to the average equivalent thereof.

Sec. 47. From and after July 1, 2012, K.S.A. 79-4103 is hereby amended to read as follows: 79-4103. On or before the 25th day of each calendar month, every person engaged in the business of selling alcoholic liquor at retail, every microbrewery selling beer to consumers, *every microdistillery selling spirits to consumers*, every farm winery selling wine to consumers in this state and every distributor selling alcoholic liquor or cereal malt beverage to clubs, drinking establishments, *public venues* or caterers in this state during the preceding calendar month shall make a return to the director of taxation upon forms prescribed and furnished by the director, stating: (a) The name and address of the seller; (b) the total amount of gross sales subject to the tax imposed by K.S.A. 79-4101, and amendments thereto, during the preceding calendar month; and (c) any other pertinent information the director requires. The person making the return shall, at the time of making the return, pay to the director of taxation the amount of tax imposed by K.S.A. 79-4101, and amendments thereto. The director of taxation may extend the time for making returns and paying the tax for any period not to exceed 60 days, under rules and regulations adopted by the secretary of revenue.

Sec. 48. From and after July 1, 2012, K.S.A. 79-4104 is hereby amended to read as follows: 79-4104. Whenever the director of alcoholic beverage control issues a retailer's, distributor's, microbrewery, *microdistillery* or farm winery license, the director of alcoholic beverage control shall promptly notify the director of taxation of its issuance. The notice shall include the name of the licensee and, in the case of a retailer, mi-

crobrewery, *microdistillery* or farm winery, the address of the licensed premises. Whenever the director of alcoholic beverage control revokes or suspends any retailer's, distributor's, microbrewery, *microdistillery* or farm winery license or whenever any retailer's, distributor's, microbrewery, *microdistillery* or farm winery license expires, the director of alcoholic beverage control shall likewise notify the director of taxation.

Sec. 49. From and after July 1, 2012, K.S.A. 79-41a01 is hereby amended to read as follows: 79-41a01. As used in K.S.A. 79-41a01 through 79-41a09, and amendments thereto:

(a) "Alcoholic liquor" means alcoholic liquor, as defined by K.S.A. 41-102, and amendments thereto, and cereal malt beverage, as defined by K.S.A. 41-2701, and amendments thereto.

(b) "Caterer," "club," "drinking establishment," "*public venue*," "*railway car*" and "temporary permit" have the meanings provided by K.S.A. 41-2601, and amendments thereto.

(c) "Gross receipts derived from the sale of alcoholic liquor" means the amount charged the consumer for a drink containing alcoholic liquor, including any portion of that amount attributable to the cost of any ingredient mixed with or added to the alcoholic liquor contained in such drink.

Sec. 50. From and after July 1, 2012, K.S.A. 79-41a02 is hereby amended to read as follows: 79-41a02. (a) There is hereby imposed, for the privilege of selling alcoholic liquor, a tax at the rate of 10% upon the gross receipts derived from the sale of alcoholic liquor by any club, caterer, drinking establishment, *public venue* or temporary permit holder.

(b) The tax imposed by this section shall be paid by the consumer to the club, caterer, drinking establishment, *public venue* or temporary permit holder and it shall be the duty of each and every club, caterer, drinking establishment, *public venue* or temporary permit holder subject to this section to collect from the consumer the full amount of such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each club, caterer, drinking establishment, *public venue* or temporary permit holder collecting the tax imposed hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 79-41a03, and amendments thereto, and the state department of revenue shall administer and enforce the collection of such tax.

Sec. 51. From and after July 1, 2012, K.S.A. 2011 Supp. 79-41a03 is hereby amended to read as follows: 79-41a03. (a) The tax levied and collected pursuant to K.S.A. 79-41a02, and amendments thereto, shall become due and payable by the club, caterer, drinking establishment, *public venue* or temporary permit holder monthly, or on or before the 25th day of the month immediately succeeding the month in which it is collected, but any club, caterer, drinking establishment, *public venue* or

temporary permit holder filing an annual or quarterly return under the Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, and amendments thereto, shall, upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time the club, caterer, drinking establishment, *public venue* or temporary permit holder pays such retailers' sales tax. Each club, caterer, drinking establishment, *public venue* or temporary permit holder shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross receipts derived from the sale of alcoholic liquor by the club, caterer, drinking establishment, *public venue* or temporary permit holder for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross receipts derived from the sale of alcoholic liquor shall be kept separate and apart from the records of other retail sales made by a club, caterer, drinking establishment, *public venue* or temporary permit holder in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a club, caterer, drinking establishment, *public venue* or temporary permit holder as may be necessary to determine the accuracy of such reports required hereunder.

(c) The secretary of revenue is hereby authorized to administer and collect the tax imposed hereunder and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any club, caterer, drinking establishment, *public venue* or temporary permit holder liable to pay the tax imposed hereunder refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617, and amendments thereto.

(d) The secretary of revenue shall remit all revenue collected under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Subject to the maintenance requirements of the local alcoholic liquor refund fund created under K.S.A. 79-41a09, and amendments thereto, 25% of the remittance shall be credited to the state general fund, 5% shall be credited to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and the balance shall be credited to the local alcoholic liquor fund created by K.S.A. 79-41a04, and amendments thereto.

(e) Whenever, in the judgment of the secretary of revenue, it is nec-

essary, in order to secure the collection of any tax, penalties or interest due, or to become due, under the provisions of this act, the secretary may require any person subject to such tax to file a bond with the director of taxation under conditions established by and in such form and amount as prescribed by rules and regulations adopted by the secretary.

(f) The amount of tax imposed by this act shall be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period except in the cases of fraud. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. No refund or credit shall be allowed by the director after three years from the date of payment of the tax as provided in this act unless before the expiration of such period a claim therefor is filed by the taxpayer, and no suit or action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing a claim therefor with the director. Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the periods of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Sec. 52. From and after July 1, 2012, K.S.A. 79-41a04 is hereby amended to read as follows: 79-41a04. (a) There is hereby created, in the state treasury, the local alcoholic liquor fund. Moneys credited to such fund pursuant to this act or any other law shall be expended only for the purpose and in the manner provided by this act.

(b) *Except as provided in subsection (b)(4)*, all moneys credited to the local alcoholic liquor fund shall be allocated to the several cities and counties of the state as follows:

(1) Each city that has a population of more than 6,000 shall receive 70% of the amount which is collected pursuant to this act from clubs, *public venues* or drinking establishments located in such city, from caterers whose principal places of business are so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made.

(2) Each city that has a population of 6,000 or less shall receive 46 $\frac{2}{3}$ % of the amount which is collected pursuant to this act from clubs, *public venues* or drinking establishments located in such city, from caterers whose principal places of business are so located or from temporary per-

mit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made.

(3) Each county shall receive: (A) 70% of the amount which is collected pursuant to this act from clubs, *public venues* or drinking establishments located in such county and outside the corporate limits of any city, from caterers whose principal places of business are so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made; and (B) 23 $\frac{1}{3}$ % of the amount which is collected pursuant to this act from clubs, *public venues* or drinking establishments located in the county and within a city that has a population of 6,000 or less, from caterers whose principal places of business are so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made.

(4) *From the amount collected from drinking establishments which are railway cars, counties shall receive 70% which shall be divided equally among the counties through which the railway car passes or in which the railway car operates, provided such county is a county where the qualified electors of the county:*

(A) (i) *Approved by a majority vote of those voting thereon, the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election in November 1986; or (ii) have approved a proposition to allow sales of alcoholic liquor by the individual drink in public places within the county at an election pursuant to K.S.A. 41-2646, and amendments thereto; and*

(B) *have not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.*

(c) The state treasurer shall make distributions from the local alcoholic liquor fund in accordance with the allocation formula prescribed by subsection (b) on March 15, June 15, September 15 and December 15 of each year. The director of accounts and reports shall draw warrants on the state treasurer in favor of the several county treasurers and city treasurers on the dates and in the amounts determined under this section. Such distributions shall be paid directly to the several county treasurers and city treasurers.

(d) Except as otherwise provided by this subsection, each city treasurer of a city that has a population of more than 6,000, upon receipt of any moneys distributed under this section, shall deposit the full amount in the city treasury and shall credit  $\frac{1}{3}$  of the deposit to the general fund of the city,  $\frac{1}{3}$  to a special parks and recreation fund in the city treasury and  $\frac{1}{3}$  to a special alcohol and drug programs fund in the city treasury. Each city treasurer of a city that has a population of 6,000 or less, upon receipt of any moneys distributed under this section, shall deposit the full

amount in the city treasury and shall credit  $\frac{1}{2}$  of the deposit to the general fund of the city and  $\frac{1}{2}$  to a special parks and recreation fund in the city treasury. Moneys in such special funds shall be under the direction and control of the governing body of the city. Moneys in the special parks and recreation fund may be expended only for the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. One-half of the moneys distributed under this section to cities located in Butler county shall be deposited in a special community support program and parks and recreation fund in the city treasury. Moneys in the special community support program and parks and recreation fund may be expended only for (1) the establishment and operation of a domestic violence program operated by a not-for-profit organization or (2) the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. Moneys in the special alcohol and drug programs fund shall be expended only for the purchase, establishment, maintenance or expansion of services or programs whose principal purpose is alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers.

(e) Except as otherwise provided by this subsection, each county treasurer, upon receipt of any moneys distributed under this section, shall deposit the full amount in the county treasury and shall credit to a special alcohol and drug programs fund in the county treasury  $23\frac{1}{3}\%$  of the amount which is collected pursuant to this act from clubs or drinking establishments located in the county and within a city that has a population of 6,000 or less, from caterers whose principal place of business is so located or from temporary permit holders whose permitted events are so located and which is paid into the state treasury during the period for which the allocation is made; of the remainder, the treasurer shall credit  $\frac{1}{3}$  to the general fund of the county,  $\frac{1}{3}$  to a special parks and recreation fund in the county treasury and  $\frac{1}{3}$  to the special alcohol and drug programs fund. Moneys in such special funds shall be under the direction and control of the board of county commissioners. Moneys in the special parks and recreation fund may be expended only for the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. One-third of the moneys distributed under this section to Butler county shall be deposited in a special community support program and parks and recreation fund in the county treasury. Moneys in the special community support program and parks and recreation fund may be expended only for (1) the establishment and operation of a domestic violence program operated by a not-for-profit organization or (2) the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. Moneys in the special alcohol and drug programs fund shall be expended only for the purchase, estab-

lishment, maintenance or expansion of services or programs whose principal purpose is alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers. In any county in which there has been organized an alcohol and drug advisory committee, the board of county commissioners shall request and obtain, prior to making any expenditures from the special alcohol and drug programs fund, the recommendations of the advisory committee concerning such expenditures. The board of county commissioners shall adopt the recommendations of the advisory committee concerning such expenditures unless the board, by unanimous vote of all commissioners, adopts a different plan for such expenditures.

(f) Each year, the county treasurer shall estimate the amount of money the county and each city in the county will receive from the local alcoholic liquor fund and from distributions pursuant to K.S.A. 79-41a05, and amendments thereto. The state treasurer shall advise each county treasurer, prior to June 1 of each year of the amount in the local alcoholic liquor fund that the state treasurer estimates, using the most recent available information, will be allocated to such county in the following year. The county treasurer shall, before June 15 of each year, notify the treasurer of each city of the estimated amount in dollars of the distribution to be made from the local alcoholic liquor fund and pursuant to K.S.A. 79-41a05, and amendments thereto.

