

STATE OF KANSAS

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**2011 SESSION LAWS  
OF KANSAS  
VOL. 1**

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

PASSED DURING THE 2011 REGULAR SESSION OF THE  
LEGISLATURE OF THE STATE OF KANSAS

Date of Publication of this Volume  
July 1, 2011



## 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 2011 regular session of the Legislature of the State of Kansas, begun on the 10th day of January, A.D. 2011, and concluded on the 1st day of June, A.D. 2011; 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. 2011, except when otherwise provided.

Given under my hand and seal this 1st day of July, A.D. 2011.

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 The bill index, subject index and list of statutes repealed or amended will assist you in locating bills of interest.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

The price for the Session Laws is set by administrative regulation in accordance with state law. Additional copies of this publication may be obtained from:

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Secretary of State  
1st Floor, Memorial Hall  
120 S.W. 10th Ave.  
Topeka, KS 66612-1594  
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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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<i>Dist.</i>	<i>Name and residence</i>	<i>Dist.</i>	<i>Name and residence</i>
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2	<b>Sue Storm</b> , Overland Park	7	<b>Kenneth R. Willard</b> , Hutchinson
3	<b>John W. Bacon</b> , Olathe	8	<b>Walt Chappell</b> , Wichita
4	<b>Carolyn L. Wims-Campbell</b> , Topeka	9	<b>Jana Shaver</b> , Independence
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> , P.O. Box 424, 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, 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, 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>Steiniger, 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, Salina 67401 .....	Rep.	69
<b>Aurand, Clay</b> , 810 Shady Ln., Belleville 66935 .....	Rep.	109
<b>Ballard, Barbara W.</b> , 1532 Alvarmar Dr., Lawrence 66047 .....	Dem.	44
<b>Bethell, Bob</b> , P.O. Box 186, 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> , 308 Harrison St., Sabetha 66534 .....	Rep.	62
<b>Gatewood, Doug</b> , 411 S. Florida, 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> , 312 Elm St., 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> , 1115 Rim Rock Rd., El Dorado 67042 .....	Rep.	75
<b>Grant, Robert (Bob)</b> , 407 W. Magnolia, Cherokee 66724 .....	Dem.	2
<b>Gregory, TerriLois</b> , 324 Dearborn, Baldwin City 66006 .....	Rep.	10
<b>Grosserode, Amanda</b> , 12601 W. 99th St., Lenexa 66215 .....	Rep.	16
<b>Hayzlett, Gary K.</b> , 308 E. Russell Rd., Lakin 67860 .....	Rep.	122
<b>Hedke, Dennis E.</b> , 1669 N. Sagebrush St., Wichita 67230 .....	Rep.	99

<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
<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> , 1308 S. Kansas Ave., Topeka 66612 .....	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>Mosier, Susan K.</b> , 3517 Amy Ln., Manhattan 66503 .....	Rep.	67
<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>Pottorff, Jo Ann</b> , 6321 E. 8th, Wichita 67208 .....	Rep.	83
<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

2011 Session Laws of Kansas

<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
<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> , 503 N. Cedar St., 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>Siegfried, 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> , P.O. Box 191, 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

\*Sworn in on May 24 to replace Rep. Rocky Fund, who was deceased.

## OFFICERS OF THE SENATE

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<b>John Vratil</b> .....	Vice President
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<b>Anthony Hensley</b> .....	Minority Leader
<b>Pat Saville</b> .....	Secretary
<b>Jody Kirkwood</b> .....	Sergeant at Arms

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<b>Jene Vickrey</b> .....	Speaker Pro Tem
<b>Arlen Siegfried</b> .....	Majority Leader
<b>Paul Davis</b> .....	Minority Leader
<b>Susan W. Kannarr</b> .....	Chief Clerk
<b>Wayne Owen</b> .....	Sergeant at Arms

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 Vice-Chairman  
 Speaker Pro Tem of the House of Representatives: **Jene Vickrey**, Louisburg  
 Senate Majority Leader: **Jay Scott Emler**, Lindsborg  
 House Majority Leader: **Arlen Siegfried**, Olathe  
 Senate Minority Leader: **Anthony Hensley**, Topeka  
 House Minority Leader: **Paul Davis**, Lawrence

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**Julie Pennington**, Audit Manager  
**Rick Riggs**, Administrative Auditor

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**Amy Deckard**, Information Systems Manager and Senior Fiscal Analyst

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**Norman J. Furse**

Revisor Emeritus

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**Chad L. Champney**, Computer Information

**Richard M. Champney**, Computer Information



# 2011 SESSION LAWS OF KANSAS

## CHAPTER 1

### HOUSE BILL No. 2033

AN ACT relating to motor vehicles; concerning the registration of fleet motor vehicles; amending K.S.A. 2010 Supp. 8-1,152 and repealing the existing section.

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

Section 1. K.S.A. 2010 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.

(b) 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. 2. K.S.A. 2010 Supp. 8-1,152 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 11, 2011.

Published in the *Kansas Register* March 17, 2011.

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## CHAPTER 2

### HOUSE BILL No.2057

AN ACT concerning forensic examinations; relating to admissibility; amending K.S.A. 2010 Supp. 22-3437 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 22-3437 is hereby amended to read as follows: 22-3437. (a) (1) In any hearing or trial, a report concerning forensic examinations and certificate of forensic examination executed pursuant to this section shall be admissible in evidence if the report and certificate are prepared and attested by a criminalist or other employee of the Kansas bureau of investigation, Kansas highway patrol, *Johnson County sheriff's laboratory*, *Sedgwick County regional forensic science center*, or any laboratory of the federal bureau of investigation, federal postal inspection service, federal bureau of alcohol, tobacco and firearms or federal drug enforcement administration. If the examination involves a breath test for alcohol content, the report must also be admissible pursuant to K.S.A. 8-1001, and amendments thereto, and be conducted by a law enforcement officer or other person who is certified by the department of health and environment as a breath test operator as provided by K.S.A. 65-1,107 et seq., and amendments thereto.

(2) Upon the request of any law enforcement agency, such person as provided in paragraph (1) performing the analysis shall prepare a certificate. Such person shall sign the certificate under oath and shall include in the certificate an attestation as to the result of the analysis. The presentation of this certificate to a court by any party to a proceeding shall be evidence that all of the requirements and provisions of this section have been complied with. This certificate shall be supported by a written declaration pursuant to K.S.A. 53-601, and amendments thereto, or shall be sworn to before a notary public or other person empowered by law to take oaths and shall contain a statement establishing the following: The type of analysis performed; the result achieved; any conclusions reached based upon that result; that the subscriber is the person who performed the analysis and made the conclusions; the subscriber's training or experience to perform the analysis; the nature and condition of the equipment used; and the certification and

foundation requirements for admissibility of breath test results, when appropriate. When properly executed, the certificate shall, subject to the provisions of paragraph (3) and notwithstanding any other provision of law, be admissible evidence of the results of the forensic examination of the samples or evidence submitted for analysis and the court shall take judicial notice of the signature of the person performing the analysis and of the fact that such person is that person who performed the analysis.

(3) Whenever a party intends to proffer in a criminal or civil proceeding, a certificate executed pursuant to this section, notice of an intent to proffer that certificate and the reports relating to the analysis in question, including a copy of the certificate, shall be conveyed to the opposing party or parties at least 20 days before the beginning of a hearing where the proffer will be used. An opposing party who intends to object to the admission into evidence of a certificate shall give notice of objection and the grounds for the objection within 10 days upon receiving the adversary's notice of intent to proffer the certificate. Whenever a notice of objection is filed, admissibility of the certificate shall be determined not later than two days before the beginning of the trial. A proffered certificate shall be admitted in evidence unless it appears from the notice of objection and grounds for that objection that the conclusions of the certificate, including the composition, quality or quantity of the substance submitted to the laboratory for analysis or the alcohol content of a blood or breath sample will be contested at trial. A failure to comply with the time limitations regarding the notice of objection required by this section shall constitute a waiver of any objections to the admission of the certificate. The time limitations set forth in this section may be extended upon a showing of good cause.

(b)(1) In any hearing or trial where there is a report concerning forensic examinations from a person as provided in paragraph (1) of subsection (a), district and municipal courts may, upon request of either party, use two-way interactive video technology, including internet-based videoconferencing, to take testimony from that person if the testimony is in relation to the report.

(2) The use of any two-way interactive video technology must be in accordance with any requirements and guidelines established by the office of judicial administration, and all proceedings at which such technology is used in a district court must be recorded verbatim by the court.

Sec. 2. K.S.A. 2010 Supp. 22-3437 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 25, 2011.

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## CHAPTER 3

## HOUSE BILL No. 2078

AN ACT concerning the state school for the blind and the state school for the deaf; relating to training programs; amending K.S.A. 76-1102a and repealing the existing section.

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

New Section 1. The state board of education is hereby authorized to establish and conduct at the Kansas state school for the deaf, a training program for deaf persons. Tuition, fees and charges for services provided shall be set by the state board.

Sec. 2. K.S.A. 76-1102a is hereby amended to read as follows: 76-1102a. The state board of education is hereby authorized to establish and conduct at the Kansas state school for the blind, a ~~summer~~ training program for blind persons. Tuition, fees; ~~and charges for maintenance and the length of the summer program~~ *services provided* shall be set by ~~said~~ the state board.

Sec. 3. K.S.A. 76-1102a 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 25, 2011.

## CHAPTER 4

## HOUSE BILL No. 2083

AN ACT relating to mortuary arts; concerning the notification of individuals with prefinanced funeral agreements; amending K.S.A. 65-1713a and repealing the existing section.

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

Section 1. K.S.A. 65-1713a is hereby amended to read as follows: 65-1713a. (a) A “funeral establishment,” as the term is used herein, is a business premises where a funeral service, visitation or lying in-state of a dead human body is arranged and conducted, or dead human bodies are embalmed or otherwise prepared for a funeral service, visitation, lying in-state, burial, cremation or transportation. A funeral establishment shall be maintained at a fixed and specific street address or location and shall contain a preparation room equipped with a sanitary floor, walls and ceiling, with adequate sanitary drainage and disposal facilities, good ventilation and light, and the necessary instruments, equipment and supplies for the preparation and embalming of dead human bodies for burial or transportation. The preparation room shall be clearly identified by signs on all preparation room entrance doors, shall be separate from any funeral merchandise display room and chapel or visitation rooms; and shall not be a part of the

living quarters. Each funeral establishment shall have available or employ a Kansas licensed embalmer for all embalming work, if the funeral director in charge of the establishment is not a Kansas licensed embalmer. Each funeral establishment shall be under the personal supervision of a Kansas licensed funeral director.

(b) The provisions and requirements herein contained shall apply to all branch establishments as well as principal establishments, except that:

(1) Only the funeral director in charge of the funeral establishment who holds the funeral establishment license shall be eligible to apply for a branch establishment license;

(2) a branch establishment is not required to contain a funeral merchandise display room or a preparation room or to be a place where dead bodies are prepared for burial, cremation or transportation;

(3) a branch establishment ownership shall be identical to the ownership of the funeral establishment which owns the branch;

(4) the funeral director in charge of the funeral establishment also shall be responsible for the supervision of all branches of that funeral establishment; and

(5) a branch establishment is not required to be under the personal supervision and charge of a licensed funeral director.

(c) *The funeral director in charge of any principal or branch establishment whose facility closes is responsible for notifying all individuals with prefinanced funeral agreements of the need to transfer their agreements to another facility. Such notification shall be provided prior to the closing of the facility with a copy of all letters provided to the state board of mortuary arts.*

Sec. 2. K.S.A. 65-1713a 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 25, 2011.

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## CHAPTER 5

### HOUSE BILL No. 2029

AN ACT concerning the Kansas tort claims act; concerning charitable health care providers; amending K.S.A. 2010 Supp. 75-6102 and repealing the existing section.

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

Section 1. K.S.A. 2010 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 credentialled 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 hy-

gienist 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 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.

(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. 2. K.S.A. 2010 Supp. 75-6102 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 25, 2011.

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## CHAPTER 6

### HOUSE BILL No. 2013

AN ACT repealing K.S.A. 48-1901, 48-1902, 48-1903, 48-1904 and 48-1905; concerning the sale and purchase of certain firearms.

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

Section 1. K.S.A. 48-1901, 48-1902, 48-1903, 48-1904 and 48-1905 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 25, 2011.

## CHAPTER 7

## HOUSE BILL No. 2205

AN ACT concerning weights and measures; relating to measuring devices; amending K.S.A. 2010 Supp. 83-202 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 83-202 is hereby amended to read as follows: 83-202. (a) Except as provided further:

(1) The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state.

(2) The following standards and requirements shall apply to commercial weighing and measuring devices:

(A) “The standards of the national conference on weights and measures” published in the national institute of standards and technology handbook 44 entitled specifications, tolerances, and other technical requirements for weighing and measuring devices as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary, except a mechanical vehicle scale used solely to sell aggregate products shall be allowed a minimum tolerance of +/- 100 pounds. Such scale shall not be sold or moved to another location for use in commercial applications unless it complies with all applicable tolerances of the national institute of standards and technology handbook 44 entitled specifications, tolerances, and other technical requirements for weighing and measuring devices as published in October, 1994 or later versions as established in rules and regulations adopted by the secretary. ~~This exception shall be in effect until June 30, 2011;~~

(B) “the uniform laws and regulations of the national conference on weights and measures” published in the national institute of standards and technology handbook 130 regarding packaging and labeling, the method of sale of commodities, national type evaluation regulation, motor fuel inspection and motor fuel regulation, as published on December, 1994 or later versions as established in rules and regulations adopted by the secretary;

(C) “checking the net contents of packaged goods” published in the national institute of standards and technology handbook 133, third edition, as published on September, 1988 or later versions as established in rules and regulations adopted by the secretary;

(D) “checking the net contents of packaged goods” published in the national institute of standards and technology handbook 133, third edition, supplement 4, as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary; and

(E) any other handbooks or sections thereof as adopted by the secretary by rules and regulations.

(b) Whenever there exists an inconsistency between the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and any of the handbooks adopted by reference, the requirements of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, shall control.

Sec. 2. K.S.A. 2010 Supp. 83-202 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 25, 2011.

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## CHAPTER 8

### HOUSE BILL No.2003\*

AN ACT designating a part of K-18 highway as the Medal of Honor recipient Donald K. Ross memorial highway.

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

Section 1. From the junction of United States highway 81 and K-18 highway then west on K-18 highway to the western boundary of Lincoln county is hereby designated as the Medal of Honor recipient Donald K. Ross 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 Medal of Honor recipient Donald K. Ross 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. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 25, 2011.

Published in the *Kansas Register* March 31, 2011.

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## CHAPTER 9

## HOUSE BILL No. 2001

AN ACT concerning law enforcement; relating to the local law enforcement training reimbursement fund; amending K.S.A. 2010 Supp. 74-5620 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 74-5620 is hereby amended to read as follows: 74-5620. (a) There is hereby created in the state treasury the local law enforcement training reimbursement fund. All expenditures from the local law enforcement training fund shall: (1) Be distributed to municipalities which participated in local law enforcement training programs, certified by the commission, which existed prior to January 1, 1992, in accordance with a distribution formula developed by the commission; (2) not exceed more than 100% of the actual training costs incurred by the municipality in participating in the local law enforcement training program; and (3) be distributed for basic law enforcement training and not be for any type of continuing law enforcement training education programs. ~~No money shall be expended from this fund prior to January 1, 1993.~~ Such distribution formula shall provide that distribution be based on the number of individuals trained and the cost per individual trained of each such municipality. Any such distributions shall be reviewed on a year-to-year basis and adjusted accordingly pursuant to the criteria specified in this section. The commission shall conduct a review of all local law enforcement training programs in which municipalities receiving expenditures pursuant to this act are participating and shall require that all such law enforcement training programs report their costs in a standardized format prescribed by the commission. *Expenditures from the local law enforcement training reimbursement 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 commission or by a person or persons designated by the commission.*

(b) This section shall be part of and supplemental to the Kansas law enforcement training act.

Sec. 2. K.S.A. 2010 Supp. 74-5620 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, 2011.

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CHAPTER 10

HOUSE BILL No. 2023  
(Amended by Chapter 83)

AN ACT concerning controlled substances; amending K.S.A. 65-4107, 65-4109 and 65-4111 and K.S.A. 2010 Supp. 65-4105 and 65-4113 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 65-4105 is hereby amended to read as follows: 65-4105. (a) The controlled substances listed in this section are included in schedule I and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-1-(1-methyl-2-phenethyl)-4-piperidinyl-N-phenylacetamide .....	9815
(2) Acetylmethadol .....	9601
(3) Allylprodine .....	9602
(4) Alphacetylmethadol .....	9603
(except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM)	
(5) Alphameprodine .....	9604
(6) Alphamethadol .....	9605
(7) Alpha-methylfentanyl (N-1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine)	9814
(8) Alpha-methylthiofentanyl (N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide) .....	9832
(9) Benzethidine .....	9606
(10) Betacetylmethadol .....	9607
(11) Beta-hydroxyfentanyl (N-1-(2-hydroxy-2-phenethyl)-4-piperidinyl-N-phenylpropanamide .....	9830
(12) Beta-hydroxy-3-methylfentanyl (other name: N-1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide .....	9831
(13) Betameprodine .....	9608
(14) Betamethadol .....	9609
(15) Betaprodine .....	9611
(16) Clonitazene .....	9612
(17) Dextrromoramide .....	9613
(18) Diampromide .....	9615
(19) Diethylthiambutene .....	9616
(20) DifenoXin .....	9168
(21) Dimenoxadol .....	9617
(22) Dimepheptanol .....	9618
(23) Dimethylthiambutene .....	9619
(24) Dioxaphetyl butyrate .....	9621
(25) Dipipanone .....	9622
(26) Ethylmethylthiambutene .....	9623
(26) Etonitazene .....	9624
(28) EtoXeridine .....	9625
(29) Furethidine .....	9626

(30) Hydroxypethidine .....	9627
(31) Ketobemidone .....	9628
(32) Levomoramide .....	9629
(33) Levophenacymorphan .....	9631
(34) 3-Methylfentanyl (N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide) .....	9813
(35) 3-Methylthiofentanyl (N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl-N-phenylpropanamide) .....	9833
(36) Morpheridine .....	9632
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine) .....	9661
(38) Noracymethadol .....	9633
(39) Norlevorphanol .....	9634
(40) Normethadone .....	9635
(41) Norpipanone .....	9636
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-1-(2-phenethyl)-4-piperidinylpropanamide .....	9812
(43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine) .....	9663
(44) Phenadoxone .....	9637
(45) Phenampromide .....	9638
(46) Phenomorphan .....	9647
(47) Phenoperidine .....	9641
(48) Piritramide .....	9642
(49) Proheptazine .....	9643
(50) Propiridine .....	9644
(51) Propiram .....	9649
(52) Racemoramide .....	9645
(53) Thiofentanyl (N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinyl-propanamide .....	9835
(54) Tilidine .....	9750
(55) Trimeperidine .....	9646

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine .....	9319
(2) Acetyldihydrocodeine .....	9051
(3) Benzylmorphine .....	9052
(4) Codeine methylbromide .....	9070
(5) Codeine-N-Oxide .....	9053
(6) Cyprenorphine .....	9054
(7) Desomorphine .....	9055
(8) Dihydromorphine .....	9145
(9) Drotebanol .....	9335
(10) Etorphine (except hydrochloride salt) .....	9056
(11) Heroin .....	9200
(12) Hydromorphanol .....	9301
(13) Methyl-desorphine .....	9302
(14) Methyl-dihydromorphine .....	9304
(15) Morphine methylbromide .....	9305
(16) Morphine methylsulfonate .....	9306
(17) Morphine-N-Oxide .....	9307
(18) Myorphine .....	9308
(19) Nicocodeine .....	9309
(20) Nicomorphine .....	9312

(21) Normorphine .....	9313
(22) Pholcodine .....	9314
(23) Thebacon .....	9315

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) 4-bromo-2,5-dimethoxy-amphetamine .....	7391
Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-ethylphenethylamine; 4-bromo-2,5-DMA.	
(2) 2,5-dimethoxyamphetamine .....	7396
Some trade or other names: 2,5-dimethoxy-alpha-methyl-phenethylamine; 2,5-DMA.	
(3) 4-methoxyamphetamine .....	7411
4-methoxy-alpha-methylphene-thylamine; paramethoxyamphetamine; PMA.	
(4) 5-methoxy-3,4-methylenedioxy-amphetamine .....	7401
(5) 4-methyl-2,5-dimethoxy-amphetamine .....	7395
Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP".	
(6) 3,4-methylenedioxy amphetamine .....	7400
(7) 3,4-methylenedioxy methamphetamine (MDMA) .....	7405
(8) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA) .....	7404
(9) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA) .....	7402
(10) 3,4,5-trimethoxy amphetamine .....	7390
(11) Bufotenine .....	7433
Some trade or other names: 3-(Beta-Dimethyl- aminoethyl)-5-hydroxyindole; 3-(2-dimethyl- aminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine.	
(12) Diethyltryptamine .....	7434
Some trade or other names: N,N-Diethyltryptamine; DET.	
(13) Dimethyltryptamine .....	7435
(14) Ibogaine .....	7260
Some trade or other names: 7-Ethyl-6,6 Beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano -5H-pyridol <sup>1</sup> ,2':1,2 azepino 5,4-bindole; Tabernanthe iboga.	
(15) Lysergic acid diethylamide .....	7315
(16) Marihuana .....	7360
(17) Mescaline .....	7381
(18) Parahexyl .....	7374
Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzob,dp <sup>1</sup> pyran; Synhexyl.	
(19) Peyote .....	7415

Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.

(20) N-ethyl-3-piperidyl benzilate .....	7482
(21) N-methyl-3-piperidyl benzilate .....	7484
(22) Psilocybin .....	7437
(23) Psilocyn .....	7438
(24) Tetrahydrocannabinols .....	7370

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(25) Ethylamine analog of phencyclidine .....	7455
Some trade or other names: N-ethyl-1-phenyl- cyclo-hexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexylamine; PCE.	
(26) Pyrrolidine analog of phencyclidine .....	7458
Some trade or other names: 1-(1-phenylcyclo- hexyl)-pyrrolidine; PCPy; PHP.	
(27) Thiophene analog of phencyclidine .....	7470
Some trade or other names: 1-1-(2-thienyl)- cyclohexyl-piperidine; 2-thienylanalogue of phencyclidine; TPCP; TCP.	
(28) L1-1-(2-thienyl)-cyclohexyl pyrrolidine .....	7473
Some other names: TCPy.	
(29) 2,5-dimethoxy-4-ethylamphetamine .....	7399
Some trade or other names: DOET.	
(30) Salvia divinorum or salvinatorum A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.	
(31) Datura stramonium, commonly known as gypsum weed or jimson weed; all parts of the plant presently classified botanically as datura stramonium, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.	
(32) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzocchromen-1-ol .....	7370
Some trade or other names: HU-210.	
(33) 1-Pentyl-3-(1-naphthoyl)indole .....	
Some trade or other names: JWH-018.	
(34) 1-Butyl-3-(1-naphthoyl)indole .....	
Some trade or other names: JWH-073.	
(35) N-benzylpiperazine .....	7493
Some trade or other names: BZP.	
Some trade or other names: TFMPP.	
(36) 1-(3-trifluoromethylphenyl) piperazine .....	
(37) 4-Bromo-2,5-dimethoxyphenethylamine .....	7392
(38) 2,5-dimethoxy-4-(n)-propylthiopenenthylamine (2C7), its optical isomers, salts and salts of optical isomers .....	7348
(39) Alpha-methyltryptamine (other name: AMT) .....	7432

(40) *5-methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salt and salts of isomers* ..... 7439

(e) 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, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone ..... 2572
- (2) Methaqualone ..... 2565
- (3) Gamma hydroxybutyric acid

(f) 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 and salts of isomers:

- (1) Fenethylamine ..... 1503
- (2) N-ethylamphetamine ..... 1475
- (3) (+)cis-4-methylaminorex ((+)cis-4,5-dihydro-4-methyl-5-phenyl- 2-oxazolamine) ..... 1590
- (4) N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl- benze-neethanamine; N,N-alpha-trimethylphenethylamine) ..... 1480
- (5) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-amino propiophenone, 2-amino propiophenone and norphedrone) ..... 1235

(g) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (1) N-1-benzyl-4-piperidyl-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers ..... 9818
- (2) N-1-(2-thienyl)methyl-4-piperidyl-N-phenylpropanamide (thethylfentanyl), its optical isomers, salts and salts of isomers ..... 9834
- (3) Methcathinone (some other names: 2-methylamino-1-phenylpropan-1-one: Ephedrone: Monomethylpropion: UR1431, its salts, optical isomers and salts of optical isomers) ..... 1237
- (4) Aminorex (some other names:Aminoxaphen 2-amino-5-phenyl-2-oxazoline or 4,5-dihydro-5-phenyl-2-oxazolamine, its salts, optical isomers and salts of optical isomers) ..... 1585
- (5) Alpha-ethyltryptamine, its optical isomers, salts and salts of isomers ..... 7249  
Some other names: etryptamine, alpha-methyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole.

Sec. 2. K.S.A. 65-4107 is hereby amended to read as follows: 65-4107.

(a) The controlled substances listed in this section are included in schedule II and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nal-

mefene, naloxone and naltrexone and their respective salts, but including the following:

(A) Raw opium .....	9600
(B) Opium extracts .....	9610
(C) Opium fluid .....	9620
(D) Powdered opium .....	9639
(E) Granulated opium .....	9640
(F) Tincture of opium .....	9630
(G) Codeine .....	9050
(H) Ethylmorphine .....	9190
(I) Etorphine hydrochloride .....	9059
(J) Hydrocodone .....	9193
(K) Hydromorphone .....	9150
(L) Metopon .....	9260
(M) Morphine .....	9300
(N) Oxycodone .....	9143
(O) Oxymorphone .....	9652
(P) Thebaine .....	9333
(Q) Dihydroetorphine .....	9334
(R) Oripavine .....	9330

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

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine (9041) or ecgonine (9180).

(5) Cocaine, its salts, isomers and salts of isomers (9041).

(6) Ecgonine, its salts, isomers and salts of isomers (9180).

(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy) (9670).