Sec. 53. From and after July 1, 2012, K.S.A. 79-41a06 is hereby amended to read as follows: 79-41a06. No club, drinking establishment, caterer, *public venue* or temporary permit holder shall sell any alcoholic liquor without a registration certificate from the secretary of revenue. Application for such certificate shall be made to the secretary upon forms provided by the secretary and shall contain such information as the secretary deems necessary for the purposes of administering the provisions of this act. The registration certificate shall be conspicuously displayed in the licensed premises or permitted for which it is issued.

Upon violation of any of the provisions of K.S.A. 79-41a01 *et seq.*, and amendments thereto, or any of the terms of this act, and upon due notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may revoke such registration certificate.

Sec. 54. From and after July 1, 2012, K.S.A. 79-41a07 is hereby amended to read as follows: 79-41a07. (a) The director of taxation or the director of alcoholic beverage control may enjoin any person from engaging in business as a club, drinking establishment, caterer, *public venue* or temporary permit holder when the club, drinking establishment, caterer, *public venue* or temporary permit holder is in violation of any of

the provisions of K.S.A. 79-41a01 *et seq.*, and amendments thereto, or any of the terms of this act and shall be entitled in any proceeding brought for that purpose to have an order restraining the person from engaging in business as a club, drinking establishment, caterer, *public venue* or temporary permit holder. No bond shall be required for any such restraining order or for any temporary or permanent injunction issued in that proceeding.

(b) If a club, drinking establishment, *public venue* or caterer licensed by the director of alcoholic beverage control or a temporary permit holder violates any of the provisions of K.S.A. 79-41a01 *et seq.*, and amendments thereto, or any of the terms of this act, the director of alcoholic beverage control may suspend or revoke the license of such club, *drinking establishment*, *public venue* or caterer in accordance with K.S.A. 41-2609, and amendments thereto, or may impose a civil fine on the licensee or permit holder in the manner provided by K.S.A. 41-2633a, and amendments thereto.

Sec. 55. From and after July 1, 2012, K.S.A. 79-41a08 is hereby amended to read as follows: 79-41a08. The tax imposed by this act shall be a lien upon the business and any property of the club, drinking establishment, caterer, *public venue* or permit holder which may be sold. The person acquiring such business or property shall withhold a sufficient amount of the purchase price thereof to cover the amount of any taxes due and unpaid by the seller, until the seller shall furnish the purchaser with a receipt from the secretary of revenue, as herein provided, showing that such taxes have been paid. The purchaser shall be personally liable for the payment of any unpaid taxes of the seller, to the extent of the value of the business or property received by the purchaser, and if a receipt is not furnished by such seller within 20 days from the date of sale of such business or property, the purchaser shall remit the amount of such unpaid taxes to the secretary on or before the 20th day of the month succeeding that in which such purchaser acquired such business or property.

Sec. 56. From and after January 1, 2013, K.S.A. 2011 Supp. 41-719, as amended by section 28 of this act, is hereby repealed.

Sec. 57. From and after July 1, 2012, K.S.A. 41-304, 41-306, 41-306a, 41-307, 41-308, 41-316, 41-320, 41-333, 41-334, 41-335, 41-336, 41-337, 41-338, 41-339, 41-340, 41-341, 41-601, 41-602, 41-701, 41-717, 41-718, 41-803, 41-901, 41-1101, 41-2608, 41-2612, 41-2613, 41-2614, 41-2640, 41-2722, 79-4101, 79-4102, 79-4103, 79-4104, 79-41a01, 79-41a02, 79-41a04, 79-41a06, 79-41a07 and 79-41a08 and K.S.A. 2011 Supp. 41-102, 41-305, 41-308a, as amended by section 11 of this act, 41-310, 41-311, 41-313, 41-317, 41-319, 41-501, 41-710, 41-714, 41-719, 41-2601, 41-2622, 41-2623, 41-2629, 41-2645, 75-5133 and 79-41a03 are hereby repealed.

Sec. 58. K.S.A. 2011 Supp. 41-308a is hereby repealed.

Sec. 59. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 25, 2012.

Published in the *Kansas Register* May 31, 2012.

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## CHAPTER 145

Senate Substitute for HOUSE BILL No. 2730

AN ACT concerning the department of agriculture; relating to the duties of the secretary of agriculture; inspections; licensing; amending K.S.A. 36-505, 36-515a, 36-517, 65-660, 65-674, 65-682, 65-6a34 and 65-6a41 and K.S.A. 2011 Supp. 36-501, 36-502, 36-506, 36-510, 36-515, 36-515b, 36-518, 36-519, 36-520, 65-655, 65-656, 65-657, 65-658, 65-685, 65-688, 65-689, 65-690, 65-6a18, 65-6a20 and 65-6a31 and repealing the existing sections; also repealing K.S.A. 36-508, 36-511, 36-513, 36-515c, 65-619, 65-620, 65-621, 65-622, 65-623, 65-624, 65-625, 65-631, 65-632, 65-633, 65-634, 65-637, 65-638, 65-639, 65-640, 65-642, 65-651, 65-652, 65-654, 65-659, 65-661, 65-666, 65-667, 65-677 and 65-681 and K.S.A. 2011 Supp. 36-503, 36-504, 36-507, 36-509, 65-626, 65-635, 65-641, 65-653, 65-673, 65-676, 65-683, 65-684, 65-686, 74-591, 74-592, 74-593, 74-594, 74-595, 74-596, 74-596a, 74-597, 74-598, 74-5,101 and 74-5,102.

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

New Section 1. (a) Except as otherwise provided in this section, any license issued under the provisions of this act shall expire on March 31 following the date of issuance. Licensees may renew licenses by applying to the secretary on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary and shall be accompanied by the license fee required for the issuance of an original license. If the secretary refuses to renew any license, the secretary shall give written notice thereof to the licensee. In giving written notice, the secretary shall specify changes necessary for complete compliance with rules and regulations, and the secretary shall state that if compliance is achieved within the time designated then the license shall be renewed. If the licensee fails to achieve complete compliance within the prescribed time, the secretary, after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act, shall deny the application for a license. If for any reason, a licensee fails to renew a license prior to the expiration date, the licensee may obtain a renewal of such license within 30 days following the expiration date. In order to renew a license during this thirty-day period, the licensee must comply with the foregoing provisions of this section and pay a \$25 late fee. If the licensee does not renew within the thirty-day period, then the license is treated as expired, and the licensee must apply for a new license.

(b) (1) The secretary shall inspect or cause to be inspected every

licensed food establishment or food processing plant in this state. If upon inspection, the secretary determines that a food establishment or food processing plant does not comply with rules and regulations, the secretary shall give written or electronic notice to the owner, proprietor, or agent in charge of such food establishment or food processing plant. In giving notice, the secretary shall specify changes necessary for complete compliance, and the secretary shall designate a time period for achieving compliance. The prescribed time period shall not be less than 10 days, unless the secretary believes time is essential to protect public health and safety. If time is essential to protect public health and safety, the secretary may designate a shorter period for compliance. Also, in giving notice, the secretary shall state that if compliance is not achieved within the time prescribed, the license for the food establishment or food processing plant shall be subject to suspension or revocation.

(2) When a licensee of any food establishment or food processing plant receives notice of noncompliance, the licensee may apply to the secretary to extend the time period for achieving compliance. Upon review of any such application, the secretary may deny the application or the secretary may modify the time period for compliance.

(3) After the secretary has issued the notice of noncompliance, the secretary may inspect to determine if the food establishment or food processing plant has achieved compliance within the prescribed time. If the food establishment or food processing plant is noncompliant, the secretary, after providing notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, may suspend or revoke the issued license.

(c) If after providing notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary determines that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of this act, or any rules and regulations or order issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice. The secretary may take such affirmative action when in the secretary's judgment affirmative action carries out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder.

(d) Any party aggrieved by a final order of the secretary made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

New Sec. 2. (a) The secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of this act, and the rules and regulations adopted thereunder whenever the secretary shall determine that such municipality has adequate personnel to provide proper enforcement. Any municipality entering into

a contract with the secretary to enforce statutes, rules or regulations shall act as an agent of the secretary in carrying out such duties. No such municipality shall charge any facility a fee for services performed as an agent of the secretary under such contract, which is in addition to and separate from, any fee such facility is required to pay to the secretary under the provisions of this act. Such municipality shall enforce such standards within the municipality as designated by contract. Any inspection of any premises by officers, employees or agents of any such municipality, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if performed by the secretary.

(b) The secretary and the state fire marshal are hereby authorized and empowered to enter into a contract authorizing the state fire marshal or the fire marshal's deputies or lawful agents to enforce all or any portion of the standards promulgated pursuant to this act. Such contract shall designate specific facilities or types of facilities wherein such authority may be exercised. Any inspection of such facilities by the state fire marshal or the fire marshal's lawful agents to determine compliance with standards established pursuant to this act, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if performed by the secretary. Such contract also may provide similar authority for the secretary with respect to enforcement of all or any portion of the Kansas fire prevention code in specified facilities or types of facilities. Any inspection of such establishments by the secretary to determine compliance with the Kansas fire prevention code shall have the same force and effect as if performed by the state fire marshal or the fire marshal's deputies or lawful agents.

Sec. 3. K.S.A. 2011 Supp. 36-501 is hereby amended to read as follows: 36-501. *(a) K.S.A. 36-501 through 36-520, and amendments thereto, shall be known and may be cited as the lodging inspection act.*

*(b) As used in the food service and lodging inspection act, the following words and phrases shall have the following meanings—respectively ascribed to them herein:*

~~(a)~~(1) "Hotel" means every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a cabin camp, tourist cabin, motel or other type of lodging unit.

~~(b)~~(2) "Rooming house" means every building or other structure which is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be

accommodated, but which does not maintain common facilities for the serving or preparation of food for such guests.

~~(c)~~(3) “Boarding house” means every building or other structure which is kept, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, and which maintains common facilities for the serving or preparation of food for such guests. The term “boarding house” shall not include facilities licensed under paragraph (5) of subsection (a) of K.S.A. 75-3307b, and amendments thereto.

~~(d)~~(4) “Lodging establishment” means a hotel, rooming house, *guest house* or boarding house.

~~(e)~~ “Food service establishment” means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

~~(f)~~(5) “Food” means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use or for sale, in whole or in part, for human consumption.

~~(g)~~ “Food vending machine” means any self-service device which, upon insertion of a coin, coins or tokens, or by other similar means, dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation but shall not include any vending machine dispensing only bottled or canned soft drinks, or prepackaged and nonpotentially hazardous food, chewing gum, nuts or candies.

~~(h)~~ “Food vending machine company” means any person who is in the business of operating and servicing food vending machines.

~~(i)~~ “Food vending machine dealer” means any manufacturer, remanufacturer or distributor of food vending machines who sells food vending machines to food vending machine companies. *has the same meaning as provided in K.S.A. 65-656, and amendments thereto.*

(6) “*Guest house*” means every building or other structure which is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests. A guest house shall accommodate no more than seven guests in no more than three rooms furnished with sleeping accommodations, regardless of whether common facilities for the serving or preparation of food are maintained.

~~(j)~~(7) "Person" means an individual, partnership, corporation or other association of persons.

~~(k)~~(8) "Municipality" means any city or county of this state.