(c) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation dextroproporph and levopropoxyphene excepted:

(1) Alfentanil .....	9737
(2) Alphaprodine .....	9010
(3) Anileridine .....	9020
(4) Bezitramide .....	9800
(5) Bulk dextropropoxyphene (nondosage forms) .....	9273
(6) Carfentanil .....	9743
(7) Dihydrocodeine .....	9120
(8) Diphenoxylate .....	9170
(9) Fentanyl .....	9801
(10) Isomethadone .....	9226
(11) Levomethorphan .....	9210
(12) Levorphanol .....	9220
(13) Metazocine .....	9240

(14) Methadone .....	9250
(15) Methadone-intermediate,4-cyano-2-dimethyl amino-4,4-diphenyl butane .....	9254
(16) Moramide-intermediate, 2-methyl-3- morpholino-1, 1-diphenylpropane-carboxylic acid .....	9802
(17) Pethidine (meperidine) .....	9230
(18) Pethidine-intermediate-A, 4-cyano-1-methyl- 4-phenylpiperidine .....	9232
(19) Pethidine-intermediate-B, ethyl-4-phenyl- piperidine-4-carboxylate .....	9233
(20) Pethidine-intermediate-C, 1-methyl-4-phenyl- piperidine-4-carboxylic acid .....	9234
(21) Phenazocine .....	9715
(22) Piminodine .....	9730
(23) Racemethorphan .....	9732
(24) Racemorphan .....	9733
(25) Sufentanil .....	9740
(26) Levo-alphaetyl methadol .....	9648
Some other names: levo-alpha-acetyl methadol, levomethadyl acetate or LAAM.	
(27) <i>Remifentanil</i> .....	9739
(28) <i>Tapentadol</i> .....	9780

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers and salts of its optical isomers ...	1100
(2) Phenmetrazine and its salts .....	1631
(3) Methamphetamine, including its salts, isomers and salts of isomers .....	1105
(4) Methylphenidate .....	1724
(5) <i>Lisdexamfetamine, its salts, isomers, and salts of its isomers</i> .....	1205

(e) 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 depressant effect on the central nervous system, 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:

(1) Amobarbital .....	2125
(2) Glutethimide .....	2550
(3) Secobarbital .....	2315
(4) Pentobarbital .....	2270
(5) Phencyclidine .....	7471

(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:	
(A) Phenylacetone .....	8501
Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.	
(2) Immediate precursors to phencyclidine (PCP):	
(A) 1-phenylcyclohexylamine .....	7460
(B) 1-piperidinocyclohexanecarbonitrile (PCC) .....	8603

(g) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substance, its salts, isomers and salts of isomers, unless specifically excepted, whenever the existence

of these salts, isomers and salts of isomers is possible within the specific chemical designation:

Nabilone .....	7379
Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a- hexahydro-1-hydroxy-6,6- dimethyl-9H-dibenzob,dpylan-9-one	

Sec. 3. K.S.A. 65-4109 is hereby amended to read: 65-4109. (a)The controlled substances listed in this section are included in schedule III and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:	
(A) Amobarbital .....	2126
(B) Secobarbital .....	2316
(C) Pentobarbital .....	2271

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:	
(A) Amobarbital .....	2126
(B) Secobarbital .....	2316
(C) Pentobarbital .....	2271

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules .....	2100
(4) Chlorhexadol .....	2510
(5) Lysergic acid .....	7300
(6) Lysergic acid amide .....	7310
(7) Methyprylon .....	2575
(8) Sulfondiethylmethane .....	2600
(9) Sulfonethylmethane .....	2605
(10) Sulfonmethane .....	2610
(11) Tiletamine and zolazepam or any salt thereof .....	7295
Some trade or other names for a tiletamine-zolazepam combination product: Telazol	
Some trade or other names for tiletamine: 2- (ethylamino)-2-(2-thienyl)- cyclohexanone	
Some trade or other names for zolazepam: 4- (2-fluorophenyl)-6,8-dihydro- 1,3,8-trimethylpyrazolo-3,4-e1,4-diazepin-7(1H)-one, flupyrzapon	
(12) Ketamine, its salts, isomers, and salts of isomers .....	7285
Some other names for ketamine: (±) -2-(2-chlorophenyl)-2-(methylamino)- cyclohexanone	
(13) Gamma hydroxybutyric acid, any salt, hydroxybutyric compound, deriva- tive or preparation of gamma hydroxybutyric acid contained in a drug prod- uct for which an application has been approved under section 505 of the federal food, drug and cosmetic act	

(14) <i>Embutramide</i> .....	2020
(c) <i>Nalorphine</i> .....	9400

(d) Any material, compound, mixture or preparation containing any of the following narcotic drugs or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium .....	9803
(2) not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts .....	9804
(3) not more than 300 milligrams of dihydrocodeinone (hydrocodone) or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with a fourfold or greater quantity of an isoquinoline alkaloid of opium .....	9805
(4) not more than 300 milligrams of dihydrocodeinone (hydrocodone) or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts .....	9806
(5) not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts .....	9807
(6) not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts .....	9808
(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts .....	9809
(8) not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts .....	9810
(9) <i>any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:</i>	
(A) <i>Buprenorphine</i> .....	9064

(e) 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) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substance listed in schedule II, which compounds, mixtures or preparations were listed on August 25, 1971, as excepted compounds under section 308.32 of title 21 of the code of federal regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same, except that it contains a lesser quantity of controlled substances .....	1405
(2) <i>Benzphetamine</i> .....	1228
(3) <i>Chlorphentermine</i> .....	1645
(4) <i>Chlortermine</i> .....	1647

- (5) Phendimetrazine ..... 1615
- (f) Anabolic steroids ..... 4000

“Anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) boldenone
- (2) chlorotestosterone (4-chlortestosterone)
- (3) clostebol
- (4) dehydrochlormethyltestosterone
- (5) dihydrotestosterone (4-dihydrotestosterone)
- (6) drostanolone
- (7) ethylestrenol
- (8) fluoxymesterone
- (9) formebulone (formebolone)
- (10) mesterolone
- (11) methandienone
- (12) methandranone
- (13) methandriol
- (14) methandrostenolone
- (15) methenolone
- (16) methyltestosterone
- (17) mibolerone
- (18) nandrolone
- (19) norethandrolone
- (20) oxandrolone
- (21) oxymesterone
- (22) oxymetholone
- (23) stanolone
- (24) stanozolol
- (25) testolactone
- (26) testosterone
- (27) trenbolone
- (28) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

(A) Except as provided in (B), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States’ secretary of health and human services for such administration.

(B) If any person prescribes, dispenses or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this subsection (f).

(g) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substance, its salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product 7369

Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro -6-6-9-trimethyl-3-pentyl-6H-dibenzo(b,d)pyran-1-0l, or (-)-delta-9- (trans)-tetrahydrocannabinol.

(h) The board may except by rule any compound, mixture or preparation containing any stimulant or 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 stimulant or 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 stimulant or depressant effect on the central nervous system.

Sec. 4. K.S.A. 65-4111 is hereby amended to read: 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) Chloral betaine .....	2460
(6) Chloral hydrate .....	2465
(7) Chlordiazepoxide .....	2744
(8) Clobazam .....	2751
(9) Clonazepam .....	2737
(10) Clorazepate .....	2768
(11) Clotiazepam .....	2752
(12) Cloxazolam .....	2753
(13) Delorazepam .....	2754
(14) Diazepam .....	2765
(15) <i>Dichloralphenazone</i> .....	2467
<del>(15)</del> (16) Estazolam .....	2756
<del>(16)</del> (17) Ethchlorvynol .....	2540
<del>(17)</del> (18) Ethinamate .....	2545
<del>(18)</del> (19) Ethyl loflazepam .....	2758
<del>(19)</del> (20) Fludiazepam .....	2759
<del>(20)</del> (21) Flunitrazepam .....	2763
<del>(21)</del> (22) Flurazepam .....	2767
(23) <i>Fospropofol</i> .....	2138
<del>(22)</del> (24) Halazepam .....	2762
<del>(23)</del> (25) Haloxazolam .....	2771
<del>(24)</del> (26) Ketazolam .....	2772
<del>(25)</del> (27) Loprazolam .....	2773
<del>(26)</del> (28) Lorazepam .....	2885
<del>(27)</del> (29) Lormetazepam .....	2774

<del>(28)</del> (30) Mebutamate .....	2800
<del>(29)</del> (31) Medazepam .....	2836
<del>(30)</del> (32) Meprobamate .....	2820
<del>(31)</del> (33) Methohexital .....	2264
<del>(32)</del> (34) Methylphenobarbital (mephobarbital) .....	2250
<del>(33)</del> (35) Midazolam .....	2884
<del>(34)</del> (36) Nimetazepam .....	2837
<del>(35)</del> (37) Nitrazepam .....	2834
<del>(36)</del> (38) Nordiazepam .....	2838
<del>(37)</del> (39) Oxazepam .....	2835
<del>(38)</del> (40) Oxazolam .....	2839
<del>(39)</del> (41) Paraldehyde .....	2585
<del>(40)</del> (42) Petrichloral .....	2591
<del>(41)</del> (43) Phenobarbital .....	2285
<del>(42)</del> (44) Pinazepam .....	2883
<del>(43)</del> (45) Prazepam .....	2764
<del>(44)</del> (46) Quazepam .....	2881
<del>(45)</del> (47) Temazepam .....	2925
<del>(46)</del> (48) Tetrazepam .....	2886
<del>(47)</del> (49) Triazolam .....	2887
<del>(48)</del> (50) Zolpidem .....	2783
<del>(49)</del> (51) Zaleplon .....	2781
(52) 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 United States code 812~~ 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 United States code 812~~ 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-propionoxybutane) .....	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. 5. K.S.A. 2010 Supp. 65-4113 is amended to read: 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) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing the following narcotic drug or its salts:~~

<del>Buprenorphine .....</del>	<del>9064</del>
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~~(c)~~(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.

~~(d)~~(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

~~(e)~~(d) Any compound, mixture or preparation containing any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers.

~~(f)~~(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) *Lacosamide (R)-2-acetoamido-N-benzyl-3-methoxy-propionamide* ..... 2746
- (2) *Pregabalin (S)-3-(aminomethyl)-5-methylhexanoic acid* ..... 2782

Sec. 6. K.S.A. 65-4107, 65-4109 and 65-4111 and K.S.A. 2010 Supp. 65-4105 and 65-4113 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2011.



## CHAPTER 11

HOUSE BILL No. 2030  
(Amended by Chapter 91)

AN ACT concerning open records; relating to exceptions to disclosure; amending K.S.A. 12-2819 and, 2010 Supp. 9-513c, K.S.A. 2010 Supp. 12-5611, 12-5711, 12-5811, 40-2,118, 40-4913 and 45-229 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 9-513c is hereby amended to read as follows: 9-513c. (a) Notwithstanding any other provision of law, all information or reports obtained by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (b) or (c).

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

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

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

(e) The provisions of subsection (a) shall expire on July 1, ~~2014~~ 2016, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, ~~2014~~ 2016.

Sec. 2. K.S.A. 12-2819 is hereby amended to read as follows: 12-2819. (a) Regular meetings of the board shall be held at least once in each calendar month, the time and place of such meetings to be fixed by the board. Three members of the board shall constitute a quorum for the transaction of business. All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the ~~chairman~~ chairperson of the board, and if ~~he or she~~ ~~he or she~~ shall approve the chairperson approves thereof ~~he or she~~ the chairperson shall sign the same, ~~and such as he or she shall.~~ If the chairperson does not approve, the ~~chairman~~ chairperson shall return to the board with ~~his or her~~ the chairperson's objections thereto in writing at the next regular meeting of the board occurring after the passage thereof. But in case the ~~chairman shall fail~~ chairperson fails to return any resolution with the objections thereto by the time aforesaid, the ~~chairman~~ chairperson shall be deemed to have approved the same and it shall take effect accordingly.

(b) Upon the return of any resolution by the ~~chairman with his or her~~ *chairperson, with the chairperson's* objections, the vote by which the same was passed shall be reconsidered by the board, and if upon such reconsideration ~~said~~ *such* resolution is passed by the affirmative vote of at least four members, it shall go into effect notwithstanding the veto of the ~~chairman~~ *chairperson*. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use in *contract* negotiations, ~~action~~ or *civil* proceedings to which the authority is a party.

Sec. 3. K.S.A. 2010 Supp. 12-5611 is hereby amended to read as follows: 12-5611. (a) The governing and administrative body of the authority shall be a board consisting of six members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

(b) Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c) Members of the board shall be appointed as follows: Three shall be appointed by the mayor with the approval of the council and three shall be appointed by the commission. Of the first appointees, the council and mayor shall designate one member to serve a term of one year, one to serve two years and one to serve a three-year term. The commission shall designate the terms of its appointees likewise. Should the city and county consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

(d) Upon the expiration of the term of any member, all successor members of the board shall be appointed and hold office for terms of three years from the date of appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

(e) Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of the council and the commission, may remove any member of the board in case of incompetency, neglect of duty or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10-days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime involving moral turpitude or removal from office, the office of a member shall become vacant. A vacancy shall be

filled for the unexpired term by appointment in the same manner as the original appointment.

(f) As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its members and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and successors shall be elected by the board from time to time for the term of the chairperson's office as a member of the board or for the term of three years, whichever is shorter.

(g) Regular meetings of the board shall be held at least once each quarter or more often if called by the chairperson. The time and place of such meetings to be fixed by the board. Four members of the board shall constitute a quorum for the transaction of business.

(h) All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairperson of the board and, if the chairperson approves thereof, the chairperson shall sign the same. If the chairperson does not approve any such resolution, the chairperson shall return it to the board with the chairperson's written objections thereto at the next regular meeting of the board occurring after the passage thereof. If the chairperson fails to return any resolution with the objections thereto by the prescribed time, the chairperson shall be deemed to have approved the same and it shall take effect accordingly. Upon the return of any resolution by the chairperson with the chairperson's objections, the vote by which such resolution was passed shall be reconsidered by the board. If upon reconsideration the resolution is passed by the affirmative vote of at least five members, it shall go into effect notwithstanding the veto of the chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use *in contract negotiations, actions or civil proceedings* to which the authority is a party.

Sec. 4. K.S.A. 2010 Supp. 12-5711 is hereby amended to read as follows: 12-5711. (a) The governing and administrative body of the authority shall be a board consisting of six members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

(b) Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c) Members of the board shall be appointed as follows: Subject to the provisions of K.S.A. 2010 Supp. 12-16,128, and amendments thereto, three shall be appointed by the mayor with the approval of the council and three shall be appointed by the commission. Of the first appointees, the council

and mayor shall designate one member to serve a term of one year, one to serve two years and one to serve a three-year term. The commission shall designate the terms of its appointees likewise. Should the city and county consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

(d) Upon the expiration of the term of any member, all successor members of the board shall be appointed and hold office for terms of three years from the date of appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

(e) Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of the council and the commission, may remove any member of the board in case of incompetency, neglect of duty or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10 days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime involving moral turpitude or removal from office, the office of a member shall become vacant. A vacancy shall be filled for the unexpired term by appointment in the same manner as the original appointment.

(f) As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its members and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and successors shall be elected by the board from time to time for the term of the chairperson's office as a member of the board or for the term of three years, whichever is shorter.

(g) Regular meetings of the board shall be held at least once each calendar month, the time and place of such meetings to be fixed by the board. Four members of the board shall constitute a quorum for the transaction of business.

(h) All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairperson of the board and, if the chairperson approves thereof, the chairperson shall sign the same. If the chairperson does not approve any such resolution, the chairperson shall return it to the board with the chairperson's written objections thereto at the next regular meeting of the board occurring after the passage thereof. If the chairperson fails to return any resolution with the objections thereto by the prescribed time, the chairper-

son shall be deemed to have approved the same and it shall take effect accordingly. Upon the return of any resolution by the chairperson with the chairperson's objections, the vote by which such resolution was passed shall be reconsidered by the board. If upon reconsideration the resolution is passed by the affirmative vote of at least five members, it shall go into effect notwithstanding the veto of the chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use *in contract negotiations, actions or civil proceedings* to which the authority is a party.

Sec. 5. K.S.A. 2010 Supp. 12-5811 is hereby amended to read as follows: 12-5811. (a) The governing and administrative body of the authority shall be a board consisting of six members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

(b) Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c) Members of the board shall be appointed as follows: Three shall be appointed by the mayor with the approval of the council and three shall be appointed by the commission. Of the first appointees, the council and mayor shall designate one member to serve a term of one year, one to serve two years and one to serve a three-year term. The commission shall designate the terms of its appointees likewise. Should the city and county consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

(d) Upon the expiration of the term of any member, all successor members of the board shall be appointed and hold office for terms of three years from the date of appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

(e) Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of the council and the commission, may remove any member of the board in case of incompetency, neglect of duty or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10 days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime involving moral turpitude or removal from office, the office of a member shall become vacant. A vacancy shall be

filled for the unexpired term by appointment in the same manner as the original appointment.

(f) As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its members and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and successors shall be elected by the board from time to time for the term of the chairperson's office as a member of the board or for the term of three years, whichever is shorter.

(g) Regular meetings of the board shall be held at least once each calendar month, the time and place of such meetings to be fixed by the board. Four members of the board shall constitute a quorum for the transaction of business.

(h) All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairperson of the board and, if the chairperson does not approve thereof, the chairperson shall sign the same. If the chairperson does not approve any such resolution, the chairperson shall return it to the board with the chairperson's written objections thereto at the next regular meeting of the board occurring after the passage thereof. If the chairperson fails to return any resolution with the objections thereto by the prescribed time, the chairperson shall be deemed to have approved the same and it shall take effect accordingly. Upon the return of any resolution by the chairperson with the chairperson's objections, the vote by which such resolution was passed shall be reconsidered by the board. If upon reconsideration the resolution is passed by the affirmative vote of at least five members, it shall go into effect notwithstanding the veto of the chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use *in contract negotiations, actions or civil proceedings* to which the authority is a party.

Sec. 6. K.S.A. 2010 Supp. 40-2,118 is hereby amended to read as follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any

fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

(b) An insurer that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed shall provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may require.

(c) Any other person that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed may provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may request.

(d) (1) Each insurer shall have antifraud initiatives reasonably calculated to detect fraudulent insurance acts. Antifraud initiatives may include: fraud investigators, who may be insurer employees or independent contractors; or an antifraud plan submitted to the commissioner no later than July 1, 2007. Each insurer that submits an antifraud plan shall notify the commissioner of any material change in the information contained in the antifraud plan within 30 days after such change occurs. Such insurer shall submit to the commissioner in writing the amended antifraud plan.

The requirement for submitting any antifraud plan, or any amendment thereof, to the commissioner shall expire on the date specified in paragraph (2) of this subsection unless the legislature reviews and reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229, and amendments thereto.

(2) Any antifraud plan, or any amendment thereof, submitted to the commissioner for informational purposes only shall be confidential and not be a public record and shall not be subject to discovery or subpoena in a civil action unless following an in camera review, the court determines that the antifraud plan is relevant and otherwise admissible under the rules of evidence set forth in article 4; *of* chapter 60 of the Kansas Statutes Annotated, and amendments thereto. The provisions of this paragraph shall expire on July 1, ~~2011~~ 2016, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, ~~2011~~ 2016.

(e) Except as otherwise specifically provided in K.S.A. 21-3718 ~~and amendments thereto~~ and K.S.A. 44-5,125, and amendments thereto, a fraudulent insurance act shall constitute a severity level 6, nonperson felony if the amount involved is \$25,000 or more; a severity level 7, nonperson felony if the amount is at least \$5,000 but less than \$25,000; a severity level 8, nonperson felony if the amount is at least \$1,000 but less than \$5,000; and a class C nonperson misdemeanor if the amount is less than \$1,000. Any combination of fraudulent acts as defined in subsection (a) which occur in a period of six consecutive months which involves \$25,000

or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block.

(f) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(g) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.

Sec. 7. K.S.A. 2010 Supp. 40-4913 is hereby amended to read as follows: 40-4913. (a) (1) Each insurer shall notify the commissioner whenever such insurer terminates a business relationship with an insurance agent if:

(A) The termination is for cause;

(B) such insurance agent has committed any act which would be in violation of any provision of subsection (a) of K.S.A. 2010 Supp. 40-4909, and amendments thereto; or

(C) such insurer has knowledge that such insurance agent is engaged in any activity which would be in violation of any provision of subsection (a) of K.S.A. 2010 Supp. 40-4909, and amendments thereto.

(2) The notification shall:

(A) Be made in a format prescribed by the commissioner;

(B) be submitted to the commissioner within 30 days of the date of the termination of the business relationship; and

(C) contain:

(i) The name of the insurance agent; and

(ii) the reason for the termination of the business relationship with such insurer.

(3) Upon receipt of a written request from the commissioner, each insurer shall provide to the commissioner any additional data, documents, records or other information concerning the termination of the insurer's business relationship with such agent.

(4) Whenever an insurer discovers or obtains additional information which would have been reportable under paragraph (1) of this subsection, the insurer shall forward such additional information to the commissioner within 30 days of its discovery.

(b) (1) Each insurer shall notify the commissioner whenever such insurer terminates a business relationship with an insurance agent for any reason not listed in subsection (a).

(2) The notification shall:

(A) Be made in a format prescribed by the commissioner;

(B) be submitted to the commissioner within 30 days of the date of the termination of the business relationship.

(3) Upon receipt of a written request from the commissioner, each insurer shall provide to the commissioner any additional data, documents,

records or other information concerning the termination of the insurer's business relationship with such agent.

(4) Whenever an insurer discovers or obtains additional information which would have been reportable under paragraph (1) of this subsection, the insurer shall forward such additional information to the commissioner within 30 days of its discovery.

(c) For the purposes of this section, the term "business relationship" shall include any appointment, employment, contract or other relationship under which such insurance agent represents the insurer.

(d) (1) No insurance entity, or any agent or employee thereof acting on behalf of such insurance entity, regulatory official, law enforcement official or the insurance regulatory official of another state who provides information to the commissioner in good faith pursuant to this section shall be subject to a civil action for damages as a result of reporting such information to the commissioner. For the purposes of this section, insurance entity shall mean any insurer, insurance agent or organization to which the commissioner belongs by virtue of the commissioner's office.

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

(3) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be required to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (2).

(4) The commissioner may share or exchange any documents, materials or other information, including confidential and privileged documents referred to in paragraph (2) of subsection (d), received in the performance of the commissioner's duties under this act, with:

- (A) The NAIC;
- (B) other state, federal or international regulatory agencies; and
- (C) other state, federal or international law enforcement authorities.

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

(B) No waiver of an existing privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure

to the commissioner under this section or as a result of sharing as authorized by paragraph (1) of subsection (d).

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

(e) The provisions of paragraph (2) of subsection (d) shall expire on July 1, ~~2006~~ 2016, unless the legislature acts to reenact such provision. The provisions of paragraph (2) of subsection (d) shall be reviewed by the legislature prior to July 1, ~~2006~~ 2016.

(f) For the purposes of this section, insurance entity shall mean any insurer, insurance agent or organization to which the commissioner belongs by virtue of the commissioner's office.

(g) Any insurance entity, including any authorized representative of such insurance entity, that fails to report to the commissioner as required under the provisions of this section or that is found by a court of competent jurisdiction to have failed to report in good faith, after notice and hearing, may have its license or certificate of authority suspended or revoked and may be fined in accordance with K.S.A. 2010 Supp. 40-4909 and amendments thereto.

Sec. 8. K.S.A. 2010 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 exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and

that the exception shall be reviewed by the legislature before the scheduled date.

(c) For purposes of this section, an exception is substantially amended if the amendment expands the scope of the exception to include more records or information. An exception is not substantially amended if the amendment narrows the scope of the exception.

(d) This section is not intended to repeal an exception that has been amended following legislative review before the scheduled repeal of the exception if the exception is not substantially amended as a result of the review.

(e) In the year before the expiration of an exception, the revisor of statutes shall certify to the president of the senate and the speaker of the house of representatives, by July 15, the language and statutory citation of each exception 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 ~~on June 1, 2005 during 2010~~, are hereby continued in existence until July 1, 2016, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, ~~38-1692, 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 39-970, 40-4913, 44-1132, 60-3333, 65-525, 65-5117, 65-6016, 65-6017 and, 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.

Sec. 9. K.S.A. 12-2819 and K.S.A. 2010 Supp. 9-513c, 12-5611, 12-5711, 12-5811, 40-2,118, 40-4913 and 45-229 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 28, 2011.

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## CHAPTER 12

HOUSE BILL No. 2038  
(Amended by Chapter 91)

AN ACT concerning crimes, criminal procedure and punishment; amending section 298 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing section.

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

Section 1. Section 298 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as: Sec. 298. (a) (1) Whenever a person is convicted of a felony, the court upon motion of either the defendant or

the state, shall hold a hearing to consider imposition of a departure sentence other than an upward durational departure sentence. The motion shall state the type of departure sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The county or district attorney shall notify the victim of a crime or the victim's family of the right to be present at the hearing. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecutor copies of the pre-sentencing investigation report.

(2) At the conclusion of the hearing or within 20 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If the court decides to depart on its own volition, without a motion from the state or the defendant, the court must notify all parties of its intent and allow reasonable time for either party to respond if requested. The notice shall state the type of departure intended by the court and the reasons and factors relied upon.

(4) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure as provided in this subsection regardless of whether a hearing is requested.

(b) (1) Upon motion of the county or district attorney to seek an upward durational departure sentence, the court shall consider imposition of such upward durational departure sentence in the manner provided in subsection (b)(2). The county or district attorney shall file such motion to seek an upward durational departure sentence not less than 30 days prior to the date of trial or if the trial date is to take place in less than 30 days then within five days from the date of the arraignment.

(2) The court shall determine if the presentation of any evidence regarding the alleged fact or factors that may increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be presented to a jury and proved beyond a reasonable doubt during the trial of the matter or whether such evidence should be submitted to the jury in a separate departure sentencing hearing following the determination of the defendant's innocence or guilt.

(3) If the presentation of the evidence regarding the alleged fact or factors is submitted to the jury during the trial of the matter as determined by the court, then the provisions of subsections (b)(5), (b)(6) and (b)(7) shall be applicable.

(4) If the court determines it is in the interest of justice, the court shall conduct a separate departure sentence proceeding to determine whether the defendant may be subject to an upward durational departure sentence. Such

proceeding shall be conducted by the court before ~~the trial~~ a jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the upward durational departure sentence proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the upward durational departure sentence proceeding, the court may conduct such upward durational departure sentence proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. Any decision of an upward durational departure sentence proceeding shall be decided by a unanimous decision of the jury. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the upward durational departure sentence proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the upward durational departure sentence proceeding has been waived ~~or the trial jury has been waived~~, the upward durational departure sentence proceeding shall be conducted by the court.

(5) In the upward durational departure sentence proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of determining if any specific factors exist that may serve to enhance the maximum sentence as provided by section 296 or 297 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Only such evidence as the state has made known to the defendant prior to the upward durational departure sentence proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the upward durational departure sentence proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral arguments.

(6) The court shall provide oral and written instructions to the jury to guide its deliberations.

(7) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more specific factors exist that may serve to enhance the maximum sentence, the defendant may be sentenced pursuant to sections 296 through 299 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation that one or more of the specific factors that may serve to enhance the maximum sentence exists, shall designate in writing, signed by the foreman of the jury, the specific factor or factors which the jury found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict of finding any of the specific factors, the court shall dismiss the jury and shall only impose a sentence as provided by law. In nonjury cases,

the court shall follow the requirements of this subsection in determining if one or more of the specific factors exist that may serve to enhance the maximum sentence.

Sec. 2. Section 298 of chapter 136 of the Session Laws of Kansas 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, 2011.

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## CHAPTER 13

House bill No. 2258\*

AN ACT authorizing the secretary of social and rehabilitation services to convey certain real estate to the evangelical lutheran good samaritan society in Ellsworth county, Kansas.

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

Section 1. (a) The secretary of social and rehabilitation services shall convey by quitclaim deed, without consideration, all of the rights, title and interest in the following described real estate, and any improvements thereon, located in Ellsworth county, Kansas, to the evangelical lutheran good samaritan society:

A tract of land in the southwest quarter of section 29, township 15 south, range eight (8) west of the 6th P.M. in Ellsworth county, Kansas, described as follows: Commencing at the southeast corner of said quarter section, thence on an assumed bearing of south 89 degrees 29 minutes 36 seconds west, 943.70 feet along the south line of said quarter section to the point of beginning; First Course, thence south 89 degrees 29 minutes 36 seconds west, 300.34 feet along the south line of said quarter section; Second Course, thence north 02 degrees 04 minutes 45 seconds west, 1182.69 feet; Third Course, thence north 89 degrees 29 minutes 36 seconds east, 1286.17 feet to the east line of said quarter section; Fourth Course, thence south 00 degrees 02 minutes 18 seconds east, 723.78 feet along the east line of said quarter; Fifth Course, thence south 89 degrees 59 minutes 12 seconds west, 120.33 feet to the existing westerly K-14/K-156 right of way; Sixth Course, thence south 44 degrees 21 minutes 14 seconds west, 418.34 feet along said westerly right of way; Seventh Course, thence south 78 degrees 21 minutes 59 seconds west 499.13 feet along said westerly right of way; Eighth Course, thence south 48 degrees 36 minutes 13 seconds west, 55.95 feet along said westerly right of way to the existing northerly township road right of way; Ninth Course, thence south 00 degrees 30 minutes 24 seconds east, 30.00 feet to the south line of said quarter section and to the point of beginning.

The above described tract contains 29.641 acres, which includes 1.529

acres of existing right of way, resulting in a tract of 28.049 acres, more or less.

(b) The deed conveying the real estate described in subsection (a) shall be approved by the attorney general and executed by the secretary of social and rehabilitation services.

(c) The deed to the real estate described in subsection (a) shall provide for the retention by the state of Kansas of all mineral rights in and under such property, together with ingress and egress thereto for production of any oil, gas or other mineral.

(c) The conveyance of real property authorized by this section shall not be subject to the provisions of K.S.A. 75-6609 or 76-6611, and amendments thereto.

(d) In the event that the secretary of social and rehabilitation services determines that the legal description of the parcel described by this section is incorrect, the secretary of social and rehabilitation services may convey the property utilizing the correct legal description but the deed conveying the property shall be subject to the approval of 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, 2011.

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## CHAPTER 14

### HOUSE BILL No. 2027

AN ACT concerning the rules and regulations filing act; amending K.S.A. 77-438 and K.S.A. 2010 Supp. 77-415, 77-421 and 77-436 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 77-421a.

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

Section 1. K.S.A. 2010 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 ~~K.S.A. 77-415 through 77-437~~ the Kansas rules and*

*regulations filing act*, and amendments thereto, unless the context clearly requires otherwise:

~~(a)~~(1) “Board” means the state rules and regulations board established under the provisions of K.S.A. 77-423, and amendments thereto.