~~(l)~~(9) "Secretary" means the secretary of agriculture *and the secretary's authorized representatives*.

~~(m)~~(10) "Department" means the Kansas department of agriculture.

Sec. 4. K.S.A. 2011 Supp. 36-502 is hereby amended to read as follows: 36-502. (a) It shall be unlawful for any person to engage in the business of conducting a lodging establishment unless such person shall have in effect a valid license therefor issued by the secretary of agriculture. Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by the appropriate license fee required by subsection (c) of this section. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the lodging establishment designated in the application, to determine that it complies with the standards for lodging establishments promulgated pursuant to this act. If such lodging establishment is found to be in compliance, *and the completed application and accompanying fees have been submitted*, the secretary shall issue the license. ~~If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held~~ *If such lodging establishment is found not to be in compliance, the secretary shall deny such application after providing notice and opportunity for a hearing* in accordance with the provisions of the Kansas administrative procedure act.

(b) Each license shall designate whether the licensed lodging unit is a hotel, rooming house or boarding house. Any person obtaining a license to engage in the business of conducting a rooming house or boarding house shall not have the right to use the name "hotel" in connection with such business. Every license issued hereunder shall be displayed conspicuously in the lodging establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$5.

(c) The fee for a license to conduct a lodging establishment in this state for all or any part of any calendar year shall be \$30, except that the fee for any lodging establishment containing 10 sleeping rooms shall be \$40 and for every additional 10 rooms therein, an additional fee of \$10 shall be charged. All lodging establishments which are newly constructed, newly converted to use as a lodging establishment or have a change of ownership shall pay an application fee which may be adjusted in accord-

ance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed \$200 in addition to the license fee.

(d) ~~Any person who, on the effective date of this act, has a valid license to operate a hotel or rooming house shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a lodging establishment issued under the provisions of this act.~~ Any lodging establishment that also has a food establishment license shall have a fee set by rule and regulation of the secretary. Such fee shall not exceed the fees for lodging establishments as provided in subsection (c).

(e) A guest house shall not be required to have a lodging license, but such guest house shall be required to be inspected if the secretary receives a complaint concerning such guest house and shall be subject to the temporary closure provisions of subsection (b) of K.S.A. 36-515a, and amendments thereto.

(f) A lodging establishment operated in connection with any premises licensed, registered or permitted by the secretary of health and environment, the secretary of social and rehabilitation services, the secretary of corrections or the secretary of aging, which is inspected and regulated pursuant to the respective law or rule and regulation of such secretary, shall not require a license as provided in this section, and the secretary of agriculture shall not be authorized to inspect or cause such premises to be inspected. This subsection shall not apply to a lodging establishment whose primary function is not in connection with any premises licensed, registered or permitted pursuant to the respective law or rule and regulation of such secretary.

Sec. 5. K.S.A. 36-505 is hereby amended to read as follows: 36-505. Except as otherwise provided in this section, any license issued under the provisions of this act shall expire on ~~December 31 of the year in which it is issued~~ March 31 following the date of issuance, and may be renewed by making application to the secretary on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary and shall be accompanied by the license fee required for the issuance of an original license. ~~Prior to the renewal of any such license, the secretary shall inspect or cause to be inspected the licensed premises or food vending machines which are to be operated and serviced under authority of a license issued under this act to determine the compliance of such premises with the applicable standards promulgated pursuant to this act. Lodging establishments shall not be required to be inspected prior to license renewal. If an inspection of the premises is required and such inspection is not made prior to the expiration date of the license sought to be renewed, such license shall be valid until the inspection has been made and the secretary has granted or denied the application for~~

~~renewal. No license shall be renewed unless and until the licensed premises for which it is issued is found to be in compliance with the applicable standards promulgated pursuant to this act. A food vending machine dealer license shall be renewed without inspection. If the secretary shall refuse to renew any license, the secretary shall give written notice thereof to the licensee, specifying the changes or alterations necessary in the establishment to effect complete compliance with the applicable standards and stating that, if such compliance is effected within the period of time designated in the notice, the license shall be renewed. If the licensee fails to effect complete compliance with the applicable standards within the time prescribed in such notice, the application for renewal of a license shall be denied, and the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon, if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act. If, for any reason, a licensee fails to renew a license prior to the expiration date thereof, the licensee may obtain a renewal of such license within 30 days following the expiration date thereof, by complying with the foregoing provisions of this section and paying a restoration fee in the amount of \$10-\$25 late fee. If the licensee does not renew within the 30-day period, then the license is treated as expired and the licensee must apply for a new license.~~

Sec. 6. K.S.A. 2011 Supp. 36-506 is hereby amended to read as follows: 36-506. (a) *The secretary is hereby authorized and empowered to administer and enforce the provisions of the lodging inspection act, and rules and regulations adopted thereunder.* The secretary of agriculture shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of lodging establishments *and the administration and enforcement thereof.* ~~The lodging standards promulgated by~~ Such rules and regulations shall relate to:

- (1) Water supply;
- (2) heating;
- (3) lighting;
- (4) ventilation;
- (5) toilet and other sanitary facilities;
- (6) conditions increasing the hazards of fire, accidents or other calamities;
- (7) bedding and furnishings;
- (8) sewage disposal; ~~and~~
- (9) such other minimum conditions which the secretary deems necessary for the operation and maintenance of a lodging establishment in a safe and sanitary manner; *and*

(10) *licensure of lodging establishments and fees related to the licensure and inspection thereof.*

(b) The standards promulgated pursuant to the rules and regulations adopted hereunder shall be designed to ensure the health, comfort and safety of the guests in lodging establishments. Such standards may be based upon or incorporate by reference specific editions, or portions thereof, of nationally recognized codes establishing lodging standards. Such standards shall be applicable uniformly throughout the state, except that the secretary may establish different standards for each of the various classes of lodging establishments. Any provision of an ordinance or resolution of any municipality, prescribing safety and sanitation standards for lodging establishments, which does not conform to the minimum standards promulgated by the secretary pursuant to this section, shall be null and void; but nothing herein shall be construed as precluding any municipality from establishing by ordinance or resolution standards which are more stringent than those established by the secretary.

Sec. 7. K.S.A. 2011 Supp. 36-510 is hereby amended to read as follows: 36-510. (a) The secretary shall be responsible for the enforcement of the lodging ~~and food service~~ standards promulgated pursuant to this act, but the secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of all or any portion of such standards, whenever the secretary shall determine that such municipality has adequate personnel to provide proper enforcement. Any municipality entering into a contract with the secretary to enforce such standards shall act as an agent of the secretary in carrying out such duties, and no such municipality shall charge any lodging establishment ~~or food service establishments~~ a fee for services performed as an agent of the secretary under such contract which is in addition to and separate from any fee such establishment is required to pay to the secretary under the provisions of this act. Such municipality shall enforce such standards within such municipalities of this state as are designated in the contract. Any inspection of lodging ~~or food service~~ establishments by officers, employees or agents of any such municipality, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

(b) The secretary and the state fire marshal are hereby authorized and empowered to enter into a contract authorizing the state fire marshal and the fire marshal's deputies or lawful agents to enforce all or any portion of the lodging ~~or food service~~ standards promulgated pursuant to this act. Such contract shall designate specific lodging ~~or food service~~ establishments, or types of lodging ~~or food service~~ establishments, wherein such authority may be exercised. Any inspection of such establishments by the state fire marshal or the fire marshal's deputies or lawful agents, to determine compliance with lodging ~~or food service~~ standards

established pursuant to this act, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

Such contract also may provide similar authority for the secretary ~~of agriculture~~ and the secretary's officers, employees and agents with respect to enforcement of all or any portion of the Kansas fire prevention code in specified lodging ~~or food service~~ establishments, or in types of lodging ~~or food service~~ establishments. Any inspection of such establishments by the secretary, or the secretary's officers, employees and agents, to determine compliance with the Kansas fire prevention code, shall have the same force and effect as if performed by the state fire marshal or the marshal's deputies and agents.

Sec. 8. K.S.A. 2011 Supp. 36-515 is hereby amended to read as follows: 36-515. (a) After notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may deny, suspend, revoke, refuse to renew or modify the license to operate ~~a food service establishment, a lodging establishment or food vending machines~~ if the licensee has:

(1) ~~failed to comply with the standards, provisions or requirements established pursuant to this act, or~~

(2) ~~failed to comply with any provision or requirement of the Kansas food service and lodging act, and amendments thereto, or any rule or regulation adopted thereunder.~~

(b) ~~Upon conviction, any person who violates any provision of this act shall be guilty of a class C misdemeanor, except that upon any subsequent conviction such person shall be guilty of a class B misdemeanor the lodging inspection act, or any rule or regulation adopted thereunder.~~

~~(c)~~(b) The secretary may seek injunctive relief from the appropriate district court to enjoin any operator of a ~~food service establishment, lodging establishment or food vending machine company~~ from conducting business when such operator has:

(1) Failed to make application for or to obtain a license for such purpose as required by the ~~food service and lodging inspection act;~~

(2) ~~or when had~~ such license ~~has been~~ suspended, *denied* or revoked;

or

(3) *failed to comply with the standards established pursuant to the lodging inspection act, or rules and regulations adopted thereunder.*

Sec. 9. K.S.A. 36-515a is hereby amended to read as follows: 36-515a. (a) If the secretary finds that the public health or safety is endangered by the continued operation of a lodging establishment ~~or food service establishment~~, the secretary may suspend temporarily the license of such establishment, *or if the lodging establishment is a guest house, order the temporary closure thereof*, without notice or hearing in accordance with

the emergency adjudication procedures of the provisions of the Kansas administrative procedure act.

(b) In no case shall a temporary suspension of a license *or closure of a guest house* under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the ~~licensee~~ *lodging establishment* shall be reinstated to full licensure *or, if such lodging establishment is a guest house, allowed to reopen*, unless the secretary has suspended or revoked the license, ~~after notice and hearing~~ *obtained an injunction against such licensee or operator*, or the license has expired as otherwise provided under the ~~food service and~~ *lodging inspection* act.

~~(c) This section shall be a part of and supplemental to the food service and lodging act.~~

Sec. 10. K.S.A. 2011 Supp. 36-515b is hereby amended to read as follows: 36-515b. (a) Any person who violates any provision of the ~~food service and~~ *lodging inspection* act or any rule and regulation adopted pursuant thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in an amount not to exceed \$500 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The ~~secretary of agriculture~~, upon a finding that a person has violated any provision of the ~~food service and~~ *lodging inspection* act or any rule and regulation adopted pursuant thereto, *after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act*, may impose a civil penalty within the limits provided in this section upon such person, which civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed.

~~(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary of agriculture to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order of the secretary and shall specify the reasons therefor.~~

~~(d)~~(c) Any ~~person~~ *party* aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

~~(e)~~(d) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

~~(f) This section shall be a part of and supplemental to the food service and lodging act.~~

Sec. 11. K.S.A. 36-517 is hereby amended to read as follows: 36-517. ~~(a)~~ Every licensed lodging establishment designated as a hotel shall provide at no additional charge to deaf and hearing impaired guests, upon request of such guests, portable smoke detectors of the type suitable for providing visual warning to such guests, or a room equipped with fixed visual warning smoke detectors or a ground floor guest room accessible to the out-of-doors. Each licensed lodging establishment designated as a hotel shall have available for such guests not less than one portable visual warning smoke detector, or one room equipped with a fixed visual warning smoke detector or one ground floor guest room accessible to the out-of-doors for each 50 guest rooms of such lodging establishment, except that no such lodging establishment designated as a hotel shall be required to have more than a total of six portable visual warning smoke detectors, or six rooms equipped with fixed visual warning smoke detectors or six ground floor guest rooms accessible to the out-of-doors nor shall any such lodging establishment have less than one such smoke detector, or one room equipped with a fixed visual warning smoke detector or one ground floor guest room accessible to the out-of-doors.