~~(b)~~—(2) “Environmental rule and regulation” means:

~~(1)~~(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

~~(2)~~(B) a rule and regulation adopted by the secretary of wildlife and parks concerning threatened or endangered species of wildlife as defined in K.S.A. 32-958, and amendments thereto.

~~(c)~~(3) “Person” means *an individual*, firm, association, organization, partnership, business trust, corporation ~~or company~~, *company or any other legal or commercial entity*.

~~(d)~~ ~~(1)~~(4) “Rule and regulation,” “rule,” and “regulation” and words of like effect mean a standard, statement of policy or general order, including amendments or revocations thereof, of general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation enforced or administered by such state agency or to govern the organization or procedure of such state agency. Every rule and regulation adopted by a state agency to govern its enforcement or administration of legislation shall be adopted by the state agency and filed as a rule and regulation as provided in this act. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in a state agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render the same a rule and regulation within the meaning of the foregoing definition, nor shall it constitute specific adoption thereof by the state agency so as to be required to be filed.

—(2)—A rule and regulation as herein defined shall not include any rule and regulation which:

—(A)—Relates to the internal management or organization of the agency and does not affect private rights or interest;

—(B)—is an order directed to specifically named persons or to a group which does not constitute a general class and the order is served on the person or persons to whom it is directed by appropriate means. The fact that the named person serves a group of unnamed persons who will be affected does not make such an order a rule and regulation;

—(C)—relates to the use of highways and is made known to the public by means of signs or signals;

—(D)—relates to the construction and maintenance of highways or bridges or the laying out or relocation of a highway other than bidding procedures or the management and regulation of rest areas;

—(E)—relates to the curriculum of public educational institutions or to the administration, conduct, discipline, or graduation of students from such

institutions or relates to parking and traffic regulations of state educational institutions under the control and supervision of the state board of regents;

— (F) relates to the emergency or security procedures of a correctional institution, as defined in subsection (d) of K.S.A. 75-5202, and amendments thereto;

— (G) relates to the use of facilities by public libraries;

— (H) relates to military or naval affairs other than the use of armories;

— (I) relates to the form and content of reports, records or accounts of state, county or municipal officers, institutions, or agencies;

— (J) relates to expenditures by state agencies for the purchase of materials, equipment, or supplies by or for state agencies, or for the printing or duplicating of materials for state agencies;

— (K) establishes personnel standards, job classifications, or job ranges for state employees who are in the classified civil service;

— (L) fixes or approves rates, prices, or charges, or rates, joint rates, fares, tolls, charges, rules, regulations, classifications or schedules of common carriers or public utilities subject to the jurisdiction of the state corporation commission, except when a statute specifically requires the same to be fixed by rule and regulation;

— (M) determines the valuation of securities held by insurance companies;

— (N) is a statistical plan relating to the administration of rate regulation laws applicable to casualty insurance or to fire and allied lines insurance;

— (O) is a form, the content or substantive requirements of which are prescribed by rule and regulation or statute;

— (P) is a pamphlet or other explanatory material not intended or designed as interpretation of legislation enforced or adopted by a state agency but is merely informational in nature;

— (Q) establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife, if such seasons and limits are made known to the public by other means; or

— (R) establishes records retention and disposition schedules for any or all state agencies *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.*

(e)—(5) “Rulemaking” shall have the meaning ascribed to it in K.S.A. 77-602, and amendments thereto.

(f)—(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.

(g)—(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. 2010 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 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 op-

portunity 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. 2010 Supp. 77-436 is hereby amended to read as follows: 77-436. (a) There is hereby established a joint committee on administrative rules and regulations which shall consist of five senators and seven members of the house of representatives. The five senator members shall be appointed as follows: Three by the committee on organization, calendar and rules and two by the minority leader of the senate. The seven representative members shall be appointed as follows: Four by the speaker of the house of representatives and three by the minority leader of the house of representatives. 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 administrative rules and regulations shall be seven. 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) All proposed rules and regulations shall be reviewed by the joint committee on administrative rules and regulations during the public comment period required by K.S.A. 77-421, and amendments thereto. ~~All proposed rules and regulations specifically excluded from the definition of rule and regulation under subsection (c) of K.S.A. 77-415, and amendments thereto, shall be subject to review by the joint committee.~~ The committee may introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations ~~and agency forms.~~

(d) All rules and regulations filed each year in the office of secretary of state ~~and all rules and regulations specifically excluded from the definition of rule and regulation under subsection (c) of K.S.A. 77-415, and amendments thereto,~~ shall be subject to review by the joint committee. The committee may introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations ~~and agency forms.~~

(e) The joint committee 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. 4. K.S.A. 77-438 is hereby amended to read as follows: 77-438. ~~K.S.A. 77-415 to 77-437, inclusive, and acts amendatory thereof or supplemental thereto shall be known and may be cited as the rules and regu-~~

~~ations filing act.~~ (a)(1) A state agency may issue a guidance document without following the procedures set forth in this act for the adoption of rules and regulations.

(2) For the purposes of this section, “guidance document” means a record of general applicability that:

(A) Is designated by a state agency as a guidance document;

(B) lacks the force of law; and

(C) states:

(i) The agency’s current approach to, or interpretation of, law; or

(ii) general statements of policy that describe how and when the agency will exercise discretionary functions.

(b) A guidance document may contain binding instructions to state agency staff members except officers who preside in adjudicatory proceedings.

(c) If a state agency proposes to act in an adjudication at variance with a position expressed in a guidance document, the state agency shall provide a reasonable explanation for the variance. If an affected person in an adjudication claims to have reasonably relied on the agency’s position, the state agency’s explanation for the variance shall include a reasonable justification for the agency’s conclusion that the need for the variance outweighs the affected person’s reliance interests.

(d) Each state agency shall:

(1) Maintain an index of all of its currently effective guidance documents;

(2) publish the index on its website;

(3) make all guidance documents available to the public; and

(4) file the index in the manner prescribed by the secretary of state.

(e) A guidance document may be considered by a presiding officer or agency head in an agency adjudication but such guidance document shall not bind any party, the presiding officer or the agency head.

(f) Any agency that issues a guidance document shall provide a copy of such document to the joint committee on administrative rules and regulations. Such document may be submitted electronically.

Sec. 5. K.S.A. 77-438 and K.S.A. 2010 Supp. 77-415, 77-421, 77-421a and 77-436 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 31, 2011.

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## CHAPTER 15

## SENATE BILL No. 15

AN ACT concerning insurance; relating to risk-based capital requirements for certain insurers; amending K.S.A. 2010 Supp. 40-2c01 and repealing the existing section.

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

Section 1. K.S.A. 2010 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, ~~2009~~ 2010, or any later version promulgated by the NAIC as may be adopted by the commissioner under K.S.A. 2010 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. 2010 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.

Approved March 31, 2011.

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## CHAPTER 16

### SENATE BILL No. 186

AN ACT concerning agriculture; relating to the pest control act; amending K.S.A. 2010 Supp. 2-2450 and repealing the existing section; also repealing K.S.A. 2-2451.

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

Section 1. K.S.A. 2010 Supp. 2-2450 is hereby amended to read as follows: 2-2450. (a) If the surety bond, certificate of liability insurance, letter of credit or proof of an escrow account previously furnished by the licensee expires or is canceled or terminated, the secretary shall suspend without a hearing the pesticide business license until an acceptable substitute surety bond, letter of credit, proof of an escrow account or certificate establishing acceptable replacement of liability insurance is supplied.

(b) If the pesticide business fails to employ one or more commercial applicators certified in each category and subcategory in which the pesticide business makes commercial pesticide applications, the secretary ~~shall~~ *may* suspend, without a hearing, the pesticide business license for that category

until the pesticide business employs a commercial applicator with the appropriate certification.

Sec. 2. K.S.A. 2-2451 and K.S.A. 2010 Supp. 2-2450 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 31, 2011.

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## CHAPTER 17

### SENATE BILL No. 179

AN ACT concerning the Kansas life and health insurance guaranty association act; amending K.S.A. 40-3009 and K.S.A. 2010 Supp. 40-3003, 40-3005 and 40-3008 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 40-3003 is hereby amended to read as follows: 40-3003. (a) This act shall provide coverage, for the policies and contracts specified in subsection (b), for:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, payees or providers of the persons covered under paragraph (2); and

(2) persons who are owners of or certificate holders under such policies or contracts *other than structured settlement annuities*, and who:

(A) Are residents;

(B) are not residents, but only with respect to an annuity contract awarded pursuant to K.S.A. 60-3407 or 60-3409, and amendments thereto, an annuity contract for future economic loss procured pursuant to a settlement agreement in a medical malpractice liability action, as defined by K.S.A. 60-3401, and amendments thereto, or fixed-return accounts of the Kansas public employees deferred compensation plan under ~~K.S.A. 75-5521 through 75-5529~~ K.S.A. 2010 Supp. 74-49b08 through 74-49b14, and amendments thereto; or

(C) are not residents, but only under all of the following conditions:

(i) The insurers which issued such policies or contracts are domiciled in this state;

(ii) ~~such insurers never had a license or certificate of authority in the states in which such persons reside~~ *have one or more associations similar to the association created by this act;*

(iii) ~~such states have associations similar to the association created by this act; and~~

~~(iv) such~~ the persons are not eligible for coverage by ~~such associations~~ an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

(3) (A) Paragraphs (1) and (2) of this subsection shall not apply to structured settlement annuities.

(B) Except as provided in paragraphs (4) and (5) of this subsection, this act shall provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) (a) Is a resident, regardless of where the contract holder resides; or

(b) is not a resident, but only under both of the following conditions:

(1) The contract holder of the structured settlement annuity is a resident; or

(2) the contract holder of the structured settlement annuity is not a resident; but:

(A) The insurer that issued the structured settlement annuity is domiciled in this state; and

(B) the state in which the contract holder resides has an association similar to the association created by this act; and

(ii) neither the payee or beneficiary nor the contract holder is eligible for coverage by the association of the state in which the payee or contract holder resides.

(4) This act shall not provide coverage to a person who is a payee or beneficiary of a contract holder resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state.

(5) This act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this act is provided coverage under the laws of any other state, the person shall not be provided coverage under this act. In determining the application of the provisions of this paragraph in situations where a person could be covered by the association of more than one state, whether as a contract holder, payee, beneficiary or assignee, this act shall be construed in conjunction with other state laws to result in coverage by only one association.

(b) This act shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, health, ~~annuity and supplemental~~ or annuity policies or contracts, *supplemental contracts* or unallocated annuity contracts covering individuals participating in a governmental deferred compensation plan established under section 457 of the U.S. internal revenue code pursuant to K.S.A. ~~75-5521 through 75-5529~~ *2010 Supp. 74-49b08 through 74-49b14*, and amendments thereto, whether or not a resident, or the beneficiaries of each such individual if deceased, and for

certificates under direct group policies and contracts issued by member insurers, except as limited by this act.

Sec. 2. K.S.A. 2010 Supp. 40-3005 is hereby amended to read as follows: 40-3005. As used in this act:

(a) “Account” means either of the three accounts created under K.S.A. 40-3006, and amendments thereto;

(b) “association” means the Kansas life and health insurance guaranty association created under K.S.A. 40-3006, and amendments thereto;

(c) “commissioner” means the commissioner of insurance of this state;

(d) “contractual obligation” means any obligation of a policy or contract or certificate under a group policy or contract, or portion thereof, for which coverage is provided under K.S.A. 40-3003, and amendments thereto;

(e) “covered policy” means any policy or contract within the scope of this act under K.S.A. 40-3003, and amendments thereto;

(f) “impaired insurer” means a member insurer which, after the effective date of this act, is not an insolvent insurer, and ~~which: (1) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations; or~~

~~—(2)~~ is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(g) “insolvent insurer” means a member insurer which, after the effective date of this act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

(h) “member insurer” means any insurer licensed or holding a certificate of authority to transact in this state any kind of insurance for which coverage is provided under K.S.A. 40-3003, and amendments thereto, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, nonrenewed or voluntarily withdrawn, but does not include: (1) A ~~nonprofit~~ hospital or medical service organization *regardless of whether such hospital or medical service organization is organized for profit or not-for-profit*;

(2) a health maintenance organization;

(3) a fraternal benefit society;

(4) a mandatory state pooling plan;

(5) a mutual assessment company or any entity that operates on an assessment basis; ~~or~~

(6) an insurance exchange, except a reciprocal or interinsurance exchange governed by the provisions of article 16 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto; *or*

(7) *any entity similar to any of the organizations listed in paragraphs (1) through (6) inclusive*;

(i) “Moody’s corporate bond yield average” means the monthly av-

erage corporates as published by Moody's investors service, inc., or any successor thereto;

(j) "person" means any individual, corporation, partnership, association, voluntary organization or provider;

(k) "policyholder" and "contract holder" means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "policyholder" and "contract holder" do not include persons with a mere beneficial interest in a policy or contract;

(l) "provider" means a person who is entitled to receive compensation for providing medical services to an insured covered under any health insurance contract or policy issued by a member insurer, regardless of whether the provider is obligated by statute or by agreement with the member insurer to hold any insured covered by any health insurance contract or policy harmless from liability for services;

(m) "premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. Premiums does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection (b) of K.S.A. 40-3003, and amendments thereto, except that assessable premiums shall not be reduced on accounts for subsection (n)(3) of K.S.A. 40-3008, and amendments thereto, relating to interest limitations and subsection (o)(2) of K.S.A. 40-3008, and amendments thereto, relating to limitations with respect to any one life and any one contract holder. Premiums shall not include:

(1) Any premiums on any unallocated annuity contract; or

(2) any premiums in excess of \$5,000,000 with respect to multiple non-group policies of life insurance owned by one policyholder, regardless of the number of policies or contracts held by the policyholder and regardless of whether:

(A) The policyholder is an individual, firm, corporation or other person; and

(B) the persons insured are officers, managers, employees or other persons;

~~(l) "person" means any individual, corporation, partnership, association, voluntary organization or provider;~~

~~(m) (n) "resident" means any person who resides in this state at the time a member insurer is determined by court order to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state which, in the case of a person other than a natural person, shall be its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of United~~

*States possessions, territories or protectorates that do not have an association similar to the association created by this act, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;*

(o) “structured settlement annuity” means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant, but excludes an annuity policy or contract awarded pursuant to K.S.A. 60-3407 or 60-3409, and amendments thereto;

~~(n) “unallocated annuity contract” means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate; and~~

~~(p) “supplemental contract” means any written agreement entered into for the distribution of policy or contract proceeds under a life, health or annuity policy or contract; and~~

(q) “unallocated annuity contract” means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

Sec. 3. K.S.A. 2010 Supp. 40-3008 is hereby amended to read as follows: 40-3008. (a) If a member insurer is an impaired domestic insurer, the association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer; ~~and that are approved by the commissioner and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:~~

(1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, any or all of the policies or contracts of the impaired insurer; ~~and~~

(2) provide such moneys, pledges, *loans*, notes, guarantees or other means as are proper to effectuate the provisions of paragraph (1) ~~of this subsection~~ and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1); ~~or~~

~~(3) lend money to the impaired insurer.~~

~~(b) (1) If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in paragraph (2) of this subsection, the association shall, in its discretion, either: (A) Take any of the actions specified in subsection (a), subject to the conditions therein; or~~

~~(B) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or~~

hardship in accordance with standards proposed by the association and approved by the commissioner.

(2) The association shall be subject to the requirements of paragraph (1) of this subsection only if: (A) The laws of the impaired insurer's state of domicile provide that: (i) The delinquency proceeding shall not be dismissed;

(ii) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and

(iii) it shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations; and

~~(B) (i) with respect to the impaired insurer who is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or~~

~~(ii) with respect to the impaired insurer who is a foreign or alien insurer: (aa) It has been prohibited from soliciting or accepting new business in this state;~~

~~(bb) its certificate of authority has been suspended or revoked in this state; and~~

~~(cc) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.~~

~~(e) (b) If a member insurer is an insolvent insurer, the association shall, in its discretion, either: (1) (A) (i) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the policies or contracts of the insolvent insurer; or~~

~~(B) (ii) assure payment of the contractual obligations of the insolvent insurer; and~~

~~(C) (B) provide such moneys, pledges, loans, notes, guarantees or other means as are reasonably necessary to discharge such duties; or~~

~~(2) with respect only to life and health policies insurance policies and annuities, provide benefits and coverages in accordance with subsection (d) (c).~~

~~(d) (c) When proceeding under subsection (b)(1)(B) or (e)(2) paragraph (2) of subsection (b), the association shall, with respect only to life and health insurance policies: (1) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred: (A) With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or 45 days, but in no event less than 30~~

days, after the date on which the association becomes obligated with respect to such policies *and contracts*;

(B) with respect to *nongroup* policies, *contracts and annuities* not later than the earlier of the next renewal date, if any, under such policies *or contracts* or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to such policies *or contracts*;

(2) make diligent efforts to provide all known insureds, *annuitants* or group policyholders with respect to group policies *and contracts*, 30 days' notice of the termination of the benefits provided; and

(3) with respect to ~~individual policies~~ *nongroup life and health insurance policies and annuities*, make available to each known insured *or annuitant*, or owner if other than the insured *or annuitant*, and with respect to an individual formerly ~~insured~~ *an insured or an annuitant* under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (4) ~~of this subsection~~, if the insureds *or annuitants* had a right under law or the terminated policy *or annuity* to convert coverage to individual coverage or to continue an individual policy *or annuity* in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy *or annuity* or had a right only to make changes in premium by class;

(4) (A) in providing the substitute coverage required under paragraph (3) ~~of this subsection~~, the association may offer either to reissue the terminated coverage or to issue an alternative policy;

(B) alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy; and

(C) the association may reinsure any alternative or reissued policy;

(5) (A) alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency;

(B) alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premiums charged. The association shall set the premiums in accordance with a table of rates which it shall adopt. The premiums shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten;

(C) any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association;

(6) if the association elects to reissue the insured's terminated coverage at a premium rate different from that charged under the terminated policy,

the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval ~~by the of the domiciliary insurance commissioner and by a court of competent jurisdiction; the receivership court.~~

~~(7)~~ (d) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured or the association.

(e) When proceeding under ~~subsection (b)(1)(B) or (e) paragraph (2) of subsection (b)~~ with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subsection (n)(3).

(f) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage shall terminate the association's obligations under such policy or coverage under this act with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this act.

(g) Premiums due after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.

(h) The protection provided by this act shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(i) In carrying out its duties under ~~subsections (b) and (e) subsection (b)~~, the association may, subject to approval by ~~the court~~ a court in this state: (1) Impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the association's duties under this act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; and

(2) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(j) If the association fails to act within a reasonable period of time as provided in ~~subsections (b)(1)(B), (e) and (d) of this section (b) and (c)~~, the commissioner shall have the powers and duties of the association under this act with respect to impaired or insolvent insurers.

(k) The association may render assistance and advice to the commis-

sioner, upon request, concerning rehabilitation, payment of claims, continuance of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

(1) (1) The association shall have standing to appear *or intervene* before any court in this state with jurisdiction over:

(A) An impaired or insolvent insurer concerning which the association is or may become obligated under this act; *or*

(B) *any person or property against which the association may have rights through subrogation or otherwise.*

(2) Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired *or insolvent* insurer and the determination of the covered policies or contracts and contractual obligations.

(3) The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(m) (1) Any person receiving benefits under this act shall be deemed to have assigned the rights under any cause of action relating to the covered policy or contract to the association to the extent of the benefits received because of this act, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any right or benefits conferred by this act upon such person.

(2) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this act.

(3) In addition to paragraphs (1) and (2), the association shall have all common-law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contracts.

(n) The contractual obligations of the impaired or insolvent insurer for which the association becomes, or may become, liable shall be as great as but no greater than the contractual obligations of the impaired or insolvent insurer would have been in the absence of an impairment or insolvency unless such obligations are reduced as permitted by ~~subsection (c)~~ *this act* but the association shall not provide coverage for: (1) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;

(2) any policy or contract of reinsurance, unless assumption certificates have been issued;

(3) any portion of a policy or contract to the extent that the rate of interest on which it is based, *or the interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:*

(A) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(4) any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited, to benefits payable by an employer, association or similar entity under: (A) A multiple employer welfare arrangement as defined in section ~~514 of the employee retirement income security act of 1974, as amended~~ 3 (40) of the employee retirement income security act of 1974 (29 U.S.C. § 1002(40));

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract;

(5) any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;

(6) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;

(7) any unallocated annuity contract, except as provided in subsection (b) of K.S.A. 40-3003, and amendments thereto; ~~and~~

(8) a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to part C or part D of subchapter XVIII, chapter 7 of title 42 of the United States code (commonly known as medicare part C & D) or any regulations issued pursuant thereto; *or*

(9) (A) *Any portion of a policy or contract:*

(i) *To the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract; or*

(ii) *as to which the policy or contract owner's rights are subject to*

*forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this act; whichever is earlier.*

*(B) If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and which are not subject to forfeiture under this paragraph, the interest or change in value determined by using the procedures defined in the policy or contract shall be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and shall not be subject to forfeiture.*

*(o) The benefits for which the association may become liable shall in no event exceed the lesser of: (1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or*

*(2) with respect to any one life, regardless of the number of policies or contracts: (A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;*

*(B) ~~\$100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values in health insurance benefits:~~*

*(i) \$100,000 for coverages not defined as disability insurance or basic hospital, medical and surgical insurance or major medical insurance or long-term care insurance including any net cash surrender and net cash withdrawal values;*

*(ii) \$300,000 for disability insurance and \$300,000 for long-term care insurance;*

*(iii) \$500,000 for basic hospital, medical and surgical insurance or major medical insurance; ~~or~~*

*(C) \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;*

*~~(D) In no event shall the association be liable to expend more than \$300,000 in the aggregate with respect to any one life as provided in paragraph (A), (B) or (C) of this subsection.~~*

*(D) with respect to each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee if deceased), \$250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values;*

*(E) however, in no event shall the association be obligated to cover more than:*

*(1) An aggregate of \$300,000 in benefits with respect to any one life as provided in paragraphs (A), (B), (C) and (D) of this subsection except with respect to benefits for basic hospital, medical and surgical insurance and major medical insurance under (o)(2)(B)(iii) of this subsection, in which case the aggregate liability of the association shall not exceed \$500,000 with respect to any one individual; or*

(2) *with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, more than \$5,000,000 in benefits, regardless of the number of policies and contracts held by the owner;*

*(F) the limitations set forth in this paragraph are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights;*

~~(E)~~ *(G) the guaranty association's limits of liability with respect to the obligations of any impaired or insolvent insurer shall be the limits of liability in effect under this act on the date the guaranty association became liable for that impaired or insolvent insurer;*

*(H) in performing its obligations to provide coverage under this section, the association shall not be required to guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.*

The provisions of subsection (o) shall not apply to annuity contracts for future economic loss procured pursuant to a judgment or settlement agreement in a medical malpractice liability action.

(p) The association may: (1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this act;

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under K.S.A. 40-3009, and amendments thereto, and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this act;

(5) take such legal action as may be necessary to avoid payment of improper claims; or

(6) exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this act.

(q) The association may join an organization of one or more other state

associations of similar purposes to further the purposes and administer the powers and duties of the association.

(r) The association shall pay any and all persons who, as a provider, may have claims as a result of a member insurer being found insolvent between March 1, 1999 and June 1, 1999.

(s) *Regarding covered policies for which the association becomes obligated after an entry of an order of liquidation, to the extent such contract provides coverage for losses occurring after the date of the order of liquidation, the association may elect to succeed to the rights of the insolvent insurer arising after the order of liquidation under any contract of reinsurance to which the insolvent insurer was a party. As a condition to making such election, the association must pay all unpaid premiums due under the contract for coverage relating to periods before and after the date on which the order of liquidation was entered.*

(t) *In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies or contracts under subsections (a) or (b), subject to approval of the receivership court, the association may issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:*

(1) *In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for:*

- (i) *A fixed interest rate;*
- (ii) *payment of dividends with minimum guarantees; or*
- (iii) *a different method for calculating interest or changes in value.*

(2) *There is no requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the replaced policy or contract; and*

(3) *the alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.*

Sec. 4. K.S.A. 40-3009 is hereby amended to read as follows: 40-3009.

(a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at 15% per annum on and after the due date.

(b) There shall be two classes of assessments, as follows: (1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of subsection (e) of K.S.A. 40-3012, and amendments thereto. Class

A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under K.S.A. 40-3008, and amendments thereto, with regard to an impaired or an insolvent insurer.

(c) (1) The amount of any class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. A non-pro rata assessment shall not exceed ~~\$150~~ \$300 per member insurer in any one calendar year. The amount of any class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this act. Classification of assessments under subsection (b) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e) (1) The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 2% of such insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the years in which the insurer became an impaired or insolvent insurer.

(2) *If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in this subsection shall be*

*equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.*

(3) If the maximum assessment, together with the other assets of the association in any account does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

(4) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(f) The board, by an equitable method as established in the plan of operation, may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

(g) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this act, to consider the amount reasonably necessary to meet its assessment obligations under this act.

(h) The association shall issue to each insurer paying an assessment under this act, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

Sec. 5. K.S.A. 40-3009 and K.S.A. 2010 Supp. 40-3003, 40-3005 and 40-3008 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 31, 2011.

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## CHAPTER 18

## SENATE BILL No. 188

AN ACT concerning solid waste; relating to exemptions from permits; amending K.S.A. 65-3407c and repealing the existing section.

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

Section 1. K.S.A. 65-3407c is hereby amended to read as follows: 65-3407c. (a) The secretary may authorize persons to carry out the following activities without a solid waste permit issued pursuant to K.S.A. 65-3407, and amendments thereto:

(1) Dispose of solid waste at a site where the waste has been accumulated or illegally dumped. Disposal of some or all such waste must be identified as an integral part of a site cleanup and closure plan submitted to the department by the person responsible for the site. No additional waste may be brought to the site following the department's approval of the site cleanup and closure plan.

(2) Perform temporary projects to remediate soils contaminated by organic constituents capable of being reduced in concentration by biodegradation processes or volatilization, or both. Soil to be treated may be generated on-site or off-site. A project operating plan and a site closure plan must be submitted to the department as part of the project approval process.

(3) Dispose of demolition waste resulting from demolition of an entire building or structure if such waste is disposed of at, *adjacent to or near* the site where the building or structure was located. Prior to the department's authorization, written approval for the disposal must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the disposal site. The disposal area must be covered with a minimum of two feet of soil and seeded, rocked or paved. The final grades for the disposal site must be compatible with and not detract from the appearance of adjacent properties. *In addition to the factors listed in subsection (b), the secretary shall consider the following when evaluating requests for off-site disposal of demolition waste:*

(A) *Public safety concerns associated with the building or structure proposed to be demolished.*

(B) *Proposed plans to redevelop the building site which would be impacted by on-site disposal of debris.*

(C) *The disposal capacity of any nearby permitted landfill.*

(4) Dispose of solid waste generated as a result of a transportation accident if such waste is disposed of on property adjacent to or near the accident site. Prior to the department's authorization, written approval for the disposal must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the disposal site. A closure plan must be submitted to the department as part of the authorization process.

(5) Dispose of whole unprocessed livestock carcasses on property at, adjacent or near where the animals died if: (A) Such animals died as a result of a natural disaster or their presence has created an emergency situation; and (B) proper procedures are followed to minimize threats to human health and the environment. Prior to the department's authorization, written approval for the disposal must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the disposal site.

(6) Dispose of solid waste resulting from natural disasters, such as storms, tornadoes, floods and fires, or other such emergencies, when a request for disposal is made by the local governmental authority having jurisdiction over the area. Authorization shall be granted by the department only when failure to act quickly could jeopardize human health or the environment. Prior to the department's authorization, written approval for the disposal must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the disposal site. The local governmental authority must agree to provide proper closure and postclosure maintenance of the disposal site as a condition of authorization.

(7) Store solid waste resulting from natural disasters, such as storms, tornadoes, floods and fires, or other such emergencies, at temporary waste transfer sites, when a request for storage is made by the local governmental authority having jurisdiction over the area. Authorization shall be granted by the department only when failure to act quickly could jeopardize human health or the environment. Prior to the department's authorization, written approval for the storage must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the storage site. The local governmental authority must agree to provide proper closure of the storage and transfer site as a condition of authorization.

(b) The secretary shall consider the following factors when determining eligibility for an exemption to the solid waste permitting requirements under this section:

- (1) Potential impacts to human health and the environment.
- (2) Urgency to perform necessary work ~~compared to typical permitting timeframes.~~
- (3) Costs and impacts of alternative waste handling methods.
- (4) Local land use restrictions.
- (5) Financial resources of responsible parties.
- (6) Technical feasibility of proposed project.
- (7) Technical capabilities of persons performing proposed work.