~~(b) This section shall be part of and supplemental to the food service and lodging act.~~

Sec. 12. K.S.A. 2011 Supp. 36-518 is hereby amended to read as follows: 36-518. (a) *Except as provided in subsections (e) and (f) of K.S.A. 36-502, and amendments thereto*, the secretary shall inspect or cause to be inspected every lodging establishment in this state. Any lodging establishment in this state shall be inspected upon receipt of a complaint indicating that ~~a such~~ lodging establishment does not comply with the applicable standards promulgated in the *lodging inspection act* or rules and regulations ~~of the secretary adopted thereunder~~. The secretary or the secretary's lawful agent shall have the right of entry and access thereto, at any reasonable time.

(b) Whenever, upon inspection, it is determined that any lodging establishment does not comply with the applicable standards promulgated in the *lodging inspection act* or rules and regulations ~~of the secretary adopted thereunder~~, the secretary shall give written or *electronic* notice to the owner, proprietor, *licensee* or agent in charge of such establishment of the changes or alterations necessary to comply with such standards. *Such notice shall:*

(1) ~~The notice shall~~ Order the establishment to comply with the applicable standards within a period of time specified in the notice, which shall be not less than 10 days, except that a shorter period of time may be provided in the notice whenever the secretary believes it essential to protect the public health and safety; *and*

(2) ~~The notice also shall~~ state that the license for such establishment, *if applicable*, shall be subject to suspension or revocation for failure to comply with the applicable standards within the time specified.

~~(3)(c)~~ The licensee *or operator* of any establishment given a notice pursuant to this section may apply to the secretary for an extension of the time specified in the notice. The secretary shall review such application and may grant or deny such application or modify the provisions of the notice with respect to the time for compliance with any of the particulars stated in the notice.

~~(e)(d)~~ Upon reinspection of any lodging establishment given a notice pursuant to this section, if it is determined that such establishment does not comply with the applicable standards promulgated in the *lodging inspection act* and rules and regulations ~~of the secretary adopted thereunder~~, the secretary, *after providing notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act*, may suspend or revoke the license issued for such establishment. ~~If the secretary suspends or revokes the license, the secretary shall send written notice to the licensee that the license for such establishment will be suspended or revoked, effective 20 days after the date such notice is sent, unless within such time the licensee files with the secretary a written request for a hearing on the proposed suspension or revocation. All hearings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.~~

~~(d)(e)~~ The secretary is authorized to receive lodging inspection reports from qualified individuals, private entities or public entities to determine compliance with lodging standards promulgated pursuant to the ~~food service and lodging inspection act~~, and amendments thereto. The secretary is authorized to promulgate such rules and regulations as are necessary to receive such inspection reports. ~~Such rules and regulations shall be promulgated on or before July 1, 2010.~~

~~(e)~~ This section shall be a part of and supplemental to the ~~food service and lodging act~~.

Sec. 13. K.S.A. 2011 Supp. 36-519 is hereby amended to read as follows: 36-519. ~~(a)~~ If the secretary determines ~~after notice and opportunity for a hearing~~ that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of the ~~food service and lodging inspection act~~, and amendments thereto, or any rules and regulations or ~~order orders~~ issued thereunder, the secretary, *after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act*, may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or

~~order orders~~ issued thereunder. ~~Any such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.~~

~~(b) This section shall be a part of and supplemental to the food service and lodging act.~~

Sec. 14. K.S.A. 2011 Supp. 36-520 is hereby amended to read as follows: 36-520. There is hereby created the lodging fee fund. The secretary shall remit all license fees received by the secretary under the provisions of K.S.A. 36-502, and amendments thereto, and all license renewal fees for lodging establishments under K.S.A. 36-505, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the lodging fee fund. All expenditures from the lodging fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary ~~of agriculture~~ or by a person designated by the secretary. ~~This section shall be a part of and supplemental to the food service and lodging act.~~

Sec. 15. K.S.A. 2011 Supp. 65-655 is hereby amended to read as follows: 65-655. K.S.A. 65-619 through 65-690, and *sections 1 and 2*, and amendments thereto, may be cited as the Kansas food, drug and cosmetic act.

Sec. 16. K.S.A. 2011 Supp. 65-656 is hereby amended to read as follows: 65-656. For the purpose of this act: ~~(a) The term~~

(a) "Secretary" means the secretary of agriculture *or the secretary's authorized representatives*.

~~(b) The term "Person" includes~~ means an individual, partnership, governmental entity, corporation, ~~and~~ or association of persons.

~~(c) The term "Food" means:~~ (1) Articles used for food or drink for ~~man~~ humans or other animals; (2) chewing gum; and (3) articles used for components of any such article.

~~(d) The term "Drug" means:~~ (1) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; ~~and~~ (2) articles intended for use in diagnosis, cure, mitigation, treatment or prevention of disease in ~~man~~ humans or other animals; ~~and~~ (3) articles ~~(, other than food)~~, intended to affect the structure or any function of the body of ~~man~~ humans or other animals; and (4) articles intended for use as a component of any article specified in ~~clause-paragraph~~ (1), (2), or (3); but does not include devices or their components, parts or accessories. The term "drug" shall not include amygdalin (laetrile).

~~(e) The term "Device," except when used in paragraph (k) of this section and in as used in subsection (j) of K.S.A. 65-657-(j), subsection (f) of K.S.A. 65-665-(f), subsection (c) and (o) of K.S.A. 65-669-(c) and (o),~~

and *subsection (c) of K.S.A. 65-671 (e), and amendments thereto*, means instruments, apparatus and contrivances, including their components, parts and accessories, intended ~~(1)~~ for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or other animals; or ~~(2)~~ to affect the structure or any function of the body of ~~man~~ humans or other animals.

(f) ~~The term~~ “Cosmetic” means: (1) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleaning, beautifying, promoting attractiveness; or altering ~~the~~ appearance; and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(g) ~~The term~~ “Official compendium” means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary; or any supplement to any of them.

(h) ~~The term~~ “Label” means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) ~~The term~~ “Immediate container” does not include package liners.

(j) ~~The term~~ “Labeling” means all labels and other written, printed or graphic matter ~~(1)~~ upon an article or any of its containers or wrappers; or ~~(2)~~ accompanying such article.

~~(k) If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combinations thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or materials with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.~~

~~(1)(k)~~ ~~The term~~ “Advertisement” means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices; or cosmetics.

~~(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as,~~

an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

~~(n)(l)~~ The term “New drug” means: (1) Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions. The term “new drug” shall not include amygdalin (laetrile).

~~(o)(m)~~ The term “Contaminated with filth” applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

~~(p)~~ The provisions of this act regarding the selling of food, drug, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such articles for sale, and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

~~(q)(n)~~ The term “Pesticide chemical” means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an “economic poison” a “pesticide” within the meaning of the agricultural chemicals act, K.S.A. 2-2202 as now enacted or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

~~(r)(o)~~ The term “Raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

~~(s)(p)~~ The term “Food additive” means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures, or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use, except that such term. “Food additive” does not include: (1) A pesticide chemical in

or on a raw agricultural commodity; ~~or~~(2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; ~~or~~(3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the food additive amendment of 1958, pursuant to the federal act.

~~(t)~~(q) (1) ~~The term “Color additive” means a material which — (A)~~ *which: (A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or (B) when added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable* ~~(, alone or through reaction with another substance), of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act.~~

(2) The term “color” includes black, white and intermediate grays.

(3) Nothing in ~~clause (1)(t)~~ *this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.*

~~(u)~~(r) ~~The term “Imitation” shall mean~~ *means any article made in the semblance of another, consisting of similar or dissimilar ingredients and being capable of being substituted for the imitated article without the knowledge of the consumer.*

~~(v)~~(s) ~~The term “Federal act” means the federal food, drug and cosmetic act—~~ *title 21 U.S.C. § 301 et seq.; 52 Stat. 1040 et seq.*

(t) *“Department” means the Kansas department of agriculture.*

(u) *“Distribution” means the provision of food, drug, cosmetic or device to another person and includes selling, offering for sale, giving, supplying, transporting, applying and dispensing.*

(v) *“Food establishment” means any place in which food is prepared, served or offered for sale or service on the premises or elsewhere. “Food establishment” does not include roadside markets that offer only whole fresh fruits, nuts and vegetables for sale. “Food establishment” includes, but is not limited to:*

(1) *Eating or drinking establishments, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, tea rooms, grills, sandwich shops, soda fountains, taverns, private clubs, roadside stands, industrial-feeding establishments, catering kitchens, commissaries and any other private, public or nonprofit organizations routinely serving food; and*

(2) *grocery stores, convenience stores, bakeries and locations where food is provided for the public with or without charge.*

(w) "Food processing plant" means a commercial operation that processes or stores food for human consumption and provides food for distribution to other business entities at other locations, including other food processing plants and food establishments. "Food processing plant" does not include any operation or individual beekeeper that produces and distributes honey to other business entities if the producer does not process the honey beyond extraction from the comb.

(x) "Food vending machine" means any self-service device, which, upon payment, dispenses unit servings of food, either in bulk or in packages. Such device shall not necessitate replenishing between each vending operation. "Food vending machine" does not include any vending machine dispensing only canned or bottled soft drinks or prepackaged food that does not require temperature control for safety.

(y) "Food vending machine company" means any person in the business of operating and servicing food vending machines.

(z) "Location" means a physical address, or absent an address, the geographical area within 300 feet of a food establishment or food processing plant. In the case of a mobile food establishment housed in a trailer, such trailer shall be considered a food establishment with its own location. In the case of a mobile food establishment that is not housed in a trailer, the equipment used for storage, preparation or offering of food shall be considered a food establishment with its own location.

(aa) "Municipality" means any city or county of this state.

(bb) "Processing" means the handling of a food, drug, cosmetic or device, including the production, manufacturing, packaging, packing and labeling of such item.

(cc) "Sample" means a small quantity of food and does not include a meal or entree.

(dd) "Storage" means holding for distribution or processing.

Sec. 17. K.S.A. 2011 Supp. 65-657 is hereby amended to read as follows: 65-657. The following acts and the causing thereof within the state of Kansas are hereby prohibited:

(a) ~~The manufacture, sale, or delivery, holding or offering for sale processing, storage or distribution of any food, drug, device, or cosmetic that is adulterated or misbranded.~~

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

~~(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of K.S.A. 65-666.~~

~~(e)~~(d) The dissemination of any false advertisement.

~~(f)~~(e) The refusal to permit entry ~~or~~, inspection, ~~or to permit the~~

taking of a sample, as authorized by K.S.A. 65-674, *and amendments thereto*.

~~(e)~~(f) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the United States from whom ~~he~~*such person* received in good faith the food, drug, device, or cosmetic.

~~(h)~~(g) The removal or disposal of a detained or embargoed article in violation of K.S.A. 65-660, *and amendments thereto*.

~~(i)~~(h) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

~~(j)~~(i) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification ~~device method~~ authorized, or required by *rules and* regulations promulgated under the provisions of this act.

~~(k)~~(j) The using of any person to such person's own advantage, or revealing, other than to the administrator or officers or employees of the department of agriculture or to the courts where relevant in any jurisdictional proceeding under this act, any information acquired under authority of this act concerning any method or process which constitutes a trade secret under the uniform trade secrets act, K.S.A. 60-3320 *et seq.*, and amendments thereto, and as a trade secret is entitled to protection.

~~(l)~~(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under K.S.A. 65-669a, ~~as amended and amendments thereto~~, or that such drug complies with the provisions of such section.

~~(m)~~(l) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

~~(n)~~(m) (1) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; ~~or~~(2) selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or

any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by ~~subsection (1) hereof~~ *paragraph (1)*; or (3) making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint; or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

~~(n)~~ (n) Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

(o) *Knowingly killing, selling, trading, exchanging or offering to sell, trade or exchange any diseased animal for human consumption, except immediate slaughter under state or federal meat and poultry inspection.*

(p) *Knowingly purchasing or otherwise obtaining possession of any diseased animal for the purpose and with the intent of disposing the same for food, except immediate slaughter under state or federal meat and poultry inspection.*

(q) *Offering or exposing for sale at retail, for human consumption, any slaughtered wild or domestic fowl, rabbit, squirrel or other small animal unless the entrails, crops and other offensive parts are properly drawn and removed and the carcass is cooled to 41 degrees fahrenheit or less within four hours of slaughter and held at such temperature until delivery to the end consumer.*

(r) *Failing to protect slaughtered fresh meats, fish, fowl or game for human consumption from dust, flies and other vermin or substance which may injuriously affect it. Protection shall be required at any wholesale or retail food establishment or food processing plant and for peddlers transporting such goods from place to place.*

Sec. 18. K.S.A. 2011 Supp. 65-658 is hereby amended to read as follows: 65-658. In addition to the remedies ~~hereinafter~~ *provided by the food, drug and cosmetic act*, the secretary of agriculture is hereby authorized to apply to the district court for, ~~and such court shall have jurisdiction upon hearing and for cause shown, to grant~~ *and the court may grant*, a temporary or permanent injunction restraining, any person from violating any provision of ~~K.S.A. 65-657, as amended~~ *the food, drug and cosmetic act*; irrespective of whether or not there exists an adequate remedy at law.

Sec. 19. K.S.A. 65-660 is hereby amended to read as follows: 65-660. (a) Whenever ~~a duly authorized agent of~~ the secretary finds or has probable cause to believe, that any food, drug, device; or cosmetic is adulterated, *contains any substance injurious to public health, is offered in vio-*

*lation of any of the provisions of the food, drug and cosmetic act or rules and regulations adopted thereunder, or so misbranded as to be dangerous or fraudulent, within the meaning of this act, ~~he~~ the secretary shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, ~~and warning.~~ Such tag or marking shall warn all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by ~~such agent or the court.~~ It shall be unlawful for any person to ~~remove such tag or marking from a detained or embargoed article or remove or dispose of such detained or embargoed article by sale or otherwise without such~~ the permission of the secretary.*

(b) When an article detained or embargoed under subsection (a) has been found by ~~such agent~~ to be adulterated, or misbranded, ~~he shall petition the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.~~

(c) ~~If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent. Provided, That when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the secretary. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the secretary that the article is no longer in violation of this act, and that the expenses of such supervision have been paid. Provided further, That No action shall be instituted under this act for any alleged misbranding if there is pending in any court, state or federal, a proceeding under this act based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (1) When such misbranding has been the basis of a prior judgment in favor of the state of Kansas or the United States, in a criminal, injunction, or condemnation proceeding under this act, or (2) when the administrator has probable cause to believe from facts found without hearing by him or any officer or employee of the agency that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the~~

~~injury or damage of the purchaser or consumer. In any case where the number of proceedings is limited as above provided, the proceeding pending or instituted shall, on application of the claimant seasonably made, be removed for trial to any district court agreed upon by stipulation between the parties, or in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court after giving the county attorney reasonable notice and opportunity to be heard shall by order, unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, to which the case shall be removed for trial. Upon demand of either party any issue of fact joined in any such case shall be tried by jury. Provided further, When proceedings under this section involving the same claimant and the same issues of adulteration or misbranding are pending in two or more jurisdictions, such pending proceedings upon application of the claimant seasonably made to the court of one jurisdiction, shall be consolidated for trial by order of such court and tried in (1) Any district selected by the claimant where one such proceeding is pending, or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time the claimant may apply to the court of one such jurisdiction and such court, after giving reasonable notice to the county attorney and opportunity to be heard, shall by order unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, in which all such pending proceedings shall be consolidated for trial and tried. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the case covered thereby. Provided further, The court at any time after seizure up to a reasonable time before trial, shall by order allow any party to a condemnation proceeding, his attorney or agent to obtain a representative sample of the article seized and as regards fresh fruits or fresh vegetables, a true copy of the analyses on which the proceeding is based and the identifying marks or numbers, if any of the packages from which the samples analyzed were obtained.~~

~~(d) Whenever the secretary or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the secretary, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food—the secretary shall issue an order establishing measures to prevent further contamination or threat to the public health. The secretary may order the destruction of contaminated food, drugs, devices or cosmetics if no alternative assures that further contamination or health hazards are averted.~~

(c) *If the secretary finds that an article so detained or embargoed is not adulterated or misbranded, the secretary shall remove the tag or other marking. Any order issued pursuant to subsection (b) or (c) shall be subject to review in accordance with the Kansas judicial review act. Nothing in this section shall be construed as limiting the right of the secretary to proceed as authorized by other sections of this act.*

Sec. 20. K.S.A. 65-674 is hereby amended to read as follows: 65-674.

~~(a) The secretary or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment location in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce processed, stored or distributed, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose: (1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this act are being violated, and (2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the secretary to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this act is being violated. following purposes:~~

*(1) To inspect any location, products or equipment subject to the provisions of the food, drug and cosmetic act and rules and regulations adopted thereunder;*

*(2) to inspect or sample food, drugs, devices or cosmetics reported to be adulterated or a threat to public health;*

*(3) to inspect or investigate complaints of violations of the provisions of the food, drug and cosmetic act and rules and regulations adopted thereunder; or*

*(4) to sample products.*

*(b) If the secretary is denied access to any location where such access is sought for the purposes as provided in subsection (a), the secretary may apply to any court of competent jurisdiction for a search warrant authorizing access to such location for such purpose. Upon such application and a showing of cause therefor, the court shall issue such search warrant.*

Sec. 21. K.S.A. 65-682 is hereby amended to read as follows: 65-682. ~~Any person violating or failing to comply with any of the provisions of this act shall be deemed guilty of a class C misdemeanor. (a) The secretary, after providing notice and an opportunity for a hearing in accordance with provisions of the Kansas administrative procedure act, may impose a civil penalty in an amount of not more than \$1,000 per violation of the food, drug and cosmetic act or rule and regulation adopted, or order issued thereunder. In the case of a continuing violation, each day such violation continues shall be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law.~~

(b) Any party aggrieved by an order of the secretary as provided in subsection (a) may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(c) Any penalty recovered pursuant to the provisions of subsection (a) shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) Any person who recklessly or intentionally violates the provisions of the food, drug and cosmetic act, or rules and regulations adopted thereunder, shall be guilty of a class A, nonperson misdemeanor.

Sec. 22. K.S.A. 2011 Supp. 65-685 is hereby amended to read as follows: 65-685. ~~It shall be the duty of each county or district attorney to whom the secretary of agriculture reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the state. In the event a county or district attorney refuses to act, the attorney general shall so act.~~

Sec. 23. K.S.A. 2011 Supp. 65-688 is hereby amended to read as follows: 65-688. ~~(a) As used in this section and K.S.A. 65-689, and amendments thereto:~~

~~(1) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines.~~

~~(2) "Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. "Food processing plant" shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail.~~

~~(3) "Food" means a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.~~

~~(4) "Secretary" means the secretary of agriculture.~~

~~(b)(a)~~ In order to reimburse the state of Kansas for inspections by the secretary of agriculture of retail food stores of food establishments and food processing plants, the secretary of agriculture shall adopt rules and regulations establishing a graduated inspection application and license fee schedule to cover all of the cost of inspection of retail food

~~stores-food establishments and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location.~~

(b) *The cost of the application fee for each food establishment and food processing plant location shall not exceed \$350.*

(c) *The cost of the annual license fee for each food establishment shall be as follows:*

(1) *No more than \$250 for any food establishment of less than 5,000 square feet;*

(2) *no more than \$300 for any food establishment of 5,000 square feet or more but less than 10,000 square feet;*

(3) *no more than \$500 for any food establishment of 10,000 square feet or more but less than 50,000 square feet; and*

(4) *no more than \$750 for any food establishment of 50,000 square feet or more.*

(d) *The cost of the annual license fee for each food processing plant shall be as follows:*

(1) *No more than \$200 for any food processing plant of less than 5,000 square feet; and*

(2) *no more than \$400 for any food processing plant of 5,000 square feet or more.*

(e) *In determining the square footage of a food establishment or food processing plant, the secretary shall only consider areas within the walls of the structure or covered by the roof of such structure in which dining, food preparation or food storage occurs. A banquet hall or ballroom in a lodging establishment, as defined in K.S.A. 36-501, and amendments thereto, that is not set with permanent or semi-permanent seating for the serving of food shall not be considered when determining such square footage.*

(f) *Any location that meets the definition of a food processing plant and a food establishment, as such terms are defined in K.S.A. 65-655, and amendments thereto, shall be required to obtain a license as both a food processing plant and a food establishment.*

(g) *Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for ~~retail food stores-food establishments~~ or food processing plants by amending the rules and regulations which fix the fees, as the case may be.*

(h) *Elementary and secondary education facilities that have school lunch programs subject to the national school lunch act, 42 U.S.C. § 1751 et seq., shall not be subject to the provisions of subsections (b) and (c)(1) through (c)(4) but shall have separate application and license fees as established by rules and regulations of the secretary.*

~~(c)~~(i) *There is hereby created the food safety fee fund. All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund. All expenditures from the food safety fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.*

~~(d)~~(j) *The secretary of agriculture shall adopt rules and regulations necessary to carry out the provisions of this section including establishing minimum conditions necessary to operate and maintain a retail food store or a food establishment or food processing plant in a safe and sanitary manner, and establishing enforcement provisions necessary to effect complete compliance with such standards, provisions, rules and regulations.*

Sec. 24. K.S.A. 2011 Supp. 65-689 is hereby amended to read as follows: 65-689. (a) It shall be unlawful for any person to engage in the business of conducting a ~~retail food store~~ *food establishment* or food processing plant unless such person shall have in effect a valid license therefor issued by the secretary. ~~For the purpose of this section, the sale of food in the same location less than seven days in any calendar year shall be construed as the occasional sale of food. Nothing in this act shall prevent the secretary from inspecting any retail food store or food processing plant when a complaint against such retail food store or food processing plant is transmitted to the secretary or any authorized agent thereof.~~

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee. ~~Application fees may be adjusted in accordance with the type of retail food store or food processing plant or based on other criteria as determined by the secretary. Such license fee shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the retail food store and food processing plant inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the retail food store food establishment or food processing plant designated in the application, to determine that it complies with rules and regulations adopted pursuant to subsection (d) of K.S.A. 65-688, the food, drug and cosmetic act, and amendments thereto. If the retail food establishment store or food processing plant is found to be in compliance, and the completed application and accompanying fees have~~

~~been submitted, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act. If the food establishment or food processing plant is found not to be in compliance, the secretary shall deny the application for a license after providing notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.~~

(c) Every license issued hereunder shall be displayed conspicuously in the ~~retail food store~~ food establishment or food processing plant for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$5.