(c) The secretary may seek counsel from local government officials prior to exempting activities from solid waste permitting requirements under this section.

Sec. 2. K.S.A. 65-3407c 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 31, 2011.

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CHAPTER 19

SENATE BILL No. 152

AN ACT concerning wildlife; relating to hunting; amending K.S.A. 2010 Supp. 32-1002 and repealing the existing section.

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

Section 1. K.S.A. 2010 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; ~~or~~
  - (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 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 ~~by~~ 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. 2010 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 31, 2011.

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## CHAPTER 20

### SENATE BILL No. 212

AN ACT concerning taxation; relating to abatement of tax liability; annual report; amending K.S.A. 2010 Supp. 79-3233b and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 79-3233b is hereby amended to read as follows: 79-3233b. (a) The secretary shall maintain a record of each abatement that reduces a final tax liability by \$5,000 or more. Such record shall contain: (1) The name and address of the taxpayer, and the petitioner, if different; (2) the disputed tax liability including penalty and interest; (3) the taxpayer's grounds for contesting the liability together with all supporting evidence; (4) all staff recommendations, reports and audits; (5) the reasons for, conditions to, and the amount of the abatement; and (6) the payment made, if any. Such records shall be maintained by the department for nine years.

(b) The secretary shall make an annual report that identifies the taxpayer, summarizes the issues and the reasons for abatement, and states the amount of liability that was abated pursuant to this section for each abatement that reduced a final tax liability by \$5,000 or more. The secretary

shall file the report with the secretary of state, the division of post audit of the legislature and the attorney general on or before September 30 of each year. Any other provision of law notwithstanding, the secretary shall make the ~~record of any abatement~~ *annual report* available for public inspection upon written request.

(c) *In order to express the intent of the legislature upon first enactment of this section, the provisions of this section and amendments enacted herein shall be effective retroactively to the original enactment of this section on and after July 1, 1999.*

Sec. 2. K.S.A. 2010 Supp. 79-3233b 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 31, 2011.

Published in the *Kansas Register* April 7, 2011.

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## CHAPTER 21

### SENATE BILL No. 185

AN ACT concerning insurance; designating trust companies as trustees; amending K.S.A. 2010 Supp. 40-2a20 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 40-2a20 is hereby amended to read as follows: 40-2a20. (a) Any insurance company other than life organized under any law of this state, with the direction or approval of a majority of its board of directors or authorized committee thereof, 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, *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 (5) of K.S.A. 84-8-102, and amendments thereto;

(2) any organization or system for 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. 2010 Supp. 40-2a20 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 31, 2011.



CHAPTER 22

SENATE BILL No. 198\*

AN ACT concerning economic development; creating rural opportunity zones; relating to income taxation, credit for certain taxpayers, amount and requirements; student loan repayment program.

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

Section 1. As used in sections 1 through 3, and amendments thereto:

(a) “Institution of higher education” means a public or private non-profit educational institution that meets the requirements of participation in programs under the higher education act of 1965, as amended, 34 C.F.R. 600;

(b) “rural opportunity zone” means Barber, Chautauqua, Cheyenne, Clark, Cloud, Comanche, Decatur, Edwards, Elk, Gove, Graham, Greeley, Greenwood, Hamilton, Harper, Hodgeman, Jewell, Kearney, Kingman, Kiowa, Lane, Lincoln, Logan, Marion, Mitchell, Morton, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Rawlins, Republic, Rooks, Rush, Russell, Scott, Sheridan, Sherman, Smith, Stafford, Stanton, Trego, Thomas, Wallace, Washington, Wichita, Wilson or Woodson counties;

(c) “secretary” means the secretary of commerce; and

(d) “student loan” means a federal student loan program supported by the federal government and a nonfederal loan issued by a lender such as a bank, savings and loan or credit union to help students and parents pay school expenses for attendance at an institution of higher education.

Sec. 2. (a) For taxable years commencing after December 31, 2011, and before January 1, 2017, there shall be allowed as a credit against the tax liability of a resident individual taxpayer an amount equal to the resident individual's income tax liability under the provisions of the Kansas income tax act, when the resident individual:

(1) Establishes domicile in a rural opportunity zone on or after July 1, 2011, and prior to January 1, 2016, and was domiciled outside this state for five or more years immediately prior to establishing their domicile in a rural opportunity zone in this state;

(2) had Kansas source income less than \$10,000 in any one year for five or more years immediately prior to establishing their domicile in a rural opportunity zone in this state; and

(3) was domiciled in a rural opportunity zone during the entire taxable year for which such credit is claimed.

(b) A resident individual may claim the credit authorized by this section for not more than five consecutive years following establishment of their domicile in a rural opportunity zone.

(c) The maximum amount of any refund under this section shall be equal to the amount withheld from the resident individual's wages or payments other than wages pursuant to K.S.A. 79-3294 et seq., and amendments thereto, or paid by the resident individual as estimated taxes pursuant to K.S.A. 79-32,101 et seq., and amendments thereto.

(d) No credit shall be allowed under this section if:

(1) The resident individual's income tax return on which the credit is claimed is not timely filed, including any extension; or

(2) the resident individual is delinquent in filing any return with, or paying any tax due to, the state of Kansas or any political subdivision thereof.

(a) This section shall be part of and supplemental to the Kansas income tax act.

Sec. 3. (a) Any county that has been designated a rural opportunity zone pursuant to section 1, and amendments thereto, may participate in the program provided in this section by authorizing such participation by the county commission of such county through a duly enacted written resolution. Such county shall provide a certified copy of such resolution to the secretary of commerce on or before January 1, 2012, for calendar year 2012, or on or before January 1 for each calendar year thereafter, in which a county chooses to participate. Such resolution shall obligate the county to participate in the program provided by this section for a period of five years, and shall be irrevocable. Such resolution shall specify the maximum amount of outstanding student loan balance for each resident individual to be repaid as provided in subsection (b), except the maximum amount of such balance shall be \$15,000.

(b) If a county submits a resolution as provided in subsection (a), under

the program provided in this section, subject to subsection (d), the state of Kansas and such county which chooses to participate as provided in subsection (a), shall agree to pay in equal shares the outstanding student loan balance of any resident individual who qualifies to have such individual's student loans repaid under the provisions of subsection (c) over a five-year period, except that the maximum amount of such balance shall be \$15,000. The amount of such repayment shall be equal to 20% of the outstanding student loan balance of the individual in a year over the five-year repayment period. The state of Kansas is not obligated to pay the student loan balance of any resident individual who qualifies pursuant to subsection (c) prior to the county submitting a resolution to the secretary pursuant to subsection (a). Each such county shall certify to the secretary that such county has made the payment required by this subsection.

(c) A resident individual shall be entitled to have such individual's outstanding student loan balance paid for attendance at an institution of higher education where such resident individual earned an associate, bachelor or post-graduate degree under the provisions of this section when such resident individual establishes domicile in a county designated as a rural opportunity zone which participates in the program as provided in subsection (a), on and after the date in which such county commenced such participation, and prior to July 1, 2016. Such resident individual may enroll in this program in a form and manner prescribed by the secretary. Subject to subsection (d), once enrolled such resident individual shall be entitled to full participation in the program for five years, except that if the resident individual relocates outside the rural opportunity zone for which the resident individual first qualified, such resident individual forfeits such individual's eligibility to participate, and obligations under this section of the state and the county terminate. No resident individual shall enroll and be eligible to participate in this program after June 30, 2016.

(d) The provisions of this act shall be subject to appropriation acts. Nothing in this act guarantees a resident individual a right to the benefits provided in this section. The county may continue to participate even if the state does not participate.

(e) The secretary shall adopt rules and regulations necessary to administer the provisions of this section.

(f) On January 1, 2012, and annually thereafter until January 1, 2017, the secretary of commerce shall report to the senate committee on assessment and taxation and the house of representatives committee on taxation as to how many residents applied for the rural opportunity zone tax credit.

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

## CHAPTER 23

## HOUSE BILL No. 2122

AN ACT concerning the agricultural ethyl alcohol producer incentive fund; relating to extension; amending K.S.A. 2010 Supp. 79-34,161, 79-34,163 and 79-34,164 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 79-34,161 is hereby amended to read as follows: 79-34,161. On July 1, 2001, and quarterly thereafter, the state treasurer shall credit amounts as provided in this subsection from the amounts remaining after the state treasurer credits an amount to the motor vehicle fuel tax refund fund as provided in K.S.A. 79-3425, and amendments thereto, to the Kansas qualified agricultural ethyl alcohol producer incentive fund. The current production account and the new production account are hereby created in the Kansas qualified agricultural ethyl alcohol producer incentive fund. During fiscal years 2002, 2003 and 2004, the state treasurer (a) shall credit \$500,000 each calendar quarter to the current production account of the Kansas qualified agricultural ethyl alcohol producer incentive fund, and (b) shall credit \$375,000 each calendar quarter to the new production account of the Kansas qualified agricultural ethyl alcohol producer incentive fund. During fiscal years 2005 through ~~2011~~ 2018, the state treasurer shall credit \$875,000 each calendar quarter to the new production account of the Kansas qualified agricultural ethyl alcohol producer incentive fund. On July 1 of each fiscal year through fiscal year ~~2011~~ 2018, or as soon after each such date as information is available, the secretary of revenue shall certify to the director of accounts and reports the amount of any unencumbered balance as of June 30 of the preceding fiscal year in the current production account of such fund and the director of accounts and reports shall transfer the amount certified from the current producer account to the new production account of the Kansas qualified agricultural ethyl alcohol producer incentive fund. *After all amounts have been paid pursuant to certifications for the fiscal year ending on June 30*, any unencumbered balance as of June 30 of any fiscal year in the new production account of such fund shall ~~remain credited in the new production account for the payment of claims of new production incentives in ensuing fiscal years. be transferred by the director of accounts and reports to the motor vehicle fuel tax refund fund.~~ If the aggregate of outstanding claims made on the current production account of such fund is greater than the amount credited to such account, then such claims shall be paid on a pro rata basis. Each claim may be paid regardless of the fiscal year during which the claim was submitted.

Sec. 2. K.S.A. 2010 Supp. 79-34,163 is hereby amended to read as follows: 79-34,163. (a) A Kansas qualified agricultural ethyl alcohol producer shall be paid a production incentive for distilling agricultural ethyl alcohol. The incentive shall be payable to the Kansas qualified agricultural

ethyl alcohol producer from the Kansas qualified agricultural ethyl alcohol producer incentive fund. The amount of the production incentive shall be as follows:

(1) During fiscal years 2002, 2003 and 2004, the amount shall be \$.05 for each gallon of agricultural ethyl alcohol sold by the producer who is in production prior to July 1, 2001, to an alcohol blender. Any such amounts pursuant to this subsection shall be paid from the current production account of the Kansas qualified agricultural ethyl alcohol producer incentive fund;

(2) If the producer who is in production prior to July 1, 2001, increases the producer's agricultural ethyl alcohol production capacity on or after July 1, 2001, by an amount of 5,000,000 gallons over the producer's base sales, such producer shall receive an amount equal to ~~\$.075~~ \$.035 for each gallon of agricultural ethyl alcohol sold by the producer to an alcohol blender that is in excess of the producer's base sales. No producer shall receive the production incentive pursuant to this subsection for more than 15,000,000 gallons sold. Any such amount shall be paid from the new production account of the fund; ~~and~~

(3) any producer who commences production on or after July 1, 2001, *but prior to July 1, 2012*, the amount shall be ~~\$.075~~ \$.035 for each gallon of agricultural ethyl alcohol sold by such producer to an alcohol blender, if such producer has sold at least 5,000,000 gallons. No producer shall receive the production incentive pursuant to this subsection for more than 15,000,000 gallons sold. Any such amounts shall be paid from the new production account of the fund; *and*

*(4) any producer who commences cellulosic alcohol production on or after July 1, 2012, the amount shall be \$.035 for each gallon of agricultural ethyl alcohol sold by such producer to an alcohol blender, if such producer has sold at least 5,000,000 gallons. No producer shall receive the production incentive pursuant to this subsection for more than 15,000,000 gallons sold. Any such amounts shall be paid from the new production account of the fund. This provision shall not apply to producers who commence alcohol production from grain.*

(b) For the purposes of subsection (a), a producer's base sales shall be the number of gallons of agricultural ethyl alcohol sold by the producer to an alcohol blender in calendar year 2000. All new production incentives pursuant to this section for a producer who is in production prior to July 1, 2001, shall be based on such producer's base sales.

(c) The amounts payable to a producer as provided in subsections (a)(2) and (a)(3) shall be payable for no more than seven years to any one producer.

(d) The Kansas qualified agricultural ethyl alcohol producer shall file for the production incentive beginning July 1, 2001, and quarterly thereafter, on a form furnished by the department of revenue. The form shall require the producer to file such information as the secretary of revenue may require by rules and regulations, but shall include information relating

to the original production records and invoices issued to the alcohol blender at the time of delivery, showing the total number of gallons of agricultural ethyl alcohol sold to the alcohol blender for the previous three months.

(e) The secretary of revenue may adopt such rules and regulations necessary to administer the provisions of this act, including the development of a procedure for the payment of the production incentive.

Sec. 3. K.S.A. 2010 Supp. 79-34,164 is hereby amended to read as follows: 79-34,164. The provisions of K.S.A. 79-34,160 through 79-34,163, and amendments thereto, shall expire on July 1, ~~2011~~ 2018.

Sec. 4. K.S.A. 2010 Supp. 79-34,161, 79-34,163 and 79-34,164 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 7, 2011.

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## CHAPTER 24

SENATE BILL No. 38  
(Amended by Chapter 91)

AN ACT concerning children; relating to permanency; priority of certain orders; amending K.S.A. 2010 Supp. 38-1116, 38-1121, 38-2201, 38-2203, 38-2262, 38-2284, 38-2304 and 60-1610 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 38-1116 is hereby amended to read as follows: 38-1116. (a) The district court has jurisdiction of an action brought under the Kansas parentage act. The action may be joined with an action for divorce, annulment, separate maintenance, support or adoption.

(b) If any determination is sought in any action under the Kansas parentage act for custody, residency or parenting time, the initial pleading seeking that determination shall include that information required by K.S.A. 38-1356, and amendments thereto.

(c) The action may be brought in the county in which the child, the mother or the presumed or alleged father resides or is found. If a parent or an alleged or presumed parent is deceased, an action may be brought in the county in which proceedings for probate of the estate of the parent or alleged or presumed parent have been or could be commenced.

(d) Any ~~custody, residency or parenting time~~ order issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall take precedence over any order under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto (determination of parentage), until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

(e) If a court of competent jurisdiction within this state has entered an order pursuant to the revised Kansas code for care of children regarding custody of a child or children who are involved in a proceeding filed pursuant to this section, and such court has determined pursuant to subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the orders in that case shall become the custody orders in the parentage case, such court shall file a certified copy of the orders with the civil case number in the caption and then close the case under the revised Kansas code for care of children. Such orders shall be binding on the parties, unless modified based on a material change in circumstances, even if such courts have different venues.

Sec. 2. K.S.A. 2010 Supp. 38-1121 is hereby amended to read as follows: 38-1121. (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for all purposes has not been joined as a party, a determination of the paternity of the child shall have only the force and effect of a finding of fact necessary to determine a duty of support.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued, but only if any man named as the father on the birth certificate is a party to the action.

(c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for support and education of the child including the necessary medical expenses incident to the birth of the child. The court may order the support and education expenses to be paid by either or both parents for the minor child. When the child reaches 18 years of age, the support shall terminate unless: (1) The parent or parents agree, by written agreement approved by the court, to pay support beyond that time; (2) the child reaches 18 years of age before completing the child's high school education in which case the support shall not automatically terminate, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (c)(3), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose

support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (c)(2), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(2). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (c)(3), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(3). For purposes of this section, “bona fide high school student” means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). The judgment may require the party to provide a bond with sureties to secure payment. The court may at any time during the minority of the child modify or change the order of support, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, as required by the best interest of the child. If more than three years has passed since the date of the original order or modification order, a requirement that such order is in the best interest of the child need not be shown. The court may make a modification of support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court’s judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.

(d) If both parents are parties to the action, the court shall enter such orders regarding custody, residency and parenting time as the court considers to be in the best interest of the child.

If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best interest of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interest of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed parenting plan to the court for consideration at such time before the final hearing as may be directed by the court.

(e) If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care, as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2010 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or another person or agency if the court finds by written order that: (1)(A) The child is likely to sustain harm if not immediately removed from the home; (B) allowing the child to remain in home is contrary to the welfare of the child; or (C) immediate placement of the

child is in the best interest of the child; and (2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-2244, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 2010 Supp. 38-2234, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. If a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any ~~custody, residency or parenting time~~ order pursuant to the revised Kansas code for care of children shall take precedence over any ~~custody, residency or parenting time~~ *similar* order under this section.

(f) In entering an original order for support of a child under this section, the court may award an additional judgment to reimburse the expenses of support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under K.S.A. 38-1114, and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

(g) In determining the amount to be ordered in payment and duration of such payments, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:

- (1) The needs of the child.
- (2) The standards of living and circumstances of the parents.
- (3) The relative financial means of the parents.

- (4) The earning ability of the parents.
- (5) The need and capacity of the child for education.
- (6) The age of the child.
- (7) The financial resources and the earning ability of the child.
- (8) The responsibility of the parents for the support of others.
- (9) The value of services contributed by both parents.
- (h) The provisions of K.S.A. 23-4,107, and amendments thereto, shall apply to all orders of support issued under this section.
- (i) An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. 23-701, and amendments thereto, or under the uniform child custody jurisdiction and enforcement act.

Sec. 3. K.S.A. 2010 Supp. 38-2201 is hereby amended to read as follows: 38-2201. K.S.A. 2010 Supp. 38-2201 through 38-2283, and amendments thereto, shall be known as and may be cited as the revised Kansas code for care of children.

(a) Proceedings pursuant to this code shall be civil in nature and all proceedings, orders, judgments and decrees shall be deemed to be pursuant to the parental power of the state. Any ~~custody, residency or parenting time~~ orders pursuant to this code shall take precedence over any ~~custody, residency or parenting time~~ *similar* order under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto (determination of parentage), article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians and conservators), article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce), article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (protection from abuse act), until jurisdiction under this code is terminated.

(b) The code shall be liberally construed to carry out the policies of the state which are to:

- (1) Consider the safety and welfare of a child to be paramount in all proceedings under the code;
- (2) provide that each child who comes within the provisions of the code shall receive the care, custody, guidance control and discipline that will best serve the child's welfare and the interests of the state, preferably in the child's home and recognizing that the child's relationship with such child's family is important to the child's well being;
- (3) make the ongoing physical, mental and emotional needs of the child decisive considerations in proceedings under this code;
- (4) acknowledge that the time perception of a child differs from that of an adult and to dispose of all proceedings under this code without unnecessary delay;
- (5) encourage the reporting of suspected child abuse and neglect;

(6) investigate reports of suspected child abuse and neglect thoroughly and promptly;

(7) provide for the protection of children who have been subject to physical, mental or emotional abuse or neglect or sexual abuse;

(8) provide preventative and rehabilitative services, when appropriate, to abused and neglected children and their families so, if possible, the families can remain together without further threat to the children;

(9) provide stability in the life of a child who must be removed from the home of a parent; and

(10) place children in permanent family settings, in absence of compelling reasons to the contrary.

(c) Nothing in this code shall be construed to permit discrimination on the basis of disability.

(1) The disability of a parent shall not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relation between the disability and harm to the child.

(2) In cases involving a parent with a disability, determinations made under this code shall consider the availability and use of accommodations for the disability, including adaptive equipment and support services.

Sec. 4. K.S.A. 2010 Supp. 38-2203 is hereby amended to read as follows: 38-2203. (a) Proceedings concerning any child who may be a child in need of care shall be governed by this code, except in those instances when the court knows or has reason to know that an Indian child is involved in the proceeding, in which case, the Indian child welfare act of 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child welfare act may apply to: The filing to initiate a child in need of care proceeding (K.S.A. 2010 Supp. 38-2234, and amendments thereto); ex parte custody orders (K.S.A. 2010 Supp. 38-2242, and amendments thereto); temporary custody hearing (K.S.A. 2010 Supp. 38-2243, and amendments thereto); adjudication (K.S.A. 2010 Supp. 38-2247, and amendments thereto); burden of proof (K.S.A. 2010 Supp. 38-2250, and amendments thereto); disposition (K.S.A. 2010 Supp. 38-2255, and amendments thereto); permanency hearings (K.S.A. 2010 Supp. 38-2264, and amendments thereto); termination of parental rights (K.S.A. 2010 Supp. 38-2267, 38-2268 and 38-2269, and amendments thereto); establishment of permanent custodianship (K.S.A. 2010 Supp. 38-2268 and 38-2272, and amendments thereto); the placement of a child in any foster, pre-adoptive and adoptive home and the placement of a child in a guardianship arrangement under chapter 59, article 30 of the Kansas Statutes Annotated, and amendments thereto.

(b) Subject to the uniform child custody jurisdiction and enforcement act, K.S.A. 38-1336 through 38-1377, and amendments thereto, the district court shall have original jurisdiction of proceedings pursuant to this code.

(c) The court acquires jurisdiction over a child by the filing of a petition pursuant to this code or upon issuance of an ex parte order pursuant to K.S.A. 2010 Supp. 38-2242, and amendments thereto. When the court acquires jurisdiction over a child in need of care, jurisdiction may continue until the child has: (1) Become 18 years of age, or until June 1 of the school year during which the child became 18 years of age if the child is still attending high school unless there is no court approved transition plan, in which event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21; (2) been adopted; or (3) been discharged by the court. Any child 18 years of age or over may request, in writing to the court, that the jurisdiction of the court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction will cease.

(d) When it is no longer appropriate for the court to exercise jurisdiction over a child, the court, upon its own motion or the motion of a party or interested party at a hearing or upon agreement of all parties or interested parties, shall enter an order discharging the child. Except upon request of the child pursuant to subsection (c), the court shall not enter an order discharging a child until June 1 of the school year during which the child becomes 18 years of age if the child is in an out-of-home placement, is still attending high school and has not completed the child's high school education.

(e) When a petition is filed under this code, a person who is alleged to be under 18 years of age shall be presumed to be under that age for the purposes of this code, unless the contrary is proved.

(f) A court's order ~~affecting a child's custody, residency, parenting time and visitation that is~~ issued in a proceeding pursuant to this code, shall take precedence over such orders in a civil custody case, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (protection from abuse act), or a comparable case in another jurisdiction, except as provided by K.S.A. 38-1336 et seq., and amendments thereto (uniform child custody jurisdiction and enforcement act).

Sec. 5. K.S.A. 2010 Supp. 38-2262 is hereby amended to read as follows: 38-2262. At any hearing under the code, the court, if requested by the child, shall ~~hear the testimony of the child as to the desires of the child concerning the child's placement~~ *allow the child to address the court*, if the child is 10 years of age ~~and of sound intellect.~~ *or older.*

Sec. 6. K.S.A. 2010 Supp. 38-2284 is hereby amended to read as follows: 38-2284. Any ~~e 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 take precedence over any order under article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), or article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments

thereto (guardians and conservators), until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

Sec. 7. K.S.A. 2010 Supp. 38-2304 is hereby amended to read as follows: 38-2304. (a) Except as provided in K.S.A. 2010 Supp. 38-2347, and amendments thereto, proceedings concerning a juvenile shall be governed by the provisions of this code.

(b) The district court shall have original jurisdiction to receive and determine proceedings under this code.

(c) When a complaint is filed under this code, the juvenile shall be presumed to be subject to this code, unless the contrary is proved.

(d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except as otherwise provided in subsection (e), jurisdiction shall continue until one of the following occurs:

(1) The complaint is dismissed;

(2) the juvenile is adjudicated not guilty at trial;

(3) the juvenile, after being adjudicated guilty and sentenced:

(i) Successfully completes the term of probation or order of assignment to community corrections;

(ii) is discharged by the commissioner pursuant to K.S.A. 2010 Supp. 38-2376, and amendments thereto;

(iii) reaches the juvenile's 21st birthday and no exceptions apply that extend jurisdiction beyond age 21;

(4) the court terminates jurisdiction; or

(5) the offender is convicted of a new felony 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. 2010 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony.

(e) Once jurisdiction is acquired by the district court over an alleged juvenile offender, it shall continue beyond the juvenile offender's 21st birthday but no later than the juvenile offender's 23rd birthday if either or both of the following conditions apply:

(1) The juvenile offender is sentenced pursuant to K.S.A. 2010 Supp. 38-2369, and amendments thereto, and the term of the sentence including successful completion of aftercare extends beyond the juvenile offender's 21st birthday; or

(2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile prosecution and continues to successfully serve the sentence imposed pursuant to the revised Kansas juvenile justice code.

(f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile offender's continuing responsibility to pay restitution ordered.

(g) (1) If a juvenile offender, at the time of sentencing, is in an out of

home placement in the custody of the secretary of social and rehabilitation services under the Kansas code for care of children, the sentencing court may order the continued placement of the juvenile offender as a child in need of care unless the offender was adjudicated for a felony or a second or subsequent misdemeanor. If the adjudication was for a felony or a second or subsequent misdemeanor, the continued placement cannot be ordered unless the court finds there are compelling circumstances which, in the best interest of the juvenile offender, require that the placement should be continued. In considering whether compelling circumstances exist, the court shall consider the reports and recommendations of the foster placement, the contract provider, the secretary of social and rehabilitation services, the presentence investigation and all other relevant factors. If the foster placement refuses to continue the juvenile in the foster placement the court shall not order continued placement as a child in need of care.

(2) If a placement with the secretary of social and rehabilitation services is continued after sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

(3) If the juvenile offender is placed in the custody of the juvenile justice authority, the secretary of social and rehabilitation services shall not be responsible for furnishing services ordered in the child in need of care proceeding during the time of the placement pursuant to the revised Kansas juvenile justice code. Nothing in this subsection shall preclude the juvenile offender from accessing other services provided by the department of social and rehabilitation services or any other state agency if the juvenile offender is otherwise eligible for the services.

(h) A court's order ~~affecting a child's custody, residency, parenting time and visitation that~~ is issued in a proceeding pursuant to this code, shall take precedence over such orders in a proceeding under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto (parentage act), a proceeding under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce), a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (protection from abuse act), a proceeding under article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), a proceeding under article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians and conservators), or a comparable case in another jurisdiction, except as provided by K.S.A. 38-1336 et seq., and amendments thereto (uniform child custody jurisdiction and enforcement act).

Sec. 8. K.S.A. 2010 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) *Minor children.* (1) *Child support and education.* The court shall make provisions for the support and education of the minor children. Sub-

ject to the provisions of K.S.A. 23-9,207, and amendments thereto, the court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (C) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (a)(1)(C), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 12-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(C). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional

condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child. Except for good cause shown, every order requiring payment of child support under this section shall require that the support be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct child support payments to the obligee and not pay through the central unit shall constitute good cause, unless the court finds the agreement is not in the best interest of the child or children. The obligor shall file such written agreement with the court. The obligor shall maintain written evidence of the payment of the support obligation and, at least annually, shall provide such evidence to the court and the obligee. If the divorce decree of the parties provides for an abatement of child support during any period provided in such decree, the child support such nonresidential parent owes for such period shall abate during such period of time, except that if the residential parent shows that the criteria for the abatement has not been satisfied there shall not be an abatement of such child support.

(2) *Child custody and residency.* (A) *Changes in custody.* Subject to the provisions of the uniform child custody jurisdiction and enforcement act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown, but no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 15 days of the date that a party requests a hearing whether to vacate or modify the order.

(B) *Examination of parties.* The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 60-235, and amendments thereto.

(3) *Child custody or residency criteria.* The court shall determine custody or residency of a child in accordance with the best interests of the child.

(A) If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

(B) In determining the issue of child custody, residency and parenting time, the court shall consider all relevant factors, including but not limited to:

(i) The length of time that the child has been under the actual care and

control of any person other than a parent and the circumstances relating thereto;

(ii) the desires of the child's parents as to custody or residency;

(iii) the desires of the child as to the child's custody or residency;

(iv) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;

(v) the child's adjustment to the child's home, school and community;

(vi) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;

(vii) evidence of spousal abuse;

(viii) whether a parent is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law;

(ix) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto;

(x) whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; and

(xi) whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

(C) Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

(D) There shall be a rebuttable presumption that it is not in the best interest of the child to have custody or residency granted to a parent who:

(i) Is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; or

(ii) is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

(E) If a court of competent jurisdiction within this state has entered an order pursuant to the revised Kansas code for care of children regarding custody of a child or children who are involved in a proceeding filed pursuant to this section, and such court has determined pursuant to subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the orders in that case shall become the custody orders in the divorce case, such court shall file a certified copy of the orders with the civil case number in the caption and then close the case under the revised Kansas code for care of children.

Such orders shall be binding on the parties, unless modified based on a material change in circumstances, even if such courts have different venues.

(4) *Types of legal custodial arrangements.* Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall provide one of the following legal custody arrangements, in the order of preference:

(A) *Joint legal custody.* The court may order the joint legal custody of a child with both parties. In that event, the parties shall have equal rights to make decisions in the best interests of the child.

(B) *Sole legal custody.* The court may order the sole legal custody of a child with one of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include on the record specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent shall not deprive the other parent of access to information regarding the child unless the court shall so order, stating the reasons for that determination.

(5) *Types of residential arrangements.* After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:

(A) *Residency.* The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

(B) *Divided residency.* In an exceptional case, the court may order a residential arrangement in which one or more children reside with each parent and have parenting time with the other.

(C) *Nonparental residency.* If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2010 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds by written order that: (i) (a) The child is likely to sustain harm if not immediately removed from the home;

(b) allowing the child to remain in home is contrary to the welfare of the child; or

(c) immediate placement of the child is in the best interest of the child; and

(ii) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child. In making such

a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-2244, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 2010 Supp. 38-2234, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. If a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any order pursuant to the revised Kansas code for care of children shall take precedence over any order under this section.

(6) *Priority.* 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 order under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce), until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

(7) *Child health insurance coverage.* The court may order that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage.

(b) *Financial matters.* (1) *Division of property.* The decree shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: (A) A division of the property in kind; (B) awarding the property or part of the property to one of the spouses and

requiring the other to pay a just and proper sum; or (C) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale. Upon request, the trial court shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing or trial as the facts and circumstances of the case may dictate. The trial court may consider evidence regarding changes in value of various assets before and after the valuation date in making the division of property. In dividing defined-contribution types of retirement and pension plans, the court shall allocate profits and losses on the nonparticipant's portion until date of distribution to that nonparticipant. In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property. The decree shall provide for any changes in beneficiary designation on: (A) Any insurance or annuity policy that is owned by the parties, or in the case of group life insurance policies, under which either of the parties is a covered person; (B) any trust instrument under which one party is the grantor or holds a power of appointment over part or all of the trust assets, that may be exercised in favor of either party; or (C) any transfer on death or payable on death account under which one or both of the parties are owners or beneficiaries. Nothing in this section shall relieve the parties of the obligation to effectuate any change in beneficiary designation by the filing of such change with the insurer or issuer in accordance with the terms of such policy.

(2) *Maintenance.* The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for re-

instatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. Except for good cause shown, every order requiring payment of maintenance under this section shall require that the maintenance be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct maintenance payments to the obligee and not pay through the central unit shall constitute good cause. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has made a determination concerning the manner of payment of child support, then maintenance payments shall be paid in the same manner.

(3) *Separation agreement.* If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation agreement may include provisions relating to a parenting plan. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions relating to the legal custody, residency, visitation parenting time, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

(4) *Costs and fees.* Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name. The court shall have jurisdiction to restore the spouse's maiden or former name at or after the time the decree of divorce becomes final. The judicial council shall develop a form which is simple, concise and direct for use with this paragraph.

(2) *Effective date as to remarriage.* Any marriage contracted by a party, within or outside this state, with any other person before a judgment of

divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

Sec. 9. K.S.A. 2010 Supp. 38-1116, 38-1121, 38-2201, 38-2203, 38-2262, 38-2284, 38-2304 and 60-1610 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 7, 2011.

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## CHAPTER 25

### SENATE BILL No. 12\*

AN ACT concerning civil procedure; relating to bankruptcy; exempt property; earned income tax credit.

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

Section 1. An individual debtor under the federal bankruptcy reform act of 1978 (11 U.S.C. §101 et seq.), may exempt the debtor's right to receive tax credits allowed pursuant to section 32 of the federal internal revenue code of 1986, as amended, and K.S.A. 2010 Supp. 79-32,205, and amendments thereto. An exemption pursuant to this section shall not exceed the maximum credit allowed to the debtor under section 32 of the federal internal revenue code of 1986, as amended, for one tax year. Nothing in this section shall be construed to limit the right of offset, attachment or other process with respect to the earned income tax credit for the payment of child support or spousal maintenance.

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

Approved April 7, 2011.

Published in the *Kansas Register* April 14, 2011.

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## CHAPTER 26

SENATE BILL No. 24  
(Amended by Chapter 91)

AN ACT concerning domestic relations; relating to recodification of certain domestic relations matters; amending K.S.A. 20-164, 20-165, 20-302b, 23-4,118, 60-1606, 60-1613 and 60-1620 and K.S.A. 2010 Supp. 12-5005, 60-1629 and 60-3107 and repealing the existing sections; also repealing K.S.A. 23-101, 23-201, 60-1608, 60-1611, 60-1612 and 60-1616 and K.S.A. 2010 Supp. 60-1610.

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

New Section 1. The marriage contract is to be considered in law as a civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void. The consent of the parties is essential. The marriage ceremony may be regarded either as a civil ceremony or as a religious sacrament, but the marriage relation shall only be entered into, maintained or abrogated as provided by law.

New Sec. 2. The state of Kansas shall not recognize a common-law marriage contract if either party to the marriage contract is under 18 years of age.

New Sec. 3. The property, real and personal, which any person in this state may own at the time of the person's marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to a person by descent, devise or bequest, and the rents, issues, profits or proceeds thereof, or by gift from any person except the person's spouse, shall remain the person's sole and separate property, notwithstanding the marriage, and not be subject to the disposal of the person's spouse or liable for the spouse's debts.

New Sec. 4. An action for divorce shall not be heard until 60 days after the filing of the petition unless the judge enters an order declaring the existence of an emergency, stating the precise nature of the emergency, the substance of the evidence material to the emergency and the names of the witnesses who gave the evidence. A request for an order declaring the existence of an emergency may be contained in a pleading or made by motion. Unless otherwise agreed by the parties, a request for the declaration of an emergency shall not be heard prior to the expiration of the time permitted for the filing of an answer. Unless waived, notice of the hearing requesting the declaration of an emergency shall be given to all parties not in default not less than seven days prior to the date of the hearing. Upon a finding that an emergency exists, the divorce and all issues pertaining thereto may be heard immediately.

New Sec. 5. In an action for divorce, the court shall conduct a pretrial conference or conferences in accordance with K.S.A. 60-216, and amendments thereto, upon request of either party or on the court's own motion.

Any pretrial conference shall be set on a date other than the date of trial and the parties shall be present or available within the courthouse.

New Sec. 6. (a) In an action for divorce, after the filing of the answer or other responsive pleading by the respondent, the court, on its own motion or upon motion of either of the parties, may require both parties to the action to seek marriage counseling if marriage counseling services are available within the judicial district of venue of the action. Neither party shall be required to submit to marriage counseling provided by any religious organization of any particular denomination.

(b) The cost of any counseling authorized by this section may be assessed as costs in the case.

New Sec. 7. (a) If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation agreement may include provisions relating to a parenting plan. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions relating to the legal custody, residency, visitation parenting time, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article.

(b) Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: (1) As prescribed by the agreement; or (2) as subsequently consented to by the parties.

New Sec. 8. (a) Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

(b) A judgment or decree of divorce rendered in any other state or territory of the United States, in conformity with the laws thereof, shall be given full faith and credit in this state, except that, if the respondent in the action, at the time of the judgment or decree, was a resident of this state and did not personally appear or defend the action in the court of that state or territory and that court did not have jurisdiction over the respondent's person, all matters relating to maintenance, property rights of the parties and support of the minor children of the parties shall be subject to inquiry and determination in any proper action or proceeding brought in the courts of this state within two years after the date of the foreign judgment or decree, to the same extent as though the foreign judgment or decree had not been rendered. Nothing in this section shall authorize a court of this state to enter a child custody determination, as defined in K.S.A. 38-1337,

and amendments thereto, contrary to the provisions of the uniform child custody jurisdiction and enforcement act.

New Sec. 9. In an action for divorce, costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

New Sec. 10. Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name. The court shall have jurisdiction to restore the spouse's maiden or former name at or after the time the decree of divorce becomes final. The judicial council shall develop a form which is simple, concise and direct for use with this paragraph.

New Sec. 11. If a party fails to comply with a provision of a decree, temporary order or injunction issued under K.S.A. 60-1601 et seq., and amendments thereto, the obligation of the other party to make payments for support or maintenance or to permit visitation or parenting time is not suspended, but the other party may request by motion that the court grant an appropriate order.

New Sec. 12. (a) All property owned by married persons, including the present value of any vested or unvested military retirement pay, or, for divorce or separate maintenance actions commenced on or after July 1, 1998, professional goodwill to the extent that it is marketable for that particular professional, whether described in section 3, and amendments thereto, or acquired by either spouse after marriage, and whether held individually or by the spouses in some form of co-ownership, such as joint tenancy or tenancy in common, shall become marital property at the time of commencement by one spouse against the other of an action in which a final decree is entered for divorce, separate maintenance, or annulment.

(b) Each spouse has a common ownership in marital property which vests at the time of commencement of such action, the extent of the vested interest to be determined and finalized by the court, pursuant to section 13, and amendments thereto.

New Sec. 13. (a) The decree shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: (1) A division of the property in kind; (2) awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or (3) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale.

(b) Upon request, the trial court shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing or trial as the facts and circumstances of the case may dictate. The trial court may consider evidence regarding changes in value of various assets before and after the valuation date in making the division of property. In dividing

defined-contribution types of retirement and pension plans, the court shall allocate profits and losses on the nonparticipant's portion until date of distribution to that nonparticipant.

(c) In making the division of property the court shall consider: (1) The age of the parties; (2) the duration of the marriage; (3) the property owned by the parties; (4) their present and future earning capacities; (5) the time, source and manner of acquisition of property; (6) family ties and obligations; (7) the allowance of maintenance or lack thereof; (8) dissipation of assets; (9) the tax consequences of the property division upon the respective economic circumstances of the parties; and (10) such other factors as the court considers necessary to make a just and reasonable division of property.

(d) The decree shall provide for any changes in beneficiary designation on: (1) Any insurance or annuity policy that is owned by the parties, or in the case of group life insurance policies, under which either of the parties is a covered person; (2) any trust instrument under which one party is the grantor or holds a power of appointment over part or all of the trust assets, that may be exercised in favor of either party; or (3) any transfer on death or payable on death account under which one or both of the parties are owners or beneficiaries.

Nothing in this section shall relieve the parties of the obligation to effectuate any change in beneficiary designation by the filing of such change with the insurer or issuer in accordance with the terms of such policy.

New Sec. 14. (a) Any decree of divorce or separate maintenance may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances.

(b) Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis.

(c) The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree.

New Sec. 15. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree.

New Sec. 16. The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the

stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months.

New Sec. 17. (a) Except for good cause shown, every order requiring payment of maintenance under this section shall require that the maintenance be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct maintenance payments to the obligee and not pay through the central unit shall constitute good cause.

(b) If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has made a determination concerning the manner of payment of child support, then maintenance payments shall be paid in the same manner.

New Sec. 18. The court shall determine custody or residency of a child in accordance with the best interests of the child.

New Sec. 19. If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

New Sec. 20. In determining the issue of child custody, residency and parenting time, the court shall consider all relevant factors, including but not limited to:

(a) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;

(b) the desires of the child's parents as to custody or residency;

(c) the desires of the child as to the child's custody or residency;

(d) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;

(e) the child's adjustment to the child's home, school and community;

(f) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;

(g) evidence of spousal abuse;

(h) whether a parent is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law;

(i) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(j) whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; and

(k) whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

New Sec. 21. Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

New Sec. 22. There shall be a rebuttable presumption that it is not in the best interest of the child to have custody or residency granted to a parent who: (a) Is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; or

(b) is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

New Sec. 23. Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall provide one of the following legal custody arrangements, in the order of preference: (a) Joint legal custody. The court may order the joint legal custody of a child with both parties. In that event, the parties shall have equal rights to make decisions in the best interests of the child.

(b) Sole legal custody. The court may order the sole legal custody of a child with one of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include on the record specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent shall not deprive the other parent of access to infor-

mation regarding the child unless the court shall so order, stating the reasons for that determination.

New Sec. 24. After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:

(a) Residency. The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

(b) Divided residency. In an exceptional case, the court may order a residential arrangement in which one or more children reside with each parent and have parenting time with the other.

(c) Nonparental residency. If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2010 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds by written order that:

(1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in the home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-2244, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county

or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 2010 Supp. 38-2234, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the revised Kansas code for care of children shall be binding and shall supersede any order under this section.

New Sec. 25. (a) A parent is entitled to reasonable parenting time unless the court finds, after a hearing, that the exercise of parenting time would seriously endanger the child's physical, mental, moral or emotional health.

(b) An order granting visitation rights or parenting time pursuant to this section may be enforced in accordance with the uniform child custody jurisdiction and enforcement act, or K.S.A. 23-701, and amendments thereto.

(c) The court may order exchange or visitation to take place at a child exchange and visitation center, as established in K.S.A. 75-720, and amendments thereto.

New Sec. 26. (a) Subject to the provisions of the uniform child custody jurisdiction and enforcement act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown, but no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 15 days of the date that a party requests a hearing whether to vacate or modify the order.

(b) The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 2010 Supp. 60-235, and amendments thereto.

New Sec. 27. Motions to modify legal custody, residency, visitation rights or parenting time in proceedings where support obligations are enforced under part D of title IV of the federal social security act (42 USC § 651 et seq.), as amended, shall be considered proceedings in connection with the administration of the title IV-D program for the sole purpose of disclosing information necessary to obtain service of process on the parent with physical custody of the child.

New Sec. 28. (a) The court may modify an order granting or denying parenting time or visitation rights whenever modification would serve the best interests of the child.

(b) Repeated unreasonable denial of or interference with visitation rights or parenting time granted pursuant to this section may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, visitation or parenting time.

(c) Any party may petition the court to modify an order granting visitation rights or parenting time to require that the exchange or transfer of children for visitation or parenting time take place at a child exchange and visitation center, as established in K.S.A. 75-720, and amendments thereto. The court may modify an order granting visitation whenever modification would serve the best interests of the child.

New Sec. 29. (a) Grandparents and stepparents may be granted visitation rights.

(b) The court may modify an order granting or denying parenting time or visitation rights whenever modification would serve the best interests of the child.

(c) Repeated unreasonable denial of or interference with visitation rights or parenting time granted pursuant to this section may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, visitation or parenting time.

(d) (1) The court may order exchange or visitation to take place at a child exchange and visitation center, as established in K.S.A. 75-720, and amendments thereto.

(2) Any party may petition the court to modify an order granting visitation rights or parenting time to require that the exchange or transfer of children for visitation or parenting time take place at a child exchange and visitation center, as established in K.S.A. 75-720, and amendments thereto. The court may modify an order granting visitation whenever modification would serve the best interests of the child.

New Sec. 30. (a) In any action for divorce or separate maintenance the court shall make provisions for the support and education of the minor children.

(b) Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless:

(1) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age;

(2) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or

(3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case

the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (b)(3), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 12-year through 18-year old children. For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED).

(c) Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (b)(3), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (b)(3).

New Sec. 31. In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child.

New Sec. 32. The court may order that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage.

New Sec. 33. Except for good cause shown, every order requiring payment of child support under this section shall require that the support be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct child support payments to the obligee and not pay through the central unit shall constitute good cause, unless the court finds the agreement is not in the best interest of the child or children. The obligor shall file such written agreement with the court. The obligor shall maintain written evidence of the payment of the support obligation and, at least annually, shall provide such evidence to the court and the obligee.

New Sec. 34. (a) The court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown.

(b) The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.

New Sec. 35. If the divorce decree of the parties provides for an abatement of child support during any period provided in such decree, the child support such nonresidential parent owes for such period shall abate during such period of time, except that if the residential parent shows that the criteria for the abatement has not been satisfied there shall not be an abatement of such child support.

New Sec. 36. An order granting visitation rights or parenting time pursuant to this section may be enforced in accordance with the uniform child custody jurisdiction and enforcement act, or K.S.A. 23-701, and amendments thereto.

Sec. 37. K.S.A. 2010 Supp. 12-5005 is hereby amended to read as follows: 12-5005. (a) Every retired member of a local police or fire pension plan and every active member of the plan who is entitled to make an election to become a member of the Kansas police and firemen's retirement system pursuant to K.S.A. 12-5003 or 74-4955, and amendments thereto, and who does not so elect shall become a special member of the Kansas police and firemen's retirement system on the entry date of the city which is affiliating with the Kansas police and firemen's retirement system with regard to all active members and retired members of the local police or fire pension plan under K.S.A. 74-4954, and amendments thereto.

(b) Beginning with the first payroll for services as a policeman or fireman after an active member of a local police or fire pension plan becomes a special member of the Kansas police and firemen's retirement system under this section, the city shall deduct from the compensation of each special member the greater of 7% or the percentage rate of contribution which the active member was required to contribute to the local police or fire pension plan preceding the entry date of the city, as employee contributions. The deductions shall be remitted quarterly, or as the board of trustees otherwise provides, to the executive secretary of the Kansas public employees retirement system for credit to the Kansas public employees retirement fund. All deductions shall be credited to the special members' individual accounts beginning on July 1 of the year following the entry date

of the city for purposes of all active and retired members of the local police and fire pension plan.

(c) Except as otherwise provided in this act, each active member of a local police or fire pension plan who becomes a special member of the Kansas police and firemen's retirement system under this section shall be subject to the provisions of and entitled to pensions and other benefits, rights and privileges to the extent provided under the local police and fire pension plan on the day immediately preceding the entry date of the city which is affiliating with the Kansas police and firemen's retirement system with regard to all active members and retired members of the plan.

(d) Each retired member of a local police or fire pension plan who becomes a special member of the Kansas police and firemen's retirement system under this section shall be entitled to receive from the Kansas police and firemen's retirement system a pension or any other benefit to the same extent and subject to the same conditions as existed under the local police or fire pension plan on the day immediately preceding the entry date of the city which is affiliating with the system with regard to all active members and retired members of the plan under K.S.A. 74-4954, and amendments thereto, except no retired special member shall be appointed in or to a position or office for which compensation is paid for service to the same state agency, or the same police or fire department of a city, township, special district or county or the same sheriff's office of a county. This subsection shall not apply to service rendered by a retiree as a juror, as a witness in any legal proceeding or action, as an election board judge or clerk or in any other office or position of a similar nature. However, all such benefits paid shall be paid in accordance with the applicable requirements under section 401 (a)(9) of the federal internal revenue code of 1986 as applicable to governmental plans, as in effect on July 1, 2008, and the regulations thereto, as in effect on July 1, 2008, and in accordance with the provisions of K.S.A. 74-49,123, and amendments thereto. Any retiree employed by a participating employer in the Kansas police and firemen's retirement system shall not make contributions or receive additional credit under the system for that service. This subsection, except as it relates to contributions and additional credit, shall not apply to the employment of any retiree by the state of Kansas, or any county, city, township, special district, political subdivision or instrumentality of any one or several of the aforementioned for a period of not exceeding 30 days in any one calendar year.

(e) (1) Every pension or other benefit received by any special member pursuant to subsection (c) or (d) is hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body of this state; shall not be subject to execution, garnishment, attachment or any other process or claim whatsoever, except such pension or benefit or any accumulated contributions due and owing from the system to such special member are subject to decrees for child support or maintenance, or

both, as provided in ~~K.S.A. 60-1610~~ *sections 7, 9, 10, 13 through 24, 26 and 30 through 35*, and amendments thereto; and shall be unassignable, except that within 30 days after the death of a retirant the lump-sum death benefit payable to a retirant pursuant to the provisions of K.S.A. 74-4989, and amendments thereto, may be assignable to a funeral establishment providing funeral services to such retirant by the beneficiary of such retirant. The Kansas public employees retirement system shall not be a party to any action under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and is subject to orders from such actions issued by the district court of the county where such action was filed. Such orders from such actions shall specify either a specific amount or specific percentage of the amount of the pension or benefit or any accumulated contributions due and owing from the system to be distributed by the system pursuant to this act.

(2) Every pension or other benefit received by any special member pursuant to subsection (c) or (d) is hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body of this state; shall not be subject to execution, garnishment, attachment or any other process or claim whatsoever, except such pension or benefit or any accumulated contributions due and owing from the system to such special members are subject to claims of an alternate payee under a qualified domestic relations order. As used in this subsection, the terms “alternate payee” and “qualified domestic relations order” shall have the meaning ascribed to them in section 414(p) of the federal internal revenue code of 1986, as in effect on July 1, 2008. The provisions of this subsection shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994.

(f) (1) Subject to the provisions of K.S.A. 74-49,123, and amendments thereto, each participating employer, pursuant to the provisions of section 414(h)(2) of the federal internal revenue code of 1986, as in effect on July 1, 2008, shall pick up and pay the contributions which would otherwise be payable by members as prescribed in subsection (b) commencing with the third quarter of 1984. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member’s compensation.

(2) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member’s compensation equal to the amount of the member’s contributions picked up by the employer, provided that such deduction shall not reduce the member’s compensation for purposes of computing benefits under K.S.A. 12-5001 to 12-5007, inclusive, and amendments thereto.

(3) Member contributions picked up by the employer shall be remitted quarterly, or as the board may otherwise provide, to the executive secretary for credit to the Kansas public employees retirement fund. Such contribu-

tions shall be credited to a separate account within the member's individual account so that amounts contributed by the member commencing with the third quarter of 1984 may be distinguished from the member contributions picked up by the employer. Interest shall be added annually to members' individual accounts.

Sec. 38. K.S.A. 20-164 is hereby amended to read as follows: 20-164.

(a) The supreme court shall establish by rule an expedited judicial process which shall be used in the establishment, modification and enforcement of orders of support pursuant to the Kansas parentage act; K.S.A. 23-451 et seq., or 39-718a, *prior to their repeal*; ~~39-755, 60-1610, and amendments thereto, or K.S.A. 23-4,105 through 23-4,118, 23-4,125 through 23-4,137, 39-718b or 39-755, and amendments thereto; K.S.A. 2007 2010 Supp. 38-2243, 38-2244 or 38-2255, and amendments thereto; or K.S.A. 23-4,105 through 23-4,118 and amendments thereto; or K.S.A. 23-4,125 through 23-4,137, and amendments thereto~~ or sections 7, 9, 10, 13 through 24, 26 and 30 through 35, and amendments thereto.

(b) The supreme court shall establish by rule an expedited judicial process for the enforcement of court orders granting visitation rights or parenting time.

Sec. 39. K.S.A. 20-165 is hereby amended to read as follows: 20-165.

The supreme court shall adopt rules establishing guidelines for the amount of child support to be ordered in any action in this state including, but not limited to, K.S.A. 38-1121 *and*; 39-755 and ~~60-1610~~ sections 7, 9, 10, 13 through 24, 26 and 30 through 35, and amendments thereto. In adopting such rules, the court shall consider the criteria in K.S.A. 38-1121, *and amendments thereto*.

Sec. 40. K.S.A. 20-302b is hereby amended to read as follows: 20-

302b. (a) A district magistrate judge shall have the jurisdiction and power, in any case in which a violation of the laws of the state is charged, to conduct the trial of traffic infractions, cigarette or tobacco infractions or misdemeanor charges, to conduct the preliminary examination of felony charges and to hear felony arraignments subject to assignment pursuant to K.S.A. 20-329, and amendments thereto. Except as otherwise provided, in civil cases, a district magistrate judge shall have jurisdiction over actions filed under the code of civil procedure for limited actions, K.S.A. 61-2801 et seq., and amendments thereto, and concurrent jurisdiction, powers and duties with a district judge. Except as otherwise specifically provided in subsection (b), a district magistrate judge shall not have jurisdiction or cognizance over the following actions:

(1) Any action, other than an action seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the provision of goods, services or money, in which the amount in controversy, exclusive of interests and costs, exceeds \$10,000. The provisions of this subsection shall not apply to actions filed under the code of civil procedure for limited

actions, K.S.A. 61-2801 et seq., and amendments thereto. In actions of replevin, the affidavit in replevin or the verified petition fixing the value of the property shall govern the jurisdiction. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code or to issue support orders as provided by paragraph (6) of this subsection;

(2) actions against any officers of the state, or any subdivisions thereof, for misconduct in office;

(3) actions for specific performance of contracts for real estate;

(4) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established. Nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in the acts contained in K.S.A. 61-3801 through 61-3808, and amendments thereto. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(5) actions to foreclose real estate mortgages or to establish and fore-close liens on real estate as provided in the acts contained in article 11 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto;

(6) actions for divorce, separate maintenance or custody of minor children. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to: (A) Except as provided in subsection (e), hear any action pursuant to the Kansas code for care of children or the revised Kansas juvenile justice code; (B) establish, modify or enforce orders of support, including, but not limited to, orders of support pursuant to the Kansas parentage act, K.S.A. ~~23-4,105 through 23-4,118, 23-4,125 through 23-4,137, 23-9,101 et seq., 39-718b, or 39-755 or 60-1610 or K.S.A. 23-4,105 through 23-4,118, 23-4,125 through 23-4,137, or K.S.A. 2007 2010 Supp. 38-2338, 38-2339 or 38-2350 or sections 7, 9, 10, 13 through 24, 26 and 30 through 35, and amendments thereto;~~ or (C) enforce orders granting visitation rights or parenting time;

(7) habeas corpus;

(8) receiverships;

(9) change of name;

(10) declaratory judgments;

(11) mandamus and quo warranto;

(12) injunctions;

(13) class actions;

(14) rights of majority; and

(15) actions pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.

(b) Notwithstanding the provisions of subsection (a), in the absence, disability or disqualification of a district judge, a district magistrate judge may:

(1) Grant a restraining order, as provided in K.S.A. 60-902, and amendments thereto;

(2) appoint a receiver, as provided in K.S.A. 60-1301, and amendments thereto; and

(3) make any order authorized by K.S.A. 60-1607, and amendments thereto.

(c) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined *de novo* by a district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge.

(d) Except as provided in subsection (e), upon motion of a party, the chief judge may reassign an action from a district magistrate judge to a district judge.

(e) Upon motion of a party for a petition or motion filed under the Kansas code for care of children requesting termination of parental rights pursuant to K.S.A. ~~2007~~ 2010 Supp. 38-2361 through 38-2367, and amendments thereto, the chief judge shall reassign such action from a district magistrate judge to a district judge.

Sec. 41. K.S.A. 23-4,118 is hereby amended to read as follows: 23-4,118. (a) The department of social and rehabilitation services, the title IV-D agency for the state, shall maintain a central unit for collection and disbursement of support payments to meet the requirements of title IV-D and this section. Such central unit shall be known as the Kansas payment center. The name "Kansas payment center" shall be reserved for use by the state of Kansas for the functions of the central unit and shall not be used by any entity without the consent of the secretary of social and rehabilitation services.

The department may contract with another entity for development, enhancement or operation, in whole or in part, of such central unit. The Kansas payment center shall be subject to the following conditions and limitations:

(1) The Kansas payment center shall be subject to the Kansas supreme court rule concerning official child support and maintenance records established pursuant to subsection (c).

(2) No contract shall include provisions allowing the contractor to be paid, in whole or in part, on the basis of an amount per phone call received by the center nor allowing the contractor to be paid an amount per check issued for checks that were issued in error by the center. Nothing in this paragraph shall be construed to prevent the secretary of social and rehabilitation services from compensating on the basis of an amount per phone call any contractor that does not process receipts or disbursements under this section.

(3) Any contract for processing receipts or disbursements under this section shall include penalty provisions for noncompliance with federal regulations relating to the timeliness of collections and disbursements and shall include a monetary penalty of \$100 for each erroneous transaction, whether related to collection or disbursement. Penalties shall be collected as and when assessed. Of the penalty, \$25 shall be allocated to the obligee and \$75 shall be allocated to the department of social and rehabilitation services.

(4) Designees of the secretary of social and rehabilitation services and designees of the office of judicial administration shall have full access to all data, subject to the provisions of title IV-D of the federal social security act, 42 U.S.C. § 651 et seq. Designees of the secretary of social and rehabilitation services, all district court clerks and court trustees shall have access to records of the Kansas payment center sufficient to allow them to assist in the process of matching support payments to the correct accounts.

(5) The Kansas payment center shall provide sufficient customer service staff during regular business hours. Obligors and obligees shall be provided 24-hour access to information about the status of receipts and disbursements, including, but not limited to, date of receipt by the center, date of processing by the center and date of disbursement to the obligee.