(d) A license shall not be required by:

(1) A plant or facility registered or licensed by the department of agriculture pursuant to article 7 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, or licensed or registered by the department of agriculture pursuant to article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall not be required to obtain a separate license pursuant to this section: ~~if the inspections conducted under the respective acts encompass all operations of the facility.~~

(2) Registered nonprofit organization that provides food without charge solely to people who are food insecure, including, but not limited to, soup kitchens and food pantries.

(3) A location where prepackaged individual meals are distributed to persons eligible under the federal older Americans act.

(4) A person who produces food for distribution directly to the end consumer, if such food does not require time and temperature control for safety or specialized processing, as determined by the secretary.

(5) A person who serves food exclusively on interstate conveyances or common carriers.

(6) A person operating a food establishment for less than seven days in any calendar year.

(7) A person who prepares, serves or sells food for the sole purpose of soliciting funds to be used for community or humanitarian purposes or educational or youth activities.

(8) A person operating a food vending machine, if the food vending machine company:

(A) Is licensed as a food establishment, or if located in another state, licensed according to the laws of such state;

(B) maintains, and makes available to the secretary, a current record of the location of each food vending machine it operates or services; and

(C) conspicuously displays the company name, phone number and any additional information the secretary may require on each such vending machine.

(9) A person providing only complimentary coffee to its patrons whose primary business is unrelated to operating a food establishment or food processing plant.

(10) A person operating a farm winery, as defined in K.S.A. 41-102, and amendments thereto, who does not produce or offer any food products other than wine produced at such farm winery.

(11) A retailer, as defined in K.S.A. 41-102, and amendments thereto, that sells only alcoholic liquors and cereal malt beverages.

(12) A food establishment that sells or offers for sale only packaged foods that are non-hazardous and are received directly from a licensed food production facility in packaged form, if such food establishment contains less than 200 cubic feet as measured pursuant to subsection (e) of K.S.A. 65-688, and amendments thereto.

(13) A person who provides food samples, without charge, to promote, advertise or compliment the sale of food or associated food preparation equipment.

(14) A guest house, as defined in K.S.A. 36-501, and amendments thereto.

(e) The exemption provided to those entities provided in subsection (d) shall not be exempt from inspection or regulation when a violation is observed or reported to the secretary.

(f) A food establishment operated in connection with any premises licensed, registered or permitted by the secretary of health and environment, the secretary of social and rehabilitation services, the secretary of corrections or the secretary of aging, which is inspected and regulated pursuant to the respective law or rule and regulation of such secretary, shall not require a license, and the secretary of agriculture shall not be authorized to inspect or cause such premises to be inspected. This subsection shall not apply to a food establishment whose primary function is not in connection with any premises licensed, registered or permitted pursuant to the respective law or rule and regulation of such secretary.

Sec. 25. K.S.A. 2011 Supp. 65-690 is hereby amended to read as follows: 65-690. (a) If the secretary of agriculture finds that the public health or safety is endangered by the continued operation of a food processing plant or ~~retail food store food establishment~~, the secretary may temporarily suspend, ~~temporarily~~, the license of such establishment or order the temporary closure of such establishment without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas administrative procedure act.

(b) In no case shall a temporary suspension of a license *or temporary closure* under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the licensee shall be reinstated to full licensure *or allowed to reopen* unless the secretary has *denied*, suspended or revoked the license, ~~after notice and hearing~~ *obtained an injunction against such licensee*, or the license has expired as otherwise provided under the Kansas food, drug and cosmetic act, and amendments thereto, or any rules and regulations or orders issued thereunder.

(c) *The secretary, after providing notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, may deny, suspend, modify, revoke or refuse to renew any license as provided in the food, drug and cosmetic act or rules and regulations adopted thereunder, if the secretary determines that such applicant or licensee has:*

(1) *Been convicted of or pleaded guilty to a criminal violation of any provision of the food, drug and cosmetic act;*

(2) *failed to comply with any provision or requirement of the act or any rule and regulation or order adopted or issued thereunder;*

(3) *interfered with the secretary's ability to carry out inspections or the administration of the act, or any rule and regulation adopted thereunder; or*

(4) *denied the secretary access to any premises required to be inspected under the provisions of the act or any rule and regulation adopted thereunder.*

New Sec. 26. (a) The secretary may make provision for voluntary inspection for animals other than livestock, poultry or rabbits which can or may be used in and for the preparation of meat or meat products, poultry or poultry products and establish such fees to cover the cost of providing such voluntary inspection services. The secretary shall consider adequate and efficient staffing and expertise prior to providing voluntary inspection services.

(b) A person requesting voluntary inspection services shall submit a request for inspection services on a form provided by the secretary.

(c) The secretary may refuse to provide voluntary inspection services due to staffing, inspector expertise or any other good cause shown. Priority in scheduling inspection services shall be given for inspection services mandated by the meat and poultry inspection act.

(d) The secretary may prescribe rules and regulations for the implementation of this section.

(e) This section shall be a part of and supplemental to the meat and poultry inspection act.

New Sec. 27. (a) No operation requiring inspection under article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto,

may be conducted unless it is conducted under the supervision of a representative of the secretary. All slaughtering of animals shall be done:

- (1) Under the direct supervision of a representative of the secretary; and
- (2) with reasonable speed, considering the official establishment's facilities.

The secretary may implement inspection procedures for processing operations that are different from the inspection procedures for slaughter operations. Processing procedures may include procedures that allow for varied frequency of inspection depending on the processing operations conducted.

(b) Each official establishment applying the mark of inspection shall submit a work schedule to the secretary for approval upon the occurrence of any of the following:

- (1) Prior to the inauguration of the inspection.
- (2) When a change in work schedule is requested, except for minor deviations from a daily operating schedule approved by the area supervisor.
- (3) Upon request by a representative of the secretary.

Work schedules shall specify the daily clock hours of inspected operations.

(c) The secretary shall take into account the efficient and effective use of inspection personnel when approving work schedules. The secretary shall consult with the establishments involved when designating work schedules.

(d) Establishments shall maintain consistent work schedules. The secretary may prescribe by rules and regulations the process by which an establishment may request a change in its work schedule.

(e) This section shall be a part of and supplemental to the meat and poultry inspection act.

Sec. 28. K.S.A. 2011 Supp. 65-6a18 is hereby amended to read as follows: 65-6a18. As used in this act:

- (a) "Secretary" means the secretary of agriculture.
- (b) "Person" means any individual, partnership, firm, corporation, association or other business unit or governmental entity.
- (c) ~~"Meat broker"~~ "Broker" means any person, firm or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat or meat food products of livestock on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person.
- (d) ~~"Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person.~~ "Public warehouse-

*man” means any person engaged in the business of storing for commerce any meat, meat products, poultry or poultry products without assuming ownership of the product in storage.*

(e) “Animal food manufacturer” means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of livestock, domestic rabbits or poultry.

(f) “Intrastate commerce” means commerce within the state of Kansas.

(g) “Meat food product” means any product capable of use as human food which is made wholly or in part from any meat or other portions of the carcasses of any livestock or domestic rabbits, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry and which are exempted from definition as a meat food product by the secretary under such conditions as the secretary may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products.

(h) “Poultry” means any domesticated bird, whether live or dead.

(i) “Poultry product” means any poultry carcass, or part thereof or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry and which are exempted by the secretary from definition as a poultry product under such conditions as the secretary may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(j) “Capable of use as human food” means any carcass, or part or product of a carcass, of any animal unless it is denatured or otherwise identified as required by regulations adopted by the ~~state board of agriculture~~ *secretary* to deter its use as human food or it is naturally inedible by humans.

(k) “Prepared” means ~~slaughtered, canned, salted, rendered, boned, cut up or otherwise manufactured~~ or processed.

(l) “Adulterated” means any carcass, or part thereof, any meat or meat food product, or any poultry or poultry product under one or more of the following circumstances:

(1) If the product bears or contains any poisonous or deleterious substance which may render it injurious to health, except that if the substance is not an added substance, the product shall not be considered adulterated if the quantity of such substance on or in the product does not render it injurious to health;

(2) (A) if the product bears or contains, by reason of administration

by feeding or by injection of any substance to the live animal or otherwise, any added poisonous or added deleterious substance, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which, in the judgment of the secretary, may make the product unfit for human food;

(B) if the product is, in whole or in part, a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of rules and regulations adopted by the secretary of agriculture;

(C) if the product bears or contains any food additive which is deemed unsafe in accordance with rules and regulations adopted by the secretary of agriculture;

(D) if the product bears or contains any color additive which is deemed unsafe in accordance with rules and regulations adopted by the secretary of agriculture; or

(E) any such product which is not adulterated under provisions (B), (C) or (D) subsection (l)(2)(B), (l)(2)(C) or (l)(2)(D) shall nevertheless be deemed adulterated if the use of the pesticide chemical, the food additive or the color additive on or in such product is prohibited by rules and regulations of the secretary of agriculture in establishments at which inspection is maintained under this act;

(3) if the product consists, in whole or in part, of any filthy, putrid or decomposed substance or is for any other reason unsound, unhealthful, unwholesome or otherwise unfit for human food;

(4) if the product has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

(5) if the product is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(6) if the container for the product is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if the product has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to rules and regulations adopted by the secretary of agriculture;

(8) (A) if any valuable constituent on or in the product has been, in whole or in part, omitted or abstracted therefrom;

(B) if any substance has been extracted and substitution made therefor, in whole or in part, or if any damage to, or inferiority of, the product has been concealed in any manner; or

(C) if any substance has been added to such product, or if any substance has been mixed or packed therewith, so as (i) to increase the bulk or weight of the product (ii) to reduce the quality or strength of the product or (iii) to make the product appear better or of greater value than

it is, except that this provision does not apply to any cured or smoked pork product by reason of its containing added water; or

(9) if the product is a margarine containing animal fat and if any of the raw material used therein consisted, in whole or in part, of any filthy, putrid or decomposed substance.