(b) The Kansas payment center shall have, by operation of law, a limited power of attorney to perform the specific act of endorsing and negotiating all drafts, checks, money orders or other negotiable instruments representing support payments received by the center. Nothing in this subsection shall be construed as affecting the property rights or interests of any person in such negotiable instruments. The provisions of this subsection shall apply to any negotiable instrument received by the center on or after October 1, 2000.

(c) The Kansas supreme court, by court rule, shall establish the procedure for the creation, maintenance and correction of official child support and maintenance records for use as official court records.

(d) The department shall collaborate with the Kansas supreme court to maintain the Kansas payment center, which shall include all support payments subject to the requirements of title IV-D of the federal social security act, 42 U.S.C. § 651 et seq., and, except as specifically directed otherwise by the court pursuant to ~~K.S.A. 60-1610 sections 7, 9, 10, 13 through 24, 26 and 30 through 35~~, and amendments thereto, all other support payments due under a court order entered in this state.

(e) Any provision in any support order or income withholding order entered in this state which requires remittance of support payments to the clerk of the district court or district court trustee shall be deemed to require remittance of support payments to the Kansas payment center, regardless of the date the support or income withholding order was entered.

(f) (1) Except as otherwise provided in this subsection, payments received by the Kansas payment center which cannot be matched to any account nor

returned to the payor shall be transferred to the state treasurer in accordance with the unclaimed property act.

(2) Except as otherwise provided in this subsection, disbursements which cannot be delivered to the payee after a good faith effort to locate the payee shall be transferred to the state treasurer in accordance with the unclaimed property act.

(3) To the extent that the secretary of social and rehabilitation services would be required to treat as federal program income any amount transferable to the state treasurer pursuant to this subsection or the unclaimed property act, such amount shall not be presumed abandoned but shall be held by the secretary until the amount may be delivered to the true owner. The secretary and the state treasurer shall collaborate on procedures for locating the true owner and confirming claims to amounts so held.

Sec. 42. K.S.A. 60-1606 is hereby amended to read as follows: 60-1606. The court shall grant a requested decree of divorce, separate maintenance or annulment unless the granting of the decree is discretionary under this act or unless the court finds that there are no grounds for the requested alteration of marital status. If a decree of divorce, separate maintenance or annulment is denied for lack of grounds, the court shall nevertheless, if application is made by one of the parties, make the orders authorized by ~~subsections (a) and (b) of K.S.A. 60-1610~~ *sections 1 and 2*, and amendments thereto.

Sec. 43. K.S.A. 60-1613 is hereby amended to read as follows: 60-1613. (a) The provisions of K.S.A. 23-4,107, *and amendments thereto*, shall apply to all orders of support issued under ~~K.S.A. 60-1610~~ *sections 7, 9, 10, 13 through 24, 26 and 30 through 35*, and amendments thereto.

(b) Any assignment previously ordered under this section remains binding on the employer, trustee or other payor of the earnings or income. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the district court trustee or the person specified in the order. The payor may withhold from the earnings or trust income payable to the person obliged to pay support a cost recovery fee of \$5 for each payment made or \$10 for each month for which payment is made, whichever is less. An employer shall not discharge or otherwise discipline an employee as a result of an assignment previously ordered under this section.

Sec. 44. K.S.A. 60-1620 is hereby amended to read as follows: 60-1620. (a) Except as provided in subsection (d), a parent entitled to legal custody or residency of or parenting time with a child pursuant to ~~K.S.A. 60-1610~~ *sections 7, 9, 10, 13 through 24, 26 and 30 through 35*, and amendments thereto, shall give written notice to the other parent not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice

shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time. In determining any motion seeking a modification of a prior order based on change of residence or removal as described in (a), the court shall consider all factors the court deems appropriate including, but not limited to: (1) The effect of the move on the best interests of the child; (2) the effect of the move on any party having rights granted pursuant to ~~K.S.A. 60-1610~~ sections 7, 9, 10, 13 through 24, 26 and 30 through 35, and amendments thereto; and (3) the increased cost the move will impose on any party seeking to exercise rights granted under ~~K.S.A. 60-1610~~ sections 7, 9, 10, 13 through 24, 26 and 30 through 35, and amendments thereto.

(d) A parent entitled to the legal custody or residency of a child pursuant to ~~K.S.A. 60-1610~~ sections 7, 9, 10, 13 through 24, 26 and 30 through 35, and amendments thereto, shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated in which the child is the victim of such crime.

Sec. 45. K.S.A. 2010 Supp. 60-1629 is hereby amended to read as follows: 60-1629. (a) A parent entitled to legal custody of, or residency of, or parenting time with a child pursuant to ~~K.S.A. 60-1610~~ sections 7, 9, 10, 13 through 24, 26 and 30 through 35, and amendments thereto, shall give written notice to the other parent of one or more of the following events when such parent: (1) Is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901; et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; (2) has been convicted of abuse of a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (3) is residing with an individual who is known by the parent to be subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901; et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; or (4) is residing with an individual who is known by the parent to have been convicted of abuse of a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Such notice shall be sent by restricted mail, return

receipt requested, to the last known address of the other parent within 14 days following such event.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) An event described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time.

Sec. 46. K.S.A. 2010 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 provided in ~~K.S.A. 21-3408~~ *subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, battery as provided in ~~K.S.A. 21-3412~~ *subsection (a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, domestic battery as provided in ~~K.S.A. 21-3412a~~ *section 49 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and violation of a protective order as provided in ~~K.S.A. 21-3843~~ *section 149 of chapter 136 of the 2010 Session Laws of Kansas*, 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 provided in ~~subsection (c) of K.S.A. 21-3721~~ *section 94 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and violation of a protective order as provided in ~~K.S.A. 21-3843~~ *section 149 of chapter 136 of the 2010 Session Laws of Kansas*, 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., 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., 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. 60-1610 et seq. sections 7, 9, 10, 13 through 24, 26 and 30 through 35~~, 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. 60-1610 et seq. sections 7, 9, 10, 13 through 24, 26 and 30 through 35~~, or K.S.A. 38-1101 et seq., 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. 60-1610 sections 7, 9, 10, 13 through 24, 26 and 30 through 35~~, 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 preexisting 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, on motion of the plaintiff, such period may be extended for one additional year.

(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 provided in ~~subsection (e) of K.S.A. 21-3721~~ *section 94 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and violation of a protective order as provided in ~~K.S.A. 21-3843~~ *section 149 of chapter 136 of the 2010 Session Laws of Kansas*, 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 provided in ~~K.S.A. 21-3408~~ *subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, battery as provided in ~~K.S.A. 21-3412~~ *subsection (a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, domestic battery as provided in ~~K.S.A. 21-3412a~~ *section 49 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and violation of a protective order as provided in ~~K.S.A. 21-3843~~ *section 149 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 47. K.S.A. 20-164, 20-165, 20-302b, 23-101, 23-201, 23-4, 118, 60-1606, 60-1608, 60-1611, 60-1612, 60-1613, 60-1616 and 60-1620 and K.S.A. 2010 Supp. 12-5005, 60-1610, 60-1629 and 60-3107 are hereby repealed.

Sec. 48. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 7, 2011.

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## CHAPTER 27

### SENATE BILL No. 103

AN ACT concerning elections; pertaining to methods of voting absentee ballots by uniformed and overseas citizens and federal service voters; amending K.S.A. 25-1215 and 25-1218 and K.S.A. 2010 Supp. 25-1216 and repealing the existing sections.

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

Section 1. K.S.A. 25-1215 is hereby amended to read as follows: 25-1215. Every person in federal services who is eligible to register for and is qualified to vote at any general election under the laws of this state and who is absent from his place of residence in this state shall be entitled, as provided in this act, to vote by federal services absentee ballot at any ~~primary or general~~ election held in ~~his~~ *such person's* election district or precinct, notwithstanding any provision of law relating to the registration of qualified voters.

Sec. 2. K.S.A. 2010 Supp. 25-1216 is hereby amended to read as follows: 25-1216. (a) Every person who is qualified and eligible to vote by federal services absentee ballot under the provisions of this act may make application for such ballot to the county election officer of the county of such voter's residence or to the secretary of state. Such application shall be made by postcard application provided for and prescribed in the federal act or on a form to be prescribed by the secretary of state. Any such application shall be valid for any election at which such voter otherwise is entitled to vote between the date of the application through the ~~next two regularly scheduled general elections for national or state office~~ *end of the calendar year*.

(b) If the voter is residing outside the United States or is a member of the United States armed forces or a spouse or dependent of a member of the armed forces and a qualified elector and cannot vote timely by mail, the voter may apply for registration and an absentee ballot by facsimile, *electronic mail or other electronic method authorized by the secretary of state*. The voter may also request that the county election officer transmit to such voter by facsimile, *electronic mail or other electronic method au-*

*thorized by the secretary of state, a ballot, or a second ballot, as the case may be. The voter may then either mail or transmit by facsimile such voter's voted ballot, back to the county election officer. The voter may transmit such voter's ballot back to the county election officer by mail, facsimile, electronic mail or other electronic method authorized by the secretary of state.*

If the voter chooses to transmit the voted ballot to the county election officer by facsimile, *electronic mail or other electronic method authorized by the secretary of state* the transmittal shall contain the following statement: "I understand that by faxing, *emailing or electronically transmitting* my voted ballot I am voluntarily waiving my right to a secret ballot." This statement shall be followed by the voter's signature and the date. Upon receipt of the transmittal, the county election officer shall place the voted ballot along with the signed statement and affidavit in an appropriately marked envelope and seal it. The county election officer and such officer's staff shall take the steps necessary to keep the voted ballots received by facsimile, *electronic mail or other electronic method authorized by the secretary of state* as confidential as practicable.

Sec. 3. K.S.A. 25-1218 is hereby amended to read as follows: 25-1218. (a) The secretary of state shall prescribe the form of official federal services absentee ballots. Such ballots shall provide for voting for all officers, ~~other than precinct committeeman and committeewoman, for whom the voter would otherwise be entitled to vote and shall also provide for voting on any proposed amendment to the constitution of the state of Kansas and any other proposition or question which is to be submitted to a vote of the qualified electors of the state at large and on any proposition or question for which the voter would otherwise be entitled to vote.~~ Such ballots shall be uniform in size and in style of type, and the type and paper shall conform generally to that used for the regular official ballots. The respective county election officers shall cause to be prepared and printed such numbers of ballots as may be appropriate for carrying out the provisions of this act.

(b) Such ballots shall contain the title of each office to be voted for, followed by the name and address of each nominated candidate for each office, the party or independent body nominating such candidate, a designation of the political subdivision to be represented, and a blank space for writing in the name of any other person for whom the voter desires to vote; ~~except that.~~ *Except for precinct committee man and committee woman,* no such blank space shall be printed on the primary ballot following the title of any office for which there is a candidate.

(c) *Any person who is qualified to vote under this act shall be allowed to submit a federal write-in absentee ballot as prescribed pursuant to the federal act if the:*

- (1) *Person has previously submitted a proper application for a ballot;*
- (2) *ballot was not received; and*

(3) *person does not submit the federal write-in absentee ballot from a location within the United States.*

Sec. 4. K.S.A. 25-1215 and 25-1218 and K.S.A. 2010 Supp. 25-1216 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 7, 2011.

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## CHAPTER 28

### SENATE BILL No. 119

AN ACT concerning rail service improvement program loans and grants; amending K.S.A. 2010 Supp. 75-5048 and 75-5049 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 75-5048 is hereby amended to read as follows: 75-5048. (a) The secretary of transportation is hereby authorized to make loans or grants to a qualified entity for the purpose of facilitating the financing, acquisition or rehabilitation of railroads and rolling stock in the state of Kansas.

(b) Such loans or grants shall be made upon such terms and conditions as the secretary of transportation may deem appropriate, and such loans or grants shall be made from funds credited to the rail service improvement fund.

(c) The rail service improvement fund is hereby established in the state treasury which shall be for the purpose of facilitating the financing, acquisition and rehabilitation of railroads pursuant to subsection (a) of this section and for the refinancing thereof. The secretary of transportation shall administer the rail service improvement fund. All expenditures from the rail service improvement 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 transportation or by a person or persons designated by the secretary.

(d) All moneys received from the federal government ~~under the local rail freight assistance program (49 U.S.C. 1654), pursuant to K.S.A. 75-5026, 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 rail service improvement fund.

(e) The management and investment of the rail service improvement fund shall be in accordance with K.S.A. 68-2324, and amendments thereto.

Notwithstanding anything to the contrary, all interest or other income of the investments, after payment of any management fees, shall be considered income of the rail service improvement fund.

(f) On July 1, 2013, and each July 1 thereafter, the director of accounts and reports shall transfer \$5,000,000 from the state highway fund to the rail service improvement fund.

(g) The secretary of transportation is hereby authorized to transfer moneys from the state highway fund to the rail service improvement fund or from the rail service improvement fund to the state highway fund. In transferring moneys from the rail service improvement fund, the secretary of transportation shall not diminish the moneys transferred under subsection (f).

(h) “Qualified entity” means any interstate commerce commission certificated railroad, a port authority established in accordance with Kansas laws, or any entity meeting the rules and regulations established by K.S.A. 75-5050, and amendments thereto.

Sec. 2. K.S.A. 2010 Supp. 75-5049 is hereby amended to read as follows: 75-5049. The secretary in making any loan *or grants* pursuant to K.S.A. 75-5048, and amendments thereto, may:

(a) Stipulate minimum operating standards for rail lines designed to achieve reasonable transportation service for shippers and to achieve best use of funds invested in rail line rehabilitation;

(b) require a portion of the total assistance for improving a rail line to be loaned to the railroad by rail users and require the railroad to reimburse rail users for any loan on the basis of use of the line and the revenues produced when the line has been improved;

(c) determine the terms and conditions under which all or any portion of funds loaned shall be repaid to the department of transportation by the railroads. Reimbursement may be made as a portion of the increased revenue derived from the improved rail line. Any reimbursement received by the department pursuant to this subsection 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 rail service improvement fund and shall be appropriated exclusively for the rehabilitation of other rail lines in the state pursuant to K.S.A. 75-5048, and amendments thereto.

(d) *The secretary may enter into loan or grant agreements with any entity which is a qualified entity pursuant to K.S.A. 75-5048, and amendments thereto, for payment of all or part of a project’s costs. Any governmental unit that is a qualified entity and in coordination with the railroad providing service, may enter into such an agreement and may accept such assistance when so authorized by its governing body.*

(e) *Upon the failure of a governmental unit, which is a qualified entity,*

*to meet the repayment terms and conditions of a loan agreement under this section, the secretary may order the state treasurer to pay to the rail service improvement fund the portion of such governmental unit's share of the special city and county highway fund as may be necessary to meet the terms of the loan agreement.*

*(f) Any loans received by a governmental unit under the provisions of K.S.A. 75-5048 through 75-5050, and amendments thereto, shall be construed to be bonds for the purpose of K.S.A. 10-1116, and amendments thereto, and the amount of such loans shall not be included within any limitation on the bonded indebtedness of the governmental unit.*

Sec. 3. K.S.A. 2010 Supp. 75-5048 and 75-5049 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 7, 2011.

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## CHAPTER 29

### SENATE BILL No. 122\*

AN ACT concerning the Kansas water office; relating to easements on state property for conservation projects.

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

Section 1. (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 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. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 7, 2011.

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## CHAPTER 30

### HOUSE BILL No. 2339

(Amended by Chapters 84, 90, 91, 100, 105 and 114)

AN ACT concerning crimes, punishment and criminal procedure; amending K.S.A. 8-254, 8-285, 8-1450, 9-2004, 19-101d, 19-27,139, 19-4804, 20-369, 22-2411, 22-2615, 22-2307, 22-2908, 22-3008, 22-3102, 22-3414, 22-3415, 22-3427, as amended by section 306 of chapter 136 of the 2010 Session Laws of Kansas, 22-3429, 22-3436, 22-3439, 22-3602, 22-3701, 22-3725, 22-4807a, 34-228, 34-249a, 36-602, 38-1132, 39-720, 39-785, 41-206, 44-1039, 46-920, 47-653c, 47-1715, 50-618, 50-648, 50-651, 50-653, 57-227, 58-2573, 60-523, 60-1620, 60-2610, 60-4111, 60-4402, 60-4404, 60-4405, 65-444, 65-1120, 65-2006, 65-2859, 65-28,108, 65-28a05, 65-4209, 65-6703, 65-6721, 68-422a, 74-7325, 74-7333, 75-4004, 75-5233 and 75-5269; K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas; K.S.A. 2010 Supp. 8-116a, 8-255, 8-262, 8-287, 8-2,144, 8-1013, 8-1102, 8-2106, 8-2117, 8-2410, 12-16,119, 12-4104, 12-4516, 12-4516a, 12-4517, 17-12a508, 20-2207, 20-2208, 20-3207, 21-3212a, 21-3220, 21-3221, 21-36a03, 22-2310, 22-2410, 22-2512, 22-2802, 22-2901, 22-2909, 22-3212, 22-3303, 22-3426, 22-3716, 22-3717, 22-3727, 22-3727a, 22-4614, 22-4616, 22-4617, 22-4902, 22-4906, 28-177, 32-1013, 32-1047, 32-1063, 36-604, 38-2202, 38-2255, 38-2271, 38-2302, 38-2303, 38-2309, 38-2310, 38-2312, 38-2313, 38-2326, 38-2331, 38-2355, 38-2356, 38-2361, 38-2364, 38-2365, 38-2371, 38-2377, 39-970, 40-252, 40-2,118, 40-1702, 40-3213, 41-346, 41-2611, 41-2708, 41-2905, 41-2906, 44-5,125, 44-706, 44-719, 44-1131, 45-217, 45-221, 45-230, 47-1706, 47-1707, 58-3043, 58-3068, 58-4505, 59-2132, 59-2948, 59-29a02, 59-29a07, 59-29a14, 59-29b48, 60-312, 60-455, 60-1610, 60-1629, 60-3107, 60-31a06, 60-4104, 60-4105, 60-4113, 60-4119, 60-4403, 60-5001, 65-448, 65-516, 65-1436, 65-1627, 65-2434, 65-2836, 65-5117, 66-2304, 72-1397, 72-5445, 74-4924, 74-5602, 74-7301, 74-7305, 74-8702, 74-9101, 75-452, 75-453, 75-755, 75-7b01, 75-7b13, 75-7c03, 75-7c04, 75-7c05, 75-7c09, 75-7c17, 75-7c19, 75-7c26, 75-1508, 75-4362, 75-5133, 75-5218, 75-5291, 75-52,127, 75-52,144, 75-52,148 and 76-11a13; and Sections 2, 11, 21, 22, 23, 24, 25, 26, 28, 33, 34, 35, 39, 47, 48, 49, 52, 53, 56, 57, 60, 61, 62, 64, 67, 68, 70, 74, 76, 78, 79, 88, 96, 98, 105, 136, 139, 141, 147, 158, 159, 164, 177, 183, 186, 187, 188, 189, 190, 192, 194, 198, 209, 212, 223, 225, 228, 230, 232, 242, 243, 244,

247, 248, 254, 257, 259, 260, 262, 266, 267, 268, 269, 271, 285, 291, 292, 294, 298, 299 and 302 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 22-3220, K.S.A. 2009 Supp. 21-3110, as amended by section 5 of chapter 101 of the 2010 Session Laws of Kansas, 21-3412a, as amended by section 6 of chapter 101 of the 2010 Session Laws of Kansas, 21-4603d, as amended by section 7 of chapter 101 of the 2010 Session Laws of Kansas, 21-4704, as amended by section 6 of chapter 147 of the 2010 Session Laws of Kansas; K.S.A. 2010 Supp. 8-1567, 21-3105, 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218, 21-3301, 21-3302, 21-3303, 21-3437, 21-3446, 21-3447, 21-3449, 21-3450, 21-3502, 21-3504, 21-3506, 21-3513, 21-3516, 21-3520, 21-3608a, 21-3826, 21-4018, 21-4201, 21-4203, 21-4204, 21-4218, 21-4226, 21-4311, 21-4316, 21-4603d, 21-4610a, 21-4619, 21-4623, 21-4624, 21-4632, 21-4634, 21-4642, 21-4643, 21-4704, 21-4710, 21-4718, 22-3212a, 22-3717c, 38-2255a and 65-516b and repealing the existing sections.

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

New Section 1. (a) Maintenance of a common nuisance is maintaining or assisting in the maintenance of a common nuisance as described by K.S.A. 22-3901, and amendments thereto.

(b) Maintenance of a common nuisance is a class A, nonperson misdemeanor. In addition to the sentence authorized by law, the defendant may be fined in an amount not exceeding \$25,000.

(c) This section shall be part of and supplemental to article 39 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 2. K.S.A. 2010 Supp. 21-3212a is hereby amended to read as follows: 21-3212a. (a) For the purposes of K.S.A. 21-3211 and 21-3212, *prior to their repeal, or sections 21 and 22 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:

(1) The person against whom the force is used, at the time the force is used:

(A) Is unlawfully or forcefully entering, or has unlawfully or forcefully entered, and is present within, the dwelling, place of work or occupied vehicle of the person using force; or

(B) Has removed or is attempting to remove another person against such other person's will from the dwelling, place of work or occupied vehicle of the person using force; and

(2) The person using force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.

(b) The presumption set forth in subsection (a) does not apply if, at the time the force is used:

(1) The person against whom the force is used has a right to be in, or is a lawful resident of, the dwelling, place of work or occupied vehicle of the person using force, and is not subject to any order listed in K.S.A. 21-3843, *prior to its repeal, or section 149 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, that would prohibit such person's presence in the property;

(2) the person sought to be removed is a child, grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the force is used;

(3) the person using force is engaged in the commission of a crime, attempting to escape from a location where a crime has been committed, or is using the dwelling, place of work or occupied vehicle to further the commission of a crime; or

(4) the person against whom the force is used is a law enforcement officer who has entered or is attempting to enter a dwelling, place of work or occupied vehicle in the lawful performance of such officer's lawful duties, and the person using force knows or reasonably should know that the person who has entered or is attempting to enter is a law enforcement officer.

Sec. 3. K.S.A. 2010 Supp. 21-3220 is hereby amended to read as follows: 21-3220. The provisions of ~~this act~~ *sections 21 through 28 of chapter 136 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 21-3212a, 21-3220 and 21-3221, and amendments thereto*, are to be construed and applied retroactively.

Sec. 4. K.S.A. 2010 Supp. 21-3221 is hereby amended to read as follows: 21-3221. (a) As used in article 32 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, sections 13 through 19, and sections 21 through 32 of chapter 136 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 21-3212a, 21-3220 and 21-3221*, and amendments thereto:

(1) "Use of force" means any or all of the following directed at or upon another person or thing: (A) Words or actions that reasonably convey the threat of force, including threats to cause death or great bodily harm to a person; (B) the presentation or display of the means of force; or (C) the application of physical force, including by a weapon or through the actions of another.

(2) "Use of deadly force" means the application of any physical force described in paragraph (1) which is likely to cause death or great bodily harm to a person. Any threat to cause death or great bodily harm, including, but not limited to, by the display or production of a weapon, shall not constitute use of deadly force, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of such actor or another or to affect a lawful arrest.

(b) An actor who threatens deadly force as described in subsection (a)(1) shall be subject to the determination in subsection (a) of K.S.A. 21-3211, *prior to its repeal, or subsection (a) of section 21 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and not to the determination in subsection (b) of K.S.A. 21-3211, *prior to its repeal, or subsection (b) of section 21 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 5. Section 2 of chapter 136 of the 2010 Session Laws of Kansas

is hereby amended to read as follows: Sec. 2. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

(a) A felony is a crime punishable by death or by imprisonment in any state correctional institution or a crime which is defined as a felony by law.

(b) A traffic infraction is a violation of any of the statutory provisions listed in subsection (c) of K.S.A. 8-2118, and amendments thereto.

(c) A cigarette or tobacco infraction is a violation of *K.S.A. 21-4009 through 21-4014* and subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto.

(d) All other crimes are misdemeanors.

Sec. 6. Section 11 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended as follows: Sec. 11. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(a) “Act” includes a failure or omission to take action.

(b) “Another” means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(c) “Conduct” means an act or a series of acts, and the accompanying mental state.

(d) “Conviction” includes a judgment of guilt entered upon a plea of guilty.

(e) “Deception” means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(f) “Deprive permanently” means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(g) “Distribute” means the actual or constructive transfer from one person to another of some item whether or not there is an agency relationship. “Distribute” includes, but is not limited to, sale, offer for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended

to cause some item to be transferred from one person to another. “Distribute” does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(h) “DNA” means deoxyribonucleic acid.

(i) “*Domestic violence*” means an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. For the purposes of this definition:

(1) “*Dating relationship*” means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(2) “*Family or household member*” means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(j) “*Domestic violence offense*” means any crime committed whereby the underlying factual basis includes an act of domestic violence.

(k) “*Dwelling*” means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

(l) “*Expungement*” means the sealing of records such that the records are unavailable except to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701 et seq., and amendments thereto, and except as provided in this act.

(m) “*Firearm*” means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

(n) “*Forcible felony*” includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

(o) “*Intent to defraud*” means an intention to deceive another person,

and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

(n) (p) “Law enforcement officer” means:

(1) Any person who by virtue of such person’s office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(2) any officer of the Kansas department of corrections or, for the purposes of ~~sections~~ *section 47* and subsection (d) of *section 48 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, any employee of the Kansas department of corrections; or

(3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

(o) (q) “Obtain” means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(p) (r) “Obtains or exerts control” over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

(q) (s) “Owner” means a person who has any interest in property.

(r) (t) “Person” means an individual, public or private corporation, government, partnership, or unincorporated association.

(s) (u) “Personal property” means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

(t) (v) “Possession” means having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(u) (w) “Property” means anything of value, tangible or intangible, real or personal.

(v) (x) “Prosecution” means all legal proceedings by which a person’s liability for a crime is determined.

(w) (y) “Prosecutor” means the same as prosecuting attorney in K.S.A. 22-2202, and amendments thereto.

(x) (z) “Public employee” is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a “public officer.”

(y) (aa) “Public officer” includes the following, whether elected or appointed:

(1) An executive or administrative officer of the state, or a county,

municipality or other subdivision or governmental instrumentality of or within the state;

(2) a member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state;

(3) a judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy;

(4) a hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer;

(5) a law enforcement officer; and

(6) any other person exercising the functions of a public officer under color of right.

~~(z)~~ (bb) “Real property” or “real estate” means every estate, interest, and right in lands, tenements and hereditaments.

~~(aa)~~ (cc) “Solicit” or “solicitation” means to command, authorize, urge, incite, request or advise another to commit a crime.

~~(bb)~~ (dd) “State” or “this state” means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. “Other state” means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

~~(ee)~~ (ee) “Stolen property” means property over which control has been obtained by theft.

~~(dd)~~ (ff) “Threat” means a communicated intent to inflict physical or other harm on any person or on property.

~~(ee)~~ (gg) “Written instrument” means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Sec. 7. Section 21 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 21. (a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such *use of* force is necessary to defend such person or a third person against such other’s imminent use of unlawful force.

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes *that such use of* deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

Sec. 8. Section 22 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 22. (a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such *use of force* is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling, *place of work* or occupied vehicle.

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, *place of work* or occupied vehicle if such person reasonably believes *that such use of* deadly force is necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling, *place of work* or occupied vehicle.

Sec. 9. Section 23 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 23. A person who is lawfully in possession of property other than a dwelling, *place of work* or occupied vehicle is justified in the ~~threat of~~ use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such ~~degree use of force or threat thereof~~ as a reasonable person would deem necessary to prevent or terminate the interference may intentionally be used.

Sec. 10. Section 24 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 24. The justification described in *K.S.A. 21-3211, 21-3212 and 21-3213, prior to their repeal, or sections 21, 22 and 23 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, is not available to a person who:

(a) Is attempting to commit, committing or escaping from the commission of a forcible felony;

(b) initially provokes the use of *any* force against such person or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

(c) otherwise initially provokes the use of *any* force against such person or another, unless:

(1) Such person has reasonable ~~ground~~ *grounds* to believe that such person is in imminent danger of death or great bodily harm, and has exhausted every reasonable means to escape such danger other than the use of *deadly* force ~~which is likely to cause death or great bodily harm to the assailant~~; or

(2) in good faith, such person withdraws from physical contact with the assailant and indicates clearly to the assailant that such person desires to withdraw and terminate the use of *such* force, but the assailant continues or resumes the use of *such* force.

Sec. 11. Section 25 of chapter 136 of the 2010 Session Laws of Kansas

is hereby amended to read as follows: Sec. 25. (a) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and *the use* of any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. However, such officer is justified in using *deadly* force ~~likely to cause death or great bodily harm~~ only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving *death or* great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

(b) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant were valid, unless such officer knows that the warrant is invalid.