(m) “Misbranded” means any carcass, part thereof, meat or meat food product, or poultry or poultry product, under any one or more of the following circumstances:

(1) If the labeling on the product or product container is false or misleading in any particular;

(2) if the product is offered for sale under the name of another food;

(3) if the product is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation” and immediately thereafter, the name of the food imitated;

(4) if the container on the product is so made, formed or filled as to be misleading;

(5) if the product is in a package or other container, unless it bears a label showing (A) the name and place of business of the manufacturer, packer or distributor and (B) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; under ~~clause (A) of this provision~~ ~~subsection (m)(5)(A)~~, reasonable variations may be permitted and exemptions as to small packages may be established by rules and regulations adopted by the secretary of agriculture;

(6) if any word, statement or other information, which is required by or under authority of this act to appear on the label or other labeling for the product, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) if the product purports to be, or is represented to be, a food for which a definition and standard of identity or composition has been prescribed by rules and regulations of the secretary of agriculture, unless (A) it conforms to such definition and standard and (B) the label thereon bears the name of the food specified in the definition and standard, and insofar as may be required by such rules and regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food;

(8) if the product purports to be, or is represented to be, a food for which a standard of fill of container has been prescribed by rules and regulations of the secretary of agriculture and if such product falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such rules and regulations specify, a statement that it falls below such standard;

(9) if the product is not subject to ~~provision (7)~~ ~~subsection (m)(7)~~,

unless its label bears (A) the common or usual name of the food, if there is any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except that spices, flavorings and colorings, when authorized by the secretary, may be designated as spices, flavorings and colorings without naming each; to the extent that compliance with the requirements of clause (B) of this provision is impracticable or results in deception or unfair competition, exemptions shall be established by rules and regulations adopted by the secretary ~~of agriculture;~~

(10) if the product purports to be, or is represented to be, for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the secretary, after consultation with the secretary of agriculture of the United States, determines to be, and by rules and regulations adopted by the secretary ~~of agriculture~~ are prescribed to be, necessary in order to fully inform a purchaser as to its value for such uses;

(11) if the product bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; to the extent that compliance with the requirements of this provision is impracticable, exemptions shall be established by rules and regulations adopted by the secretary ~~of agriculture;~~ or

(12) if the product fails to bear directly thereon, or on the product container, as the secretary ~~of agriculture~~ may prescribe by rules and regulations, the inspection legend unrestricted by any of the foregoing and such other information as the secretary ~~of agriculture~~ may require in such rules and regulations to assure that the product will not have any false or misleading labeling and that the public will be informed of the manner of handling required to maintain the product in a wholesome condition.

(n) "Label" means a display of written, printed or graphic matter upon the immediate container (not including package liners) of any article.

(o) "Labeling" means all labels and other written, printed or graphic matter (1) upon any article or any of its containers or wrappers or (2) accompanying the article.

(p) "Federal meat inspection act" means the act so entitled, approved March 4, 1907, (21 U.S.C.A. § 601 *et seq.*, 34 Stat. 1260) as amended by the federal wholesome meat act (8 Stat. 584).

(q) "Federal food, drug and cosmetic act" means the act so entitled, approved June 25, 1938, (21 U.S.C.A. § 301 *et seq.*, 52 Stat. 1040) and ~~acts amendatory thereof or supplementary amendments thereto.~~

(r) "Federal poultry products inspection act" means the act so entitled, approved August 28, 1957, (21 U.S.C.A. §. 451 *et seq.*, 71 Stat. 441) as amended by the federal wholesome poultry products act (82 Stat. 791).

(s) "Pesticide chemical," "food additive," "color additive" and "raw

agricultural commodity” have the meanings for purposes of this act as ascribed thereto under K.S.A. 65-656, and amendments thereto.

(t) “Official mark” means the official inspection legend or any other symbol prescribed by rules and regulations of the ~~state board of agriculture~~ *secretary* to identify the status of any article or animal under this act.

(u) “Official inspection legend” means any symbol prescribed by rules and regulations of the ~~secretary of agriculture~~ showing that an article was inspected and passed in accordance with this act.

(v) “Official certificate” means any certificate prescribed by rules and regulations of the ~~secretary of agriculture~~ for issuance by an inspector or other person performing official functions under this act.

(w) “Official device” means any device prescribed or authorized by the ~~secretary of agriculture~~ for use in applying any official mark.

(x) ~~“Slaughterhouse”~~ “Slaughter facility” means any ~~plant~~ *facility or section thereof* which carries on the slaughter and dressing of animals ~~but which does not engage in the further processing of meat into meat food products.~~

(y) ~~“Packing plant” or “packing house”~~ “Processing facility” means any ~~installation processing facility or section thereof that packs, cans, salts, renders, bones, cuts up or otherwise manufactures~~ *meat or poultry into meat food products or poultry products.*

(z) “Buffalo” means the American buffalo or bison (*Bos*, *Bison bison* or *Bison americanus*).

(aa) “Livestock” means cattle, buffaloes, sheep, swine, goats, domesticated deer, all creatures of the ratite family that are not indigenous to this state, including but not limited to ostriches, emus and rheas or horses, mules or other equines. Livestock shall not include buffalo or domesticated deer slaughtered for sport or recreational purpose.

~~(bb) “Slaughter facility” means a slaughterhouse or poultry dressing plant.~~

~~(cc) “Processing facility” means a packing house, sausage plant or poultry packing plant.~~

~~(bb) “Wholesaler” means any person engaged in the distribution of inspected and passed meat, meat products, poultry or poultry products. Wholesalers may not further process or repackage product.~~

~~(cc) “Humane slaughter act” means K.S.A. 47-1401 et seq., and amendments thereto, and rules and regulations adopted thereunder.~~

(dd) “Domesticated deer” means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

Sec. 29. K.S.A. 2011 Supp. 65-6a20 is hereby amended to read as follows: 65-6a20. (a) For the purpose of preventing the use in intrastate commerce of meat and meat food products and poultry and poultry prod-

ucts which are adulterated, the secretary shall make an examination and inspection, by inspectors appointed for such purpose, of all livestock, domestic rabbits and poultry before such livestock, domestic rabbits and poultry are allowed to enter into any slaughtering, ~~packing, canning~~ *processing* or similar establishment in this state in which slaughtering and preparation of meat or meat food products or poultry and poultry products of such animals are conducted for intrastate commerce. All livestock, domestic rabbits and poultry found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other livestock, domestic rabbits and poultry. When slaughtered as provided in this section, the carcasses of such livestock, domestic rabbits or poultry shall be subject to a careful examination and inspection as provided by the rules and regulations adopted by the secretary ~~of agriculture~~.

(b) *For the purpose of preventing the inhumane slaughtering or inhumane handling in connection with slaughter of livestock, domestic rabbits or poultry, the secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which livestock, domestic rabbits or poultry are slaughtered and handled in connection with slaughter in establishments registered or required to be registered under this act.*

(c) *The secretary may prescribe rules and regulations for the implementation of this section.*

Sec. 30. K.S.A. 2011 Supp. 65-6a31 is hereby amended to read as follows: 65-6a31. (a) The provisions of this act shall not apply:

(1) To the slaughtering by any person of animals of such person's own raising or to the preparing by the slaughterer or to the transporting in intrastate commerce of the carcasses, parts thereof, meat food products or poultry products of such animals exclusively for use or consumption by such person, members of such person's household, former members of such household or such person's nonpaying guests and employees;

(2) to any person operating a retail store or similar retail type business who prepares only inspected and passed carcasses, parts thereof, meat food products or poultry products for sale to consumers at retail in normal retail quantities; or prepares inspected carcasses, parts thereof, meat food products or poultry products, owned by the consumer and prepared for such consumer's consumption or the consumption of such consumer's household members, nonpaying guests and employees; or

(3) to any person operating a restaurant who prepares only inspected and passed carcasses, parts thereof, meat food products or poultry products for human consumption.

(b) (1) Only those provisions of this act relating to registration, *humane slaughter and humane handling in connection with slaughter*, sanitation and adulteration shall apply:

(A) To a person *custom* slaughtering livestock, domestic rabbits or

poultry delivered by the owner thereof for such slaughter, including the *custom* preparation by such slaughterer and the transportation in intrastate commerce of the carcasses, parts thereof, meat food products or poultry products of such animals exclusively for use or consumption by the owner, the members of the owner's household or the owner's non-paying guests and employees; or

(B) to the custom preparation by any person, firm or corporation of carcasses, parts thereof, meat or meat food products, derived from the slaughter by any person of livestock of such person's own raising, or from game animals which are delivered by the owner thereof for such custom preparation and transportation in intrastate commerce of such custom prepared articles, exclusively for use in the household of the owner by the owner and the members of the owner's household and the owner's nonpaying guests and employees.

(2) In cases where such person, firm or corporation engages in such custom operations at an establishment at which inspection under the Kansas meat and poultry inspection act is maintained, the secretary may exempt from such inspection at such establishment any animals slaughtered or any meat or meat food products otherwise prepared on such custom basis, except that custom operations at any establishment shall be exempt from inspection requirements as provided by this section only if the establishment complies with rules and regulations adopted by the secretary of agriculture to assure that any carcasses, parts thereof, meat or meat food products wherever handled on a custom basis, or any containers or packages containing such articles, are separated at all times from carcasses, parts thereof, meat or meat food products prepared for sale and that all such articles prepared on a custom basis, or any containers or packages containing such articles, are plainly marked "not for sale" immediately after being prepared and kept so identified until delivered to the owner and that the establishment conducting the custom operation is maintained and operated in a sanitary manner.

(c) Only those provisions of this act relating to sanitation and adulteration shall apply to a person operating a food locker plant who: (1) Prepares meat, meat food products, poultry or poultry products which have been inspected and passed and which are being prepared and sold in normal retail quantities; or (2) prepares such meat, meat products, poultry or poultry products for the owner thereof.

(d) *Notwithstanding any other provision of this section, any carcasses, parts thereof, meat, or meat products prepared on a custom basis, or any containers or packages containing such articles, shall be plainly marked "Not for Sale" immediately after being prepared and kept so identified until delivered to the owner.*

Sec. 31. K.S.A. 65-6a34 is hereby amended to read as follows: 65-6a34. (a) No person shall: (1) Engage in business, in or for intrastate

commerce, as a ~~meat~~ broker or animal food manufacturer; (2) engage in business in such commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any livestock, domestic rabbits or poultry, whether intended for human food or other purposes; or (3) engage in business as a public warehouseman storing any such articles in or for such commerce, without first having registered with the secretary such person's name and the address of each place of business at which, and all trade names under which, such person conducts such business and having paid the \$25 registration fee established by this section, if applicable.

(b) No person shall engage in business or operate ~~a packing house, sausage plant, poultry packing plant, slaughterhouse or poultry dressing plant~~ as a slaughter or processing facility solely on a custom basis as described by subsection (b)(1) of K.S.A. 65-6a31, and amendments thereto; a slaughter facility, processing facility, state-owned slaughter or processing facility operated in conjunction with education and research and located at institutions under the jurisdiction of the state board of regents, or slaughter or processing facility operated in conjunction with education and research and located at a public secondary school without registering such person's name and place of business with the secretary, and paying the \$25 registration fee established by this section.

~~(c) Except as provided in subsection (c)(6):~~

~~(1) An annual registration fee of \$50 shall be charged for the registration of each meat broker, poultry product broker, animal food manufacturer, seasonal poultry packing or dressing plant, state-owned slaughter or processing facility operated in conjunction with education and research and located at institutions under the jurisdiction of the state board of regents, or slaughter or processing facility operated in conjunction with education and research and located at a public secondary school, and each such registration shall expire on December 31 of each year.~~

~~(2) Except for persons who register under paragraph (1) of this subsection (c), an annual registration fee of \$150 shall be charged for the registration of each slaughter facility which slaughters 300 animal units or less annually, and such registration shall expire on December 31 of each year.~~

~~(3) An annual registration fee of \$200 shall be charged for the registration of each slaughter or processing facility which operates solely on a custom basis as defined by subsection (b)(1) of K.S.A. 65-6a31 and amendments thereto, and such registration shall expire on December 31 of each year.~~

~~(4) Except for those persons who have registered under paragraphs (1), (2) or (3) of this subsection (c), an annual registration fee of \$250 shall be charged for each processing facility and each slaughter facility which slaughters more than 300 animal units annually, and such registration shall expire on December 31 of each year.~~

~~(5) As used in this subsection (c), animal units shall be computed by~~

using one unit for each bovine, bison, horse, mule or other equine, .6 unit for each swine, .4 unit for each sheep or goat and as specified by rule and regulation for other animal units.

~~(6) Persons who become subject to registration under this section after January 1 shall pay an amount equal to  $\frac{1}{2}$  of the annual registration fee which would have been due for a full year, multiplied by the number of full calendar months remaining in the registration year and adjusted to the nearest dollar amount.~~

~~(d)~~(c) Any person whose completed application for renewal of a registration required by this section is not received by January 15 of the year of renewal shall be subject to a reinstatement fee which shall be paid in addition to the required registration fee. If the completed application for renewal of a registration required by this section is received by the secretary after January 15 and on or before January 31 of the year of renewal, the reinstatement fee shall be \$10. If the completed application for renewal of a registration required by this section is received after January 31 of the year of renewal, the amount of the reinstatement fee shall be increased at the rate of \$25 per month for each additional month or fraction thereof. No registration required by this section shall be reinstated if it has been delinquent for one year. No registration required by this section shall be issued until all applicable reinstatement fees, if any, have been paid.

Sec. 32. K.S.A. 65-6a41 is hereby amended to read as follows: 65-6a41. *(a) Any person registered or required to be registered under the provisions of K.S.A. 65-6a34, and amendments thereto, shall keep records that fully and accurately disclose transactions related to animals prepared for and capable of use as human food. Nothing in this section shall affect the exemptions established in K.S.A. 65-6a31, and amendments thereto. All persons, firms and corporations subject to such requirements, at all reasonable times upon request by the secretary, shall provide access to their places of business and provide an opportunity to examine the facilities, inventory and records thereof and to copy all such records.*

*(b) Any record required to be maintained by this section shall be maintained for a period of time as the secretary shall prescribe by rules and regulations.*

*(c) It shall be unlawful for any person to refuse to furnish, on request of a representative of the secretary, the name and address of the person from whom ~~he~~ such person received any article or animal which does not meet the requirements of this act, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to ~~him~~ such person.*

Sec. 33. K.S.A. 36-505, 36-508, 36-511, 36-513, 36-515a, 36-515c, 36-517, 65-619, 65-620, 65-621, 65-622, 65-623, 65-624, 65-625, 65-631, 65-632, 65-633, 65-634, 65-637, 65-638, 65-639, 65-640, 65-642, 65-651, 65-

652, 65-654, 65-659, 65-660, 65-661, 65-666, 65-667, 65-674, 65-677, 65-681, 65-682, 65-6a34 and 65-6a41 and K.S.A. 2011 Supp. 36-501, 36-502, 36-503, 36-504, 36-506, 36-507, 36-509, 36-510, 36-515, 36-515b, 36-518, 36-519, 36-520, 65-626, 65-635, 65-641, 65-653, 65-655, 65-656, 65-657, 65-658, 65-673, 65-676, 65-683, 65-684, 65-685, 65-686, 65-688, 65-689, 65-690, 65-6a18, 65-6a20, 65-6a31, 74-591, 74-592, 74-593, 74-594, 74-595, 74-596, 74-596a, 74-597, 74-598, 74-5,101 and 74-5,102 are hereby repealed.

Sec. 34. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 25, 2012.

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## CHAPTER 146

### HOUSE BILL No. 2413

AN ACT concerning criminal procedure; relating to aid to indigent defendants; disclosure of tax information by department of revenue; amending K.S.A. 2011 Supp. 79-3234 and repealing the existing section; also repealing K.S.A. 2011 Supp. 79-3234b.

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

Section 1. K.S.A. 2011 Supp. 79-3234 is hereby amended to read as follows: 79-3234. (a) All reports and returns required by this act shall be preserved for three years and thereafter until the director orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act; and it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer or employee engaged in the administration of this act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government, or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has

been assessed by the state of Kansas, any other state or by the United States government.

(c) The secretary or the secretary's designee may: (1) Publish statistics, so classified as to prevent the identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or other legal representatives of the state;

(3) provide the post auditor access to all income tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

(4) disclose taxpayer information from income tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) disclose to the secretary of commerce the following: (A) Specific taxpayer information related to financial information previously submitted by the taxpayer to the secretary of commerce concerning or relevant to any income tax credits, for purposes of verification of such information or evaluating the effectiveness of any tax credit or economic incentive program administered by the secretary of commerce; (B) the amount of payroll withholding taxes an employer is retaining pursuant to K.S.A. 2011 Supp. 74-50,212, and amendments thereto; (C) information received from businesses completing the form required by K.S.A. 2011 Supp. 74-50,217, and amendments thereto; and (D) findings related to a compliance audit conducted by the department of revenue upon the request of the secretary of commerce pursuant to K.S.A. 2011 Supp. 74-50,215, and amendments thereto;

(6) disclose income tax returns to the state gaming agency to be used solely for the purpose of determining qualifications of licensees of and applicants for licensure in tribal gaming. Any information received by the state gaming agency shall be confidential and shall not be disclosed except to the executive director, employees of the state gaming agency and members and employees of the tribal gaming commission;

(7) disclose the taxpayer's name, last known address and residency status to the department of wildlife and parks to be used solely in its license fraud investigations;

(8) disclose the name, residence address, employer or Kansas adjusted gross income of a taxpayer who may have a duty of support in a title IV-D case to the secretary of the Kansas department of social and rehabilitation services for use solely in administrative or judicial proceedings to establish, modify or enforce such support obligation in a title IV-D case. In addition to any other limits on use, such use shall be allowed only where subject to a protective order which prohibits disclosure outside of the title IV-D proceeding. As used in this section, "title IV-D case" means a case being administered pursuant to part D of title IV of

the federal social security act (42 U.S.C. § 651 *et seq.*) and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e);

(9) permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an income tax, or the authorized representative of either, to inspect the income tax returns made under this act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in income tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the income tax laws, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of tax laws of such state, the state of Kansas or of the United States;

(10) communicate to the executive director of the Kansas lottery information as to whether a person, partnership or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer;

(11) communicate to the executive director of the Kansas racing commission as to whether a person, partnership or corporation has failed to meet any tax obligation to the state of Kansas for the purpose of determining whether such person, partnership or corporation is eligible for a facility owner license or facility manager license pursuant to the Kansas parimutuel racing act;

(12) provide such information to the executive director of the Kansas public employees retirement system for the purpose of determining that certain individuals' reported compensation is in compliance with the Kansas public employees retirement act, K.S.A. 74-4901 *et seq.*, and amendments thereto;~~and~~

(13) (i) provide taxpayer information of persons suspected of violating K.S.A. 2011 Supp. 44-766, and amendments thereto, to the secretary of labor or such secretary's designee for the purpose of determining compliance by any person with the provisions of K.S.A. 44-703(i)(3)(D) and K.S.A. 2011 Supp. 44-766, and amendments thereto. The information to be provided shall include all relevant information in the possession of the department of revenue necessary for the secretary of labor to make a proper determination of compliance with the provisions of K.S.A. 44-703(i)(3)(D) and K.S.A. 2011 Supp. 44-766, and amendments thereto, and to calculate any unemployment contribution taxes due. Such information to be provided by the department of revenue shall include, but not be limited to, withholding tax and payroll information, the identity of

any person that has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act, K.S.A. 79-3294 *et seq.*, and amendments thereto, and the results or status of such audit or investigation.

(ii) Any person receiving tax information under the provisions of this paragraph shall be subject to the same duty of confidentiality imposed by law upon the personnel of the department of revenue and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality.

(iii) Each of the secretary of labor and the secretary of revenue may adopt rules and regulations necessary to effect the provisions of this paragraph;

(14) *provide such information to the state treasurer for the sole purpose of carrying out the provisions of K.S.A. 58-3934, and amendments thereto. Such information shall be limited to current and prior addresses of taxpayers or associated persons who may have knowledge as to the location of an owner of unclaimed property. For the purposes of this paragraph, "associated persons" includes spouses or dependents listed on income tax returns; and*

(15) *After receipt of information pursuant to subsection (f), forward such information and provide the following reported Kansas individual income tax information for each listed defendant, if available, to the state board of indigents' defense services in an electronic format and in the manner determined by the secretary: (A) The defendant's name; (B) social security number; (C) Kansas adjusted gross income; (D) number of exemptions claimed; and (E) the relevant tax year of such records. Any social security number provided to the secretary and the state board of indigents' defense services pursuant to this section shall remain confidential.*

(d) Any person receiving information under the provisions of subsection (c) shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e).

(e) Any violation of subsection (b) or (c) is a class A nonperson misdemeanor and, if the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(f) *For the purpose of determining whether a defendant is financially able to employ legal counsel under the provisions of K.S.A. 22-4504, and amendments thereto, in all felony cases with appointed counsel where the defendant's social security number is accessible from the records of the district court, the court shall electronically provide the defendant's name, social security number, district court case number and county to the secretary of revenue in the manner and format agreed to by the office of judicial administration and the secretary.*

(g) Nothing in this section shall be construed to allow disclosure of the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information, where such

disclosure is prohibited by the federal internal revenue code as in effect on September 1, 1996, and amendments thereto, related federal internal revenue rules or regulations, or other federal law.

Sec. 2. K.S.A. 2011 Supp. 79-3234 and 79-3234b are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 25, 2012.

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## CHAPTER 147

Substitute for HOUSE BILL No. 2427

AN ACT concerning the Kansas open records act; relating to information concerning law enforcement officers; amending K.S.A. 2011 Supp. 45-221 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2011 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2011 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the char-

acter or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

- (A) Is in the public interest;
- (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;
- (C) would not reveal the identity of any confidential source or undercover agent;
- (D) would not reveal confidential investigative techniques or procedures not known to the general public;
- (E) would not endanger the life or physical safety of any person; and
- (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the

generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has au-

thority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 *et seq.*, and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which

specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 *et seq.*, and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning

insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third-party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers—(, DD Form 214). Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safe-house or similar place where persons are provided protection from abuse

or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(51) *Records of a public agency which identify the home address or home ownership of a law enforcement officer as defined in K.S.A. 2011 Supp. 21-5111, and amendments thereto, parole officer, probation officer, court services officer or community correctional services officer. The agency head of such law enforcement office, parole office, probation office, court services office or community correctional services office or such individual officer shall file with the custodian of such record a request to have such officer's identifying information removed from public access. Within seven days of receipt of such requests, the public agency shall remove such officer's identifying information from such public access.*

(52) *Records of a public agency which identify the home address or home ownership of a federal judge, a justice of the supreme court, a judge of the court of appeals, a district judge, a district magistrate judge, the United States attorney for the district of Kansas, an assistant United States attorney, the attorney general, an assistant attorney general, a district attorney or county attorney or an assistant district attorney or assistant county attorney. Such person or such person's employer shall file with the custodian of such record a request to have such person's identifying information removed from public access. Within seven days of receipt of such requests, the public agency shall remove such person's identifying information from such public access.*

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for *ad valorem* taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, em-

ployees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 2. K.S.A. 2011 Supp. 45-221 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 25, 2012.

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