Sec. 12. Section 26 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 26. (a) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which such person would be justified in using if such person were summoned or directed by a law enforcement officer to make such arrest, except that such person is justified in the use of *deadly* force ~~likely to cause death or great bodily harm~~ only when such person reasonably believes that such force is necessary to prevent death or great bodily harm to such person or another.

(b) A private person who is summoned or directed by a law enforcement officer to assist in making an arrest which is unlawful, is justified in the use of any force which such person would be justified in using if the arrest were lawful.

Sec. 13. Section 28 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 28. A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be has no duty to retreat and has the right to stand such person's ground and ~~meet force with force~~ *use any force which such person would be justified in using under article 32 of chapter 21 of the Kansas Statute Annotated, prior to their repeal, or sections 13 through 19 and sections 21 through 32 of chapter 136 of the 2010 Session Laws of Kansas,*

*and K.S.A. 2010 Supp. 21-3212a, 21-3220 and 21-3221, and amendments thereto.*

Sec. 14. Section 33 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 33. (a) An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.

(b) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible.

(c) (1) An attempt to commit an off-grid felony shall be ranked at non-drug severity level 1. An attempt to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for an attempt to commit a nondrug felony shall be a severity level 10.

(2) The provisions of this subsection shall not apply to a violation of attempting to commit the crime of:

(A) *Aggravated human trafficking, as defined in subsection (b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;*

(B) ~~terrorism pursuant to section 56 as defined in section 56 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or of~~

(C) ~~illegal use of weapons of mass destruction pursuant to section 57 as defined in section 57 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

(D) *rape, as defined in subsection (a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

(E) *aggravated indecent liberties with a child, as defined in subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

(F) *aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

(G) *promoting prostitution, as defined in section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age;*  
*or*

(H) *sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age.*

(d) (1) An attempt to commit a felony which prescribes a sentence on

the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(2) *The provisions of this subsection shall not apply to a violation of attempting to commit a violation of K.S.A. 2010 Supp. 21-36a03, and amendments thereto.*

(e) An attempt to commit a class A person misdemeanor is a class B person misdemeanor. An attempt to commit a class A nonperson misdemeanor is a class B nonperson misdemeanor.

(f) An attempt to commit a class B or C misdemeanor is a class C misdemeanor.

Sec. 15. Section 34 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 34. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

(b) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(c) (1) Conspiracy to commit an off-grid felony shall be ranked at non-drug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be a severity level 10.

(2) The provisions of this subsection shall not apply to a violation of conspiracy to commit the crime of:

(A) *Aggravated human trafficking, as defined in subsection (b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;*

(B) ~~terrorism pursuant to as defined in section 56 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~ ~~or of~~

(C) ~~illegal use of weapons of mass destruction pursuant to as defined in section 57 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

(D) *rape, as defined in subsection (a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

(E) *aggravated indecent liberties with a child, as defined in subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

(F) *aggravated criminal sodomy, as defined in subsection (b)(1) or*

*(b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

*(G) promoting prostitution, as defined in section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age; or*

*(H) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age.*

(d) Conspiracy to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(e) A conspiracy to commit a misdemeanor is a class C misdemeanor.

Sec. 16. Section 35 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 35. (a) Criminal solicitation is commanding, encouraging or requesting another person to commit a felony, attempt to commit a felony or aid and abet in the commission or attempted commission of a felony for the purpose of promoting or facilitating the felony.

(b) It is immaterial under subsection (a) that the actor fails to communicate with the person solicited to commit a felony if the person's conduct was designed to effect a communication.

(c) It is an affirmative defense that the actor, after soliciting another person to commit a felony, persuaded that person not to do so or otherwise prevented the commission of the felony, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purposes.

(d) (1) Criminal solicitation to commit an off-grid felony shall be ranked at nondrug severity level 3. Criminal solicitation to commit any other nondrug felony shall be ranked on the nondrug scale at three severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for criminal solicitation to commit a nondrug felony shall be a severity level 10.

(2) The provisions of this subsection shall not apply to a violation of criminal solicitation to commit the crime of:

*(A) Aggravated human trafficking, as defined in subsection (b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;*

*(B) terrorism pursuant to as defined in section 56 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;—or of*

*(C) illegal use of weapons of mass destruction pursuant to as defined in section 57 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;:*

(D) *rape, as defined in subsection (a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

(E) *aggravated indecent liberties with a child, as defined in subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

(F) *aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;*

(G) *promoting prostitution, as defined in section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age; or*

(H) *sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age.*

(e) Criminal solicitation to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

Sec. 17. Section 39 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 39. (a) Voluntary manslaughter is knowingly killing a human being committed:

(1) Upon a sudden quarrel or in the heat of passion; or

(2) upon an unreasonable but honest belief that circumstances existed that justified *use of* deadly force under section 21, 22 or 23 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(b) Voluntary manslaughter is a severity level 3, person felony.

Sec. 18. Section 47 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 47. (a) Assault is knowingly placing another person in reasonable apprehension of immediate bodily harm;

(b) Aggravated assault is assault, as ~~described~~ defined in subsection (a), committed:

(1) With a deadly weapon;

(2) while disguised in any manner designed to conceal identity; or

(3) with intent to commit any felony.

(c) Assault of a law enforcement officer is assault, as defined in subsection (a), committed against:

(1) A uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty; or

(2) a uniformed or properly identified university or campus police of-

ficer while such officer is engaged in the performance of such officer's duty.

(d) Aggravated assault of a law enforcement officer is assault of a law enforcement officer, as defined in subsection (c), committed:

- (1) With a deadly weapon;
- (2) while disguised in any manner designed to conceal identity; or
- (3) with intent to commit any felony.

(e) (1) Assault is a class C person misdemeanor.

(2) Aggravated assault is a severity level 7, person felony.

(3) Assault of a law enforcement officer is a class A person misdemeanor.

(4) Aggravated assault of a law enforcement officer is a severity level 6, person felony. A person convicted of aggravated assault of a law enforcement officer shall be subject to the provisions of subsection (g) of section 285 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 19. Section 48 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 48. (a) Battery is:

(1) Knowingly or recklessly causing bodily harm to another person; or

(2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner;

(b) Aggravated battery is:

(1)(A) Knowingly causing great bodily harm to another person or disfigurement of another person;

(B) knowingly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(C) knowingly causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted;

(2)(A) recklessly causing great bodily harm to another person or disfigurement of another person; or

(B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

(c) Battery against a law enforcement officer is:

(1) Battery, as defined in subsection (a)(2), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility of-

ficer or employee or a juvenile detention facility ~~office~~ *officer*, or employee, while such officer is engaged in the performance of such officer's duty; or

(2) battery, as defined in subsection (a)(1), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility office, or employee, while such officer is engaged in the performance of such officer's duty; or

(3) battery, as defined in subsection (a) committed against a:

(A) State correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(B) juvenile correctional facility officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C) juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or

(D) city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(d) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection (b)(1)(~~a~~) (A) committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

(2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)(C), committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(3) knowingly causing, with a motor vehicle, bodily harm to a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(e) Battery against a school employee is a battery, as defined in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

(f) Battery against a mental health employee is a battery, as defined in subsection (a), committed against a mental health employee by a person in the custody of the secretary of social and rehabilitation services, while such employee is engaged in the performance of such employee's duty.

(g)(1) Battery is a class B person misdemeanor.

(2) Aggravated battery as defined in:

(A) Subsection (b)(1)(A) is a severity level 4, person felony;

(B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person felony;

(C) subsection (b)(2)(A) is a severity level 5, person felony; and

(D) subsection (b)(2)(B) is a severity level 8, person felony.

(3) Battery against a law enforcement officer as defined in:

(A) Subsection (c)(1) is a class A person misdemeanor;

(B) subsection (c)(2) is a severity level 7, person felony; and

(C) subsection (c)(3) is a severity level 5, person felony.

(4) Aggravated battery against a law enforcement officer as defined in:

(A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony; and

(B) subsection (d)(2) is a severity level 4, person felony.

(5) Battery against a school employee is a class A person misdemeanor.

(6) Battery against a mental health employee is a severity level 7, person felony.

(h) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections;

(2) "state correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution;

(3) "juvenile correctional facility officer or employee" means any officer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. ~~2009~~ 2010 Supp. 38-2302, and amendments thereto;

(4) "juvenile detention facility officer or employee" means any officer

or employee of a juvenile detention facility as defined in K.S.A. ~~2009~~ 2010 Supp. 38-2302, and amendments thereto;

(5) “city or county correctional officer or employee” means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility;

(6) “school employee” means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12; and

(7) “mental health employee” means an employee of the department of social and rehabilitation services working at Larned state hospital, Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto.

Sec. 20. Section 49 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 49. (a) Domestic battery is:

(1) *Knowingly or* recklessly causing bodily harm by a family or household member against a family or household member; or

(2) knowingly causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

(b) Domestic battery is a:

(1) Class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months’ imprisonment and fined not less than \$200, nor more than \$500 or in the court’s discretion the court may enter an order which requires the offender enroll in and successfully complete a domestic violence prevention program, except as provided in subsection (b)(2) or (b)(3);

(2) class A person misdemeanor, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a second time and the offender shall be sentenced to not less than 90 days nor more than one year’s imprisonment and fined not less than \$500 nor more than \$1,000, except as provided in subsection (b)(3). The five days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to enter into and complete a treatment program for domestic violence prevention; and

(3) person felony, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a third or subsequent time, and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$7,500. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the offender has served at least 90 days imprisonment. The court shall require as a condition of parole that such offender enter into and complete a treatment program for domestic violence. If the offender does not enter into and complete a treatment program for domestic violence, the offender shall serve not less than 180 days nor more than one year's imprisonment. The 90 days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program.

(c) As used in this section:

(1) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(2) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(B) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(C) only convictions occurring in the immediately preceding five years including prior to ~~the effective date of this act~~ *July 1, 2001* shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(d) A person may enter into a diversion agreement in lieu of further

criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any ~~three-year~~ *five-year* period.

Sec. 21. Section 52 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 52. (a) Mistreatment of a dependent adult is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or ~~eruel~~ *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 ~~by a caretaker or another person~~; or

(3) ~~omitting or depriving~~ *omission or deprivation of* treatment, goods or services ~~by a caretaker or another person which~~ *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 6, person felony;

(2) subsection (a)(2) ~~is a severity level 6, person felony~~ if the aggregate amount of the value of the resources is ~~\$100,000 or more~~;

(3) ~~subsection (a)(2) is a severity level 7, person felony if the aggregate amount of the value of the resources is at least \$25,000 but less than \$100,000;~~

(4) ~~subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is at least \$1,000 but less than \$25,000;~~

(5) ~~subsection (a)(2) is a:~~

(A) ~~Class A person misdemeanor if the aggregate amount of the value of the resources is less than \$1,000, except as provided in subsection (b)(5)(B); and~~

(B) ~~severity level 9, person felony, if:~~

(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~~

~~(6)~~ (3) subsection (a)(3) is a ~~class A nonperson misdemeanor~~ *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 or a developmental disability receiving services through a community mental retardation facility 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.

(e) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in sections 36 through 125 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 22. Section 53 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended as follows: Sec. 53. (a) Hazing is recklessly coercing, demanding or encouraging another person to perform, as a condition of membership in a social or fraternal organization, any act which could reasonably be expected to result in great bodily harm, disfigurement or death or which is done in a manner whereby great bodily harm, disfigurement or death could be inflicted.

(b) ~~Promoting or permitting~~ Hazing is a class B nonperson misdemeanor.

Sec. 23. Section 56 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 56. (a) Terrorism is the commission of, the attempt to commit, the conspiracy to commit, or the criminal solicitation to commit any felony with the intent to:

(1) Intimidate or coerce the civilian population;

(2) influence government policy by intimidation or coercion; or

(3) affect the operation of any unit of government.

(b) *Terrorism or attempt, conspiracy or criminal solicitation to commit terrorism* is an off-grid person felony.

(c) The provisions of subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of terrorism pursuant to this section. The provisions of subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of terrorism pursuant to this section. The provisions of subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of terrorism pursuant to this section.

Sec. 24. Section 57 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 57. (a) The illegal use of weapons of mass destruction is:

(1) Knowingly and without lawful authority, developing, producing, stockpiling, transferring, acquiring, retaining or possessing any:

(A) Biological agent, toxin or delivery system for use as a weapon;

(B) chemical weapon; or

(C) nuclear materials or nuclear byproduct materials for use as a weapon;

(2) knowingly assisting a foreign state or any organization to do any such activities as specified in subsection (a)(1); or

(3) ~~attempting, threatening, conspiring or criminally soliciting~~ to do any such activities as specified in subsection (a)(1) or (a)(2).

(b) *Illegal use of weapons of mass destruction or attempt, conspiracy or criminal solicitation to commit illegal use of weapons of mass destruction* is an off-grid person felony.

(c) The provisions of subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of illegal use of weapons of mass destruction pursuant to this section. The provisions of subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of illegal use of weapons of mass destruction pursuant to this section. The provisions of subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of illegal use of weapons of mass destruction pursuant to this section.

(d) The following shall not be prohibited under the provisions of this section:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm;

(4) any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment; or

(5) any individual self-defense device, including those using a pepper spray or chemical mace.

(e) As used in this section:

(1) “Biological agent” means any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

(A) Death, disease or other biological malfunction in a human, an animal, a plant or another living organism;

(B) deterioration of food, water, equipment, supplies or material of any kind; or

(C) deleterious alteration of the environment;

(2) “chemical weapon” means the following together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this section, as long as the type and quantity is consistent with such a purpose;

(B) a munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device; or

(C) any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B);

(3) “key component of a binary or multicomponent chemical system” means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system;

(4) “delivery system” means:

(A) Any apparatus, equipment, device or means of delivery specifically designed to deliver or disseminate a biological agent, toxin or vector; or

(B) any vector;

(5) “for use as a weapon” does not include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin or delivery system for prophylactic, protective or other peaceful purposes;

(6) “nuclear material” means material containing any:

- (A) Plutonium;
- (B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;
- (C) enriched uranium, defined as uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or
- (D) uranium 233;
- (7) “nuclear byproduct material” means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;
- (8) “precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. “Precursor” includes any key component of a binary or multicomponent chemical system;
- (9) “toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. “Toxic chemical” includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;
- (10) “toxin” means the toxic material of plants, animals, microorganisms, viruses, fungi or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:
  - (A) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or
  - (B) any poisonous isomer or biological product, homolog or derivative of such a substance; and
- (11) “vector” means a living organism or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

Sec. 25. Section 60 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 60. (a) Unlawful administration of a substance is the administration of a substance to another person without consent with the intent to impair such other person’s physical or mental ability to appraise or control such person’s conduct.

(b) Unlawful administration of a substance is a class A person misdemeanor.

(c) This section shall not prohibit administration of any substance described in subsection ~~(b)~~ (d) for lawful medical or therapeutic treatment.

(d) As used in this section, “administration of a substance” means any method of causing the ingestion by another person of a controlled substance, including gamma hydroxybutyric acid, or any controlled substance analog,

as defined in K.S.A. 65-4101, *and amendments thereto*, of gamma hydroxybutyric acid, including gamma butyrolactone; 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 with CAS No. 96-48-0; 1,4-butanediol; butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol.

Sec. 26. Section 61 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 61. (a) *Human trafficking is:*

(1) ~~Recruiting, harboring, transporting, providing or obtaining, by any means, another person with knowledge that force, fraud, threat or coercion will be used to cause the person to engage in forced labor or involuntary servitude; or~~ *The intentional recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;*

(2) *intentionally benefitting financially or by receiving anything of value from participation in a venture that the person has reason to know has engaged in acts set forth in subsection (a)(1);*

(3) *knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through any of the following:*

- (A) *Causing or threatening to cause physical injury to any person;*
- (B) *physically restraining or threatening to physically restrain another person;*
- (C) *abusing or threatening to abuse the law or legal process;*
- (D) *threatening to withhold food, lodging or clothing; or*
- (E) *knowingly destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or*

(4) *knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person.*

(b) *Aggravated human trafficking is:*

- (1) *Human trafficking, as defined in subsection (a):*
  - (A) *Involving the commission or attempted commission of kidnapping, as defined in subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*
  - (B) *committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or*
  - (C) *resulting in a death; or*
- (2) *recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or*

without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

(c) (1) *Human trafficking* is a severity level 2, person felony.

(2) Aggravated *human trafficking* is a:

~~(A)~~ severity level 1, person felony, except as provided in subsection (c)(2)(B); and (3).

~~(B)~~ (3) *Aggravated human trafficking or attempt, conspiracy or criminal solicitation to commit aggravated human trafficking* is an off-grid person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.

(d) *If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:*

(1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated human trafficking pursuant to this section;*

(2) *subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated human trafficking pursuant to this section; and*

(3) *subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated human trafficking pursuant to this section.*

(e) *The provisions of this section shall not apply to the use of the labor of any person incarcerated in a state or county correctional facility or city jail.*

(f) *As used in this section, “peonage” means a condition of involuntary servitude in which the victim is forced to work for another person by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.*

Sec. 27. Section 62 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 62. (a) Stalking is:

(1) Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person’s safety, or the safety of a member of such person’s immediate family and the targeted person is actually placed in such fear;

(2) engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person’s safety or the safety of a member of such person’s immediate family; or

(3) after being served with, or otherwise provided notice of, any pro-

tective order included in K.S.A. 21-3843, prior to its repeal or section 149 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f) (1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.

(b) Stalking as defined in:

(1) Subsection (a)(1) is a:

(A) Class A person misdemeanor, except as provided in subsection (b)(1)(B); and

(B) severity level 7, person felony upon a second or subsequent conviction;

(2) subsection (a)(2) is a:

(A) Class A person misdemeanor, except as provided in subsection (b)(2)(B); and

(B) severity level 5, person felony upon a second or subsequent conviction; and

(3) subsection (a)(3) is a:

(A) Severity level 9, person felony, except as provided in subsection (b)(3)(B); and

(B) severity level 5, person felony, upon a second or subsequent conviction.

(c) For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, prior to its repeal ~~and~~ or section 149 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

(d) In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

(e) The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.

(f) As used in this section:

(1) "Course of conduct" means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:

(A) Threatening the safety of the targeted person or a member of such person's immediate family;

(B) following, approaching or confronting the targeted person or a member of such person's immediate family;

(C) appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family;

(D) causing damage to the targeted person's residence or property or that of a member of such person's immediate family;

(E) placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person;

(F) causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family;

(G) any act of communication;

(2) "communication" means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer;

(3) "computer" means a programmable, electronic device capable of accepting and processing data;

(4) "conviction" includes being convicted of a violation of K.S.A. 21-3438, prior to its repeal, this section or a law of another state which prohibits the acts that this section prohibits; and

(5) "immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person.

Sec. 28. Section 64 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 64. (a) Blackmail is *intentionally* gaining or attempting to gain anything of value or compelling or attempting to compel another to act against such person's will, by threatening to communicate accusations or statements, about any person that would subject such person or any other person to public ridicule, contempt or degradation.

(b) Blackmail is a severity level 7, nonperson felony.

Sec. 29. Section 67 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 67. (a) Rape is:

(1) Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:

(A) When the victim is overcome by force or fear; or

(B) when the victim is unconscious or physically powerless; or

(2) Knowingly engaging in sexual intercourse with a victim when the

victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

(3) sexual intercourse with a child who is under 14 years of age;

(4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(5) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b) (1) Rape as defined in:

~~(1)~~ (A) Subsection (a)(1) or (a)(2) is a severity level 1, person felony;

~~(2)~~ (B) subsection (a)(3) is a:

~~(A)~~ severity level 1, person felony, except as provided in subsection (b)(2)~~(B)~~; and

~~(B)~~ off-grid person felony, when the offender is 18 years of age or older; and

~~(3)~~ (C) subsection (a)(4) or (a)(5) is a severity level 2, person felony.

(2) *Rape as defined in subsection (a)(3) or attempt, conspiracy or criminal solicitation to commit rape as defined in subsection (a)(3) is an off-grid person felony, when the offender is 18 years of age or older.*

(c) *If the offender is 18 years of age or older, the provisions of:*

(1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of rape as defined in subsection (a)(3);*

(2) *subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of rape as defined in subsection (a)(3); and*

(3) *subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of rape as defined in subsection (a)(3).*

~~(d)~~ (d) It shall be a defense to a prosecution of rape under subsection (a)(3) that the child was married to the accused at the time of the offense.

~~(e)~~ (e) Except as provided in subsection (a)(2), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sexual intercourse, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

Sec. 30. Section 68 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 68. (a) Criminal sodomy is:

(1) Sodomy between persons who are 16 or more years of age and members of the same sex;

- (2) sodomy between a person and an animal;
- (3) sodomy with a child who is 14 or more years of age but less than 16 years of age; or
- (4) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.
  - (b) Aggravated criminal sodomy is:
    - (1) Sodomy with a child who is under 14 years of age;
    - (2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or
    - (3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim's consent, to engage in sodomy with any person or an animal under any of the following circumstances:
      - (A) When the victim is overcome by force or fear;
      - (B) when the victim is unconscious or physically powerless; or
      - (C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.
  - (c) (1) Criminal sodomy as defined in:
    - (A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor; and
    - (B) subsection (a)(3) or (a)(4) is a severity level 3, person felony.
  - ~~(e) (2) Aggravated criminal sodomy as defined in:~~
    - (A) Subsection (b)(3) is a severity level 1, person felony; and
    - (B) subsection (b)(1) or (b)(2) is a:
      - ~~(i) severity level 1, person felony, except as provided in subsection (c)(2)(B)(ii); and~~ (3).
      - ~~(ii) off-grid person felony, when the offender is 18 years of age or older.~~
  - (3) *Aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) or attempt, conspiracy or criminal solicitation to commit aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid person felony, when the offender is 18 years of age or older.*
- (d) *If the offender is 18 years of age or older, the provisions of:*
  - (1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);*
  - (2) *subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and*
  - (3) *subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of crim-*

*inal solicitation to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2).*

~~(d)~~ (e) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(3), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.

~~(e)~~ (f) Except as provided in subsection (b)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

Sec. 31. Section 70 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 70. (a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 *or more* years of age but less than 16 years of age:

(1) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(2) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(c)(1) Indecent liberties with a child is a severity level 5, person felony.

(2) Aggravated indecent liberties with a child as defined in:

(A) Subsection (b)(1) is a severity level 3, person felony;

(B) subsection (b)(2) is a severity level 4, person felony; and

(C) subsection (b)(3) is a:

~~(i)~~ severity level 3, person felony, except as provided in subsection (c)(2)~~(C)(ii)~~; and (3).

~~(ii) off-grid person felony, when the offender is 18 years of age or older.~~

(3) *Aggravated indecent liberties with a child as defined in subsection (b)(3) or attempt, conspiracy or criminal solicitation to commit aggravated indecent liberties with a child as defined in subsection (b)(3) is an off-grid person felony, when the offender is 18 years of age or older.*

(d) *If the offender is 18 years of age or older, the provisions of:*

(1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3);*

(2) *subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3);*

(3) *subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3).*

~~(d)~~ (e) *It shall be a defense to a prosecution of indecent liberties with a child, as defined in subsection (a)(1), and aggravated indecent liberties with a child, as defined in subsections (b)(1), (b)(2)(A) and (b)(3)(A) that the child was married to the accused at the time of the offense.*

Sec. 32. Section 74 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 74. (a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct with the intent to promote any performance;

(2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or

(4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

(b) (1) Sexual exploitation of a child as defined in:

(~~1~~) (A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and

(~~2~~) (B) subsection (a)(1) or (a)(4) is a:

(~~A~~) severity level 5, person felony, except as provided in subsection (b)(2)(~~B~~); and (2).

(~~B~~) off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.

(2) *Sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) or attempt, conspiracy or criminal solicitation to commit sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.*

(c) *If the offender is 18 years of age or older and the child is under 14 years of age, the provisions of:*

(1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);*

(2) *subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and*

(3) *subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4).*

(~~e~~) (d) As used in this section:

(1) “Sexually explicit conduct” means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person;

(2) “promoting” means procuring, transmitting, distributing, circulating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person;

(3) “performance” means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph,

negative, photocopy, video tape or video laser disk or any play or other live presentation;

(4) “nude” means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered; *and*

(5) “visual depiction” means any photograph, film, video picture, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.

Sec. 33. Section 76 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 76. (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, ~~or conditional release or postrelease supervision under the direct supervision and control of the offender;~~ *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 the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is 16 years of age or older and:

(A) 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) 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 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 and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(2) of section 67 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, lewd fondling or touching, or sodomy, not otherwise subject to subsection ~~(b)(C)~~ (b)(3)(C) of section 68 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, is a person 16 years of age or older who is a patient in such institution;

(8) the offender is a teacher or a 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 section 67 of *chapter 136 of the 2010 Session Laws of Kansas*, or subsection (b)(1) of section 70 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, lewd fondling or touching, not otherwise subject to subsection (a) of section 70 of *chapter 136 of the 2010 Session Laws of Kansas*, or subsection (b)(2) or (b)(3) of section 70 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or sodomy, not otherwise subject to subsection (a) of section 68 of *chapter 136 of the 2010 Session Laws of Kansas*, or subsection (b)(1) or (b)(2) of section 68 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, 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 section 81 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall apply, not this subsection;

(9) 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) 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 is a severity level 10, person felony 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) is a severity level 5, person felony.*

(c) 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 section 284 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(5) “juvenile detention facility” means the same as in K.S.A. ~~2009~~ 2010 Supp. 38-2302, and amendments thereto;

(6) “juvenile correctional facility” means the same as in K.S.A. ~~2009~~ 2010 Supp. 38-2302, and amendments thereto;

(7) “sanctions house” means the same as in K.S.A. ~~2009~~ 2010 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, 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. ~~2009~~ 2010 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. 34. Section 78 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 78. (a) Endangering a child is knowingly and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child’s life, body or health may be endangered.

(b) Aggravated endangering a child is:

(1) Recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child’s life, body or health is endangered;

(2) causing or permitting such child to be in an environment where the person knows or reasonably should know that any person is distributing, possessing with intent to distribute, manufacturing or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

(3) causing or permitting such child to be in an environment where the person knows or reasonably should know that drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

(c) (1) Endangering a child is a class A person misdemeanor.

(2) Aggravated endangering a child is a severity level 9, person felony. *The sentence for a violation of aggravated endangering a child shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(d) Nothing in subsection (a) shall be construed to mean a child is endangered for the sole reason the child’s parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(e) As used in this section:

(1) “Manufacture” means the same as in K.S.A. ~~2009~~ 2010 Supp. 21-36a01, and amendments thereto; and

(2) “drug paraphernalia” means the same as in K.S.A. ~~2009~~ 2010 Supp. 21-36a01, and amendments thereto.

Sec. 35. Section 88 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 88. (a) Theft of property lost, mislaid or delivered by mistake is obtaining control of property of another by a person who:

- (1) Knows or learns the identity of the owner thereof;
- (2) fails to take reasonable measures to restore to the owner lost property, mislaid property or property delivered by a mistake; and
- (3) intends to permanently deprive the owner of the possession, use or benefit of the property.

(b) Theft of ~~lost or mislaid~~ property *lost, mislaid or delivered by mistake* of the value of:

- (1) \$100,000 or more is a severity level 5, nonperson felony;
- (2) at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;
- (3) at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony; and
- (4) less than \$1,000 is a class A nonperson misdemeanor.

(c) As used in this section, “property delivered by mistake” includes, but is not limited to, a mistake as to the:

- (1) Nature or amount of the property; or
- (2) identity of the recipient of the property.

Sec. 36. Section 96 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 96. (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 department of wildlife and parks of any conviction or diversion for a violation of this section.

Sec. 37. Section 98 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 98. (a) Arson is:

(1) Knowingly, by means of fire or explosive damaging any building or property which:

(A) Is a dwelling in which another person has any interest without the consent of such other person;

(B) is a dwelling with intent to injure or defraud an insurer or lienholder;

(C) is not a dwelling in which another person has any interest without the consent of such other person; or

(D) is not a dwelling with intent to injure or defraud an insurer or lienholder;

(2) accidentally, by means of fire or explosive, as a result of manufacturing or attempting to manufacture a controlled substance or controlled substance analog in violation of K.S.A. ~~2009~~ 2010 Supp. 21-36a03, and amendments thereto, damaging any building or property which is a dwelling; or

(3) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance or controlled substance analog in violation of K.S.A. ~~2009~~ 2010 Supp. 21-36a03, and amendments thereto, damaging any building or property which is not a dwelling.

(b) Aggravated arson is arson, as ~~described~~ defined in subsection (a):

(1) Committed upon a building or property in which there is a human being; or

(2) which results in great bodily harm or disfigurement to a firefighter or law enforcement officer in the course of fighting or investigating the fire.

(c) (1) Arson as defined in:

(A) Subsection (a)(1)(A) or (a)(1)(B) is a severity level 6, person felony;

(B) subsection (a)(1)(C) ~~or~~, (a)(1)(D) or (a)(3) is a severity level 7, nonperson felony; and

(C) subsection (a)(2) is a severity level 7, person felony.

(2) Aggravated arson as defined in:

(A) Subsection (b)(1) is a:

(i) Severity level 3, person felony, if such crime results in a substantial risk of bodily harm; and

(ii) severity level 6, person felony, if such crime results in no substantial risk of bodily harm; and

(B) subsection (b)(2) is a severity level 3, person felony.

Sec. 38. Section 105 of chapter 136 of the 2010 Session Laws of Kan-

sas is hereby amended to read as follows: Sec. 105.(a) It is unlawful for any person to:

(1) Recklessly throw, push, pitch or otherwise cast any rock, stone or other object, matter or thing onto a street, road, highway, railroad right-of-way, or upon any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock thereon;

(2) violate subsection (a) and damage any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object;

(3) violate subsection (a) and injure another person on the street, road, highway or railroad right-of-way; or

(4) violate subsection (a), damage a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock and a person is injured as a result of the cast or thrown object or from injuries incurred as a result of damage to the vehicle in which a person was a passenger when struck by such object.

(b) (1) Violation of subsection (a)(1) is a class B nonperson misdemeanor.

(2) Violation of subsection (a)(2) is a class A nonperson misdemeanor.

(3) Violation of subsection (a)(3) is a severity level 7, person felony.

(4) Violation of subsection (a)(4) is a severity level 6, person felony.

~~(c)~~ (c) In any case where a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock is damaged as a result of a violation of subsection (a), the provisions of this section shall not bar conviction of the accused under any other offense in sections 87 through 125 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. An accused may be convicted for a violation of any other offense in sections 87 through 125 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or this section, but not under both.

~~(d)~~ (d) In any case where a person dies or sustains bodily injury as a result of a violation of subsection (a), the provisions of this section shall not bar conviction of the accused under any other offense in sections 36 through 64 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. An accused may be convicted for a violation of any other offense in sections 36 through 64 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or this section, but not under both.

Sec. 39. Section 136 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 136. (a) Escape from custody is escaping while held in custody on a: (1) Charge or conviction of a misdemeanor;

(2) charge or adjudication as a juvenile offender where the act, if committed by an adult, would constitute a misdemeanor; or

(3) commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a misdemeanor or by a person 18 years of age or over who is being held in custody on a adjudication of a misdemeanor.

(b) Aggravated escape from custody is:

(1) Escaping while held in custody:

(A) Upon a charge or conviction of a felony;

(B) upon a charge or adjudication as a juvenile offender where the act, if committed by an adult, would constitute a felony;

(C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05, and amendments thereto;

(D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;

(E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a felony;

(F) by a person 18 years of age or over who is being held on an adjudication of a felony; or

(G) upon incarceration at a state correctional institution while in the custody of the secretary of corrections.

(2) Escaping effected or facilitated by the use of violence or the threat of violence against any person while held in custody:

(A) On a charge or conviction of any crime;

(B) on a charge or adjudication as a juvenile offender where the act, if committed by an adult, would constitute a felony;

(C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05, and amendments thereto;

(D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;

(E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting any crime;

(F) by a person 18 years of age or over who is being held on a charge or adjudication of a misdemeanor or felony; or

(G) upon incarceration at a state correctional institution while in the custody of the secretary of corrections.

(c) (1) Escape from custody is a class A nonperson misdemeanor.

(2) Aggravated escape from custody as defined in:

(A) Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F) is a severity level 8, nonperson felony;

(B) subsection (b)(1)(B); ~~or (b)(1)(G), (b)(2)(B) or (b)(2)(G)~~ is a severity level 5, nonperson felony;

(C) subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F) is a severity level 6, ~~nonperson~~ *person felony*; and

(D) *subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person felony.*

(d) As used in this section and section 137 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto:

(1) “Custody” means arrest; detention in a facility for holding persons charged with or convicted of crimes or charged or adjudicated as a juvenile offender; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto; or any other detention for law enforcement purposes. “Custody” does not include general supervision of a person on probation or parole or constraint incidental to release on bail;

(2) “escape” means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court;

(3) “juvenile offender” means the same as in K.S.A. ~~2009~~ 2010 Supp. 38-2302, and amendments thereto; and

(4) “state correctional institution” means the same as in K.S.A. 75-5202, and amendments thereto.

Sec. 40. Section 139 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 139. (a) Traffic in contraband in a correctional institution or care and treatment facility is, without the consent of the administrator of the correctional institution or care and treatment facility:

(1) Introducing or attempting to introduce any item into or upon the grounds of any correctional institution or care and treatment facility;

(2) taking, sending, attempting to take or attempting to send any item from any correctional institution or care and treatment facility;

(3) any unauthorized possession of any item while in any correctional institution or care and treatment facility;

(4) distributing any item within any correctional institution or care and treatment facility;

(5) supplying to another who is in lawful custody any object or thing adapted or designed for use in making an escape; or

(6) introducing into an institution in which a person is confined any object or thing adapted or designed for use in making any escape.

(b) ~~(+)~~ Traffic in contraband in a correctional institution or care and treatment facility ~~of firearms, ammunition, explosives or a controlled substance as defined in K.S.A. 2009 2010 Supp. 21-36a01, and amendments thereto,~~ is a severity level 5, ~~nonperson~~ *person felony*.

~~(2) Traffic in any contraband, as defined by rules and regulations~~

~~adopted by the secretary, in a correctional institution by an employee of a correctional institution is a severity level 5, nonperson felony, except a violation of subsection (a)(5) or (a)(6) by an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services to the department of corrections, is a severity level 4, nonperson felony.~~

~~(3) Traffic in any contraband, as defined by rules and regulations adopted by the secretary of social and rehabilitation services, in a care and treatment facility by an employee of a care and treatment facility is a severity level 5, nonperson felony.~~

~~(4) Except as provided in subsections (b)(1) and (b)(2), traffic in contraband in a correctional institution or care and treatment facility is a severity level 6, nonperson felony.~~

*is a:*

*(1) Severity level 6, nonperson felony, except as provided in subsection (b)(2) or (b)(3);*

*(2) severity level 5, nonperson felony if such items are:*

*(A) Firearms, ammunition, explosives or a controlled substance which is defined in K.S.A. 2010 Supp. 21-36a01, and amendments thereto, except as provided in subsection (b)(3);*

*(B) defined as contraband by rules and regulations adopted by the secretary of corrections, in a state correctional institution or facility by an employee of a state correctional institution or facility, except as provided in subsection (b)(3);*

*(C) defined as contraband by rules and regulations adopted by the secretary of social and rehabilitation services, in a care and treatment facility by an employee of a care and treatment facility, except as provided in subsection (b)(3); or*

*(D) defined as contraband by rules and regulations adopted by the commissioner of the juvenile justice authority, in a juvenile correctional facility by an employee of a juvenile correctional facility, except as provided by subsection (b)(3); and*

*(3) severity level 4, nonperson felony if:*

*(A) Such items are firearms, ammunition or explosives, in a correctional institution by an employee of a correctional institution or in a care and treatment facility by an employee of a care and treatment facility; or*

*(B) a violation of (a)(5) or (a)(6) by an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services to the department of corrections.*

*(c) The provisions of subsection (b)(2)(A) shall not apply to the possession of a firearm or ammunition by a person licensed under the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto, in a parking lot open to the public if the firearm or ammunition is carried on the person while in a vehicle or while securing the firearm or ammu-*

niton in the vehicle, or stored out of plain view in a locked but unoccupied vehicle.

(e) (d) As used in this section:

(1) “Correctional institution” means any state correctional institution or facility, conservation camp, state security hospital, juvenile correctional facility, community correction center or facility for detention or confinement, juvenile detention facility or jail;

(2) “care and treatment facility” means the state security hospital provided for under K.S.A. 76-1305 et seq., and amendments thereto, and a facility operated by the department of social and rehabilitation services for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments thereto; and

(3) “lawful custody” means the same as in section 137 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

Sec. 41. Section 141 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 141. (a) False signing of a petition is knowingly affixing any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the legislature, or either house thereof, or to any agency or officer of the state of Kansas or any of its political subdivisions.

(b) False signing of ~~an official~~ a petition is a class C misdemeanor.

Sec. 42. Section 147 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 147. (a) Interference with the conduct of public business in public buildings is:

(1) Conduct at or in any public building owned, operated or controlled by the state or any of its political subdivisions so as to knowingly deny to any public official, public employee or any invitee on such premises, the lawful rights of such official, employee or invitee to enter, to use the facilities or to leave any such public building;

(2) knowingly impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion or intimidation or by force and violence or threat thereof;

(3) knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or such officer’s designee, charged with maintaining order in such public building, if such person is committing, threatens to commit or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions being carried on in such public building;

(4) knowingly impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder

any member of such body or any official engaged in the performance of duties at such meeting or session; or

(5) knowingly impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.

(b) Aggravated interference with the conduct of public business is interference with the conduct of public business *in public buildings*, as defined in subsection (a), when in possession of any firearm or weapon as described in section 186 or 187 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(c) (1) Interference with the conduct of public business in public buildings is a class A nonperson misdemeanor:

(2) Aggravated interference with the conduct of public business is a level 6, person felony.

Sec. 43. Section 158 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 158. (a) There is hereby created within the office of the attorney general a medicaid fraud and abuse division.

(b) The medicaid fraud and abuse division shall be the same entity to which all cases of suspected medicaid fraud shall be referred by the department of social and rehabilitation services, or its fiscal agent, for the purpose of investigation, criminal prosecution or referral to the district or county attorney for criminal prosecution.

(c) In carrying out these responsibilities, the attorney general shall have:

(1) All the powers necessary to comply with the federal laws and regulations relative to the operation of the medicaid fraud and abuse division;

(2) the power to investigate and criminally prosecute violations of sections 150 through 161 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(3) the power to cross-designate assistant United States attorneys as assistant attorneys general;

(4) the power to issue, serve or cause to be issued or served subpoenas or other process in aid of investigations and prosecutions;

(5) the power to administer oaths and take sworn statements under penalty of perjury;

(6) the power to serve and execute in any county, search warrants which relate to investigations authorized by ~~this act~~ *sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*; and

(7) the powers of a district or county attorney.

Sec. 44. Section 159 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 159. (a) The attorney general shall be allowed access to all records held by a provider:

(1) That are directly related to an alleged violation of ~~this act sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto~~, and which are necessary for the purpose of investigating whether any person may have violated ~~sections 150 through 161, and amendments thereto~~ such statutes; or

(2) for use or potential use in any legal, administrative or judicial proceeding pursuant to sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(b) No person holding such records may refuse to provide the attorney general with access to such records on the basis that release would violate any:

- (1) ~~Any~~ Recipient's right of privacy;
- (2) ~~any~~ recipient's privilege against disclosure or use; or
- (3) ~~any~~ professional or other privilege or right.

(c) The disclosure of patient information as required by sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not subject any provider to liability for breach of any confidential relationship between a patient and a provider.

(d) Notwithstanding K.S.A. 60-427, and amendments thereto, there shall be no privilege preventing the furnishing of such information or reports as required by sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, by any person.

Sec. 45. Section 164 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 164. (a) Fraudulent acts relating to aircraft identification numbers is knowingly:

(1) Buying, receiving, disposing of, distributing, concealing, operating, or having in possession or attempting to buy, receive, dispose of, distribute, conceal, operate, or possess, by any person, firm, business or corporation of any aircraft or part thereof on which the identification numbers do not meet the requirements of the federal aviation regulations; or

(2) possessing, manufacturing, or distributing any counterfeit manufacturer's aircraft identification number plate or decal used for the purpose of identification of any aircraft or authorizing, directing, aiding in exchange or giving away any such counterfeit manufacturer's aircraft identification number plate or decal.

(b) Fraudulent acts relating to aircraft identification numbers is a severity level 8, nonperson felony.

(c) The failure to have aircraft identification numbers clearly displayed on the aircraft and in compliance with federal aviation regulations is probable cause for any law enforcement officer in this state to make further inspection of the aircraft in question to ascertain its true identity. A law enforcement officer is authorized to inspect an aircraft for identification numbers:

- (1) When it is located on public property;

(2) upon consent of the owner of the private property on which the aircraft is stored; or

(3) when otherwise authorized by law.

Sec. 46. Section 177 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 177. (a) Identity theft is obtaining, possessing, transferring, using, selling or purchasing any personal identifying information, or document containing the same, belonging to or issued to another person, with the intent to defraud that person, or any one else, in order to receive any benefit.

(b) Identity fraud is:

(1) Using or supplying information the person knows to be false in order to obtain a document containing any personal identifying information; or

(2) altering, amending, counterfeiting, making, manufacturing or otherwise replicating any document containing personal identifying information with the intent to deceive;

(c) (1) Identity theft is a:

(A) Severity level 8, nonperson felony, except as provided in subsection (c)(1)(B); and

(B) ~~is a~~ severity level 5, nonperson felony if the monetary loss to the victim or victims is more than \$100,000.

(2) Identity fraud is a severity level 8, nonperson felony.

(d) It is not a defense that the person did not know that such personal identifying information belongs to another person, or that the person to whom such personal identifying information belongs or was issued is deceased.

(e) As used in this section “personal identifying information” includes, but is not limited to, the following:

(1) Name;

(2) birth date;

(3) address;

(4) telephone number;

(5) driver’s license number or card or nondriver’s identification number or card;

(6) social security number or card;

(7) place of employment;

(8) employee identification numbers or other personal identification numbers or cards;

(9) mother’s maiden name;

(10) birth, death or marriage certificates;

(11) electronic identification numbers;

(12) electronic signatures; and

(13) any financial number, or password that can be used to access a person’s financial resources, including, but not limited to, checking or sav-

ings accounts, credit or debit card information, demand deposit or medical information.

Sec. 47. Section 183 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 183. (a) Criminal desecration is:

(1) Knowingly obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being; or

(2) recklessly, by means other than by fire or explosive:

(A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;

(B) damaging, defacing or destroying any public monument or structure;

(C) damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or

(D) damaging, defacing or destroying any place of worship.

(b) ~~(+)~~ Criminal desecration as defined in:

(1) Subsections (a)(2)(B), (a)(2)(C) ~~and~~ or (a)(2)(D) if the property is damaged to the extent of:

(A) \$25,000 or more is a severity level 7, nonperson felony;

(B) at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony; and

(C) ~~if the property is damaged to the extent of~~ less than \$1,000 is a class A nonperson misdemeanor; ~~and~~

(2) ~~Criminal desecration as defined in~~ subsections (a)(1) ~~and~~ or (a)(2)(A) is a class A nonperson misdemeanor.

Sec. 48. Section 186 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 186. (a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing or possessing any bludgeon, sand club, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

- (3) setting a spring gun;
- (4) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;
- (5) selling, manufacturing, purchasing or possessing a shotgun with a barrel less than 18 inches in length, or any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger, whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically;
- (6) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight, whether the person knows or has reason to know that the plastic-coated bullet has a core of less than 60% lead by weight;
- (7) selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;
- (8) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;
- (9) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;
- (10) possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;
- (11) possession of any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;
- (12) refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;
- (13) possession of any firearm by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or persons with an alcohol or substance abuse problem subject to involuntary commitment for

care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;  
or

(14) possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age whether the person knows or has reason to know the length of the barrel.

(b) Criminal use of weapons as defined in:

(1) Subsection (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9) or (a)(12) is a class A nonperson misdemeanor;

(2) subsection (a)(4), (a)(5) or (a)(6) is a severity level 9, nonperson felony;

(3) subsection (a)(10) or (a)(11) is a class B nonperson select misdemeanor;

(4) subsection (a)(13) is a severity level 8, nonperson felony; and

(5) subsection (a)(14) is a:

(A) Class A nonperson misdemeanor except as provided in subsection (b)(5)(B);

(B) severity level 8, nonperson felony upon a second or subsequent conviction.

(c) Subsections (a)(1), (a)(2) and (a)(5) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty;  
or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsections (a)(4) and (a)(5) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. § 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(6) shall not apply to a governmental laboratory or solid plastic bullets.

(f) Subsection (a)(4) shall not apply to a law enforcement officer who is:

(1) Assigned by the head of such officer's law enforcement agency to a tactical unit which receives specialized, regular training;

(2) designated by the head of such officer's law enforcement agency to possess devices described in subsection (a)(4); and

(3) in possession of commercially manufactured devices which are:

(A) Owned by the law enforcement agency;

(B) in such officer's possession only during specific operations; and

(C) approved by the bureau of alcohol, tobacco, firearms and explosives of the United States department of justice.

(g) Subsections (a)(4), (a)(5) and (a)(6) shall not apply to any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsections (a)(4), (a)(5) and (a)(6) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory.

(h) Subsections (a)(4) and (a)(5) shall not apply to or affect any person or entity in compliance with the national firearms act, 26 U.S.C. § 5801 et seq.

(i) Subsection (a)(11) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

(3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student; ~~or~~

(4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; *or*

(5) *possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. 2010 Supp. 75-7c01 et seq., and amendments thereto.*

(j) Subsections (a)(9) and (a)(13) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. ~~2009~~ 2010 Supp. 75-7c26, and amendments thereto.

(k) Subsection (a)(14) shall not apply if such person, less than 18 years of age, was:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located;

(3) engaging in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organi-

zation exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;

(4) hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(5) traveling with any such firearm in such person's possession being unloaded to or from any activity described in subsections (k)(1) through (k)(4), only if such firearm is secured, unloaded and outside the immediate access of such person;

(6) on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or

(7) at such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in sections 21, 22 or 23 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(1) *Subsection (a)(1) shall not apply to any ordinary pocket knife which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the blade of the knife to overcome the bias towards closure to assist in the opening of the knife.*

⊕ (m) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

Sec. 49. Section 187 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 187. (a) Criminal carrying of a weapon is knowingly carrying:

(1) Any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) concealed on one's person, a dagger, dirk, billy, blackjack, slung-shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) on one's person or in any land, water or air vehicle, with intent to

use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business; or

(5) a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically.

(b) Criminal carrying of a weapon as defined in:

(1) Subsections (a)(1), (a)(2), (a)(3) or (a)(4) is a class A nonperson misdemeanor; and

(2) subsection (a)(5) is a severity level 9, nonperson felony.

(c) Subsection (a) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsection (a)(4) shall not apply to:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto;

(6) special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of in-

struction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a, and amendments thereto;

(7) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c19, and amendments thereto; or

(8) any person carrying a concealed ~~weapon~~ *handgun* as authorized by K.S.A. ~~2009~~ 2010 Supp. 75-7c01 through 75-7c17, and amendments thereto.

(e) Subsection (a)(5) shall not apply to:

(1) Any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. § 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor;

(2) any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsection (a)(5) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory; or

(3) any person or entity in compliance with the national firearms act, 26 U.S.C. § 5801 et seq.

*(f) Subsection (a)(1) shall not apply to any ordinary pocket knife which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the blade of the knife to overcome the bias towards closure to assist in the opening of the knife.*

*(g) It shall not be a violation of this section if a person violates the provisions of K.S.A. 2010 Supp. 75-7c03, and amendments thereto, but has an otherwise valid license to carry a concealed handgun which is issued or recognized by this state.*

*(h) As used in this section, "throwing star" means the same as prescribed by section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

Sec. 50. Section 188 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 188. (a) Criminal distribution of firearms to a felon is knowingly:

(1) Selling, giving or otherwise transferring any firearm to any person

who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (c), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was not found to have been in possession of a firearm at the time of the commission of the felony;

(2) selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, but was not found to have been in possession of a firearm at the time of the commission of the felony, or has been released from imprisonment for such a felony, and has not had the conviction of such felony expunged or been pardoned for such felony; or

(3) selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the felony.

(b) Criminal distribution of firearms to a felon is a class A nonperson misdemeanor.

(c) Subsection (a)(2) shall apply to a felony under section 37, section 38, section 39, section 40, section 43, subsection (b) or (d) of section 47, subsection (b) or (d) of section 48, subsection (a) *or* (b) of section 50, subsection (b) of section 55, section 67, subsection (b) of section 68, subsection (b) of section 69, *and* subsection (b) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, K.S.A. ~~2009~~ 2010 Supp. 21-36a05 or 21-36a06, and amendments thereto, or K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, 65-4127b or 65-4160 through ~~65-4164~~ 65-4165, prior to their repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(d) It is not a defense that the distributor did not know or have reason to know:

(1) The precise felony the recipient committed;

(2) that the recipient was in possession of a firearm at the time of the commission of the recipient's prior felony; or

(3) that the convictions for such felony have not been expunged or pardoned.

Sec. 51. Section 189 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 189. (a) Criminal possession of a firearm by a convicted felon is possession of any firearm by a person who:

(1) Has been convicted of a person felony or a violation of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, *or any violation of any provision of the uniform controlled substances act prior to July 1, 2009*, or a crime under a law of another jurisdiction which is sub-

stantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, *or any violation of any provision of the uniform controlled substances act prior to July 1, 2009*, and was found to have been in possession of a firearm at the time of the commission of the crime;

(2) ~~possession of any firearm by a person who~~, within the preceding five years has been convicted of a felony, other than those specified in subsection (a)(3)(A), under the laws of Kansas or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for a felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony, and was not found to have been in possession of a firearm at the time of the commission of the crime; or

(3) ~~possession of any firearm by a person who~~, within the preceding 10 years, has been convicted of a:

(A) Felony under section 37, section 38, section 39, section 40, section 43, subsection (b) or (d) of section 47, subsection (b) or (d) of section 48, subsection (a) of section 50, subsection (b) of section 55, section 67, subsection (b) of section 68, subsection (b) of section 69, subsection (b) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; K.S.A. ~~2009 Supp. 21-36a05 or 21-36a06, and amendments thereto, or K.S.A. 65-4127a, 65-4127b or 65-4160 through 65-4164, prior to their repeal~~ 2010 Supp. 21-36a03, 21-36a05, 21-36a06, 21-36a07 or 21-36a09, *and amendments thereto*; K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, 65-4127b, 65-4159 through 65-4165 or 65-7006, *prior to their repeal*; or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for such felony, or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of such felony, was not found to have been in possession of a firearm at the time of the commission of the crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or

(B) nonperson felony under the laws of Kansas or a crime under the laws of another jurisdiction which is substantially the same as such nonperson felony, has been released from imprisonment for such nonperson felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony, and was found to have been in possession of a firearm at the time of the commission of the crime.

(b) Criminal possession of a firearm by a convicted felon is a severity level 8, nonperson felony.

Sec. 52. Section 190 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 190. (a) Aggravated weapons violation by a convicted felon is a violation of any of the provisions of subsections (a)(1) through (a)(6) of section 186 or section 187 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, by a person who:

(1) Within five years preceding such violation has been convicted of a nonperson felony under the laws of Kansas or in any other jurisdiction which is substantially the same as such crime or has been released from imprisonment for such nonperson felony; or

(2) has been convicted of a person felony under the laws of Kansas or in any other jurisdiction which is substantially the same as such crime or has been released from imprisonment for such crime, and has not had the conviction of such crime expunged or been pardoned for such crime.

(b) (1) Aggravated weapons violation *by a convicted felon* is a severity level 9, nonperson felony for a violation of subsections (a)(1) through (a)(5) or subsection (a)(9) of K.S.A. 21-4201, prior to its repeal, or subsection (a)(1) through (a)(3) of section 186 or subsection (a)(1) through (a)(4) of section 187 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(2) Aggravated weapons violation *by a convicted felon* is a severity level 8, nonperson felony for a violation of subsections (a)(6), (a)(7) and (a)(8) of K.S.A. 21-4201, prior to its repeal, or subsection (a)(4) through (a)(6) of section 186 or subsection (a)(5) of section 187 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 53. Section 192 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 192. (a) Upon conviction of a violation or upon adjudication as a juvenile offender for a violation of *subsections (a)(1) through (a)(6) or (a)(10) through (a)(14) of section 186, section 187, section 189, section 190 or subsection (a)(1) or (a)(2) of section 193 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, any weapon seized in connection therewith shall remain in the custody of the trial court.

(b) Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the trial court, be:

(1) Destroyed;

(2) forfeited to the law enforcement agency seizing the weapon for use within such agency, for sale to a properly licensed federal firearms dealer, for trading to a properly licensed federal firearms dealer for other new or

used firearms or accessories for use within such agency or for trading to another law enforcement agency for that agency's use; or

(3) forfeited to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.

(c) If weapons are sold as authorized by subsection ~~(2)~~ (b), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency.

Sec. 54. Section 194 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 194. (a) It shall be unlawful to possess, with no requirement of a culpable mental state, a firearm on the grounds ~~of or~~ in *any of the following places*:

(1) *Within* any building located within the capitol complex;

(2) *within* the governor's residence;

(3) *on the grounds of or in* any building on the grounds of the governor's residence;

(4) *within* any other state-owned or leased building if the secretary of administration has so designated by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building; or

(5) *within* any county courthouse, unless, by county resolution, the board of county commissioners authorize the possession of a firearm within such courthouse.

(b) Violation of this section is a class A misdemeanor.

(c) This section shall not apply to:

(1) A commissioned law enforcement officer;

(2) a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state;

(3) any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer; or

(4) a member of the military of this state or the United States engaged in the performance of duties.

(d) It is not a violation of this section for the:

(1) Governor, the governor's immediate family, or specifically authorized guest of the governor to possess a firearm within the governor's residence or on the grounds of or in any building on the grounds of the governor's residence; or

(2) United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed,

to possess a firearm within any county courthouse and court-related facility, subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. ~~2009~~ 2010 Supp. 75-7c19, and amendments thereto.

(e) Notwithstanding the provisions of this section, any county may elect by passage of a resolution that the provisions of subsection (d)(2) shall not apply to such county's courthouse or court-related facilities if such:

(1) Facilities have adequate security measures to ensure that no weapons are permitted to be carried into such facilities;

(2) facilities have adequate measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options;

(3) county also has a policy or regulation requiring all law enforcement officers to secure and store such officer's firearm upon entering the courthouse or court-related facility. Such policy or regulation may provide that it does not apply to court security or sheriff's office personnel for such county; and

(4) facilities have a sign conspicuously posted at each entryway into such facility stating that the provisions of subsection (d)(2) do not apply to such facility.

(f) As used in this section:

(1) "Adequate security measures" means the use of electronic equipment and personnel to detect and restrict the carrying of any weapons into the facility, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes;

(2) "possession" means having joint or exclusive control over a firearm or having a firearm in a place where the person has some measure of access and right of control; and

(3) "capitol complex" means the same as in K.S.A. 75-4514, and amendments thereto.

(g) *For the purposes of subsection (a)(1), (a)(4) and (a)(5), "building" and "courthouse" shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.*

Sec. 55. Section 198 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 198. As used in sections 198 through 201 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto:

(a) "Criminal street gang" means any organization, association or group, whether formal or informal:

(1) Consisting of three or more persons;

(2) having as one of its primary activities the commission of one or more person felonies, person misdemeanors, felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,

*any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors;*

(3) which has a common name or common identifying sign or symbol; and

(4) whose members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies, person misdemeanors, felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, *any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors or any substantially similar offense from another jurisdiction;*

(b) “criminal street gang member” is a person who:

(1) Admits to criminal street gang membership; or

(2) meets three or more of the following criteria:

(A) Is identified as a criminal street gang member by a parent or guardian;

(B) is identified as a criminal street gang member by a state, county or city law enforcement officer or correctional officer or documented reliable informant;

(C) is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information;

(D) resides in or frequents a particular criminal street gang’s area and adopts such gang’s style of dress, color, use of hand signs or tattoos, and associates with known criminal street gang members;

(E) has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity;

(F) is identified as a criminal street gang member by physical evidence including, but not limited to, photographs or other documentation;

(G) has been stopped in the company of known criminal street gang members two or more times; or

(H) has participated in or undergone activities self-identified or identified by a reliable informant as a criminal street gang initiation ritual;

(c) “criminal street gang activity” means the commission or attempted commission of, or solicitation or conspiracy to commit, one or more person felonies, person misdemeanors, felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, *any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or the comparable juvenile offenses, which if committed by*

an adult would constitute the commission of such felonies or misdemeanors on separate occasions;

(d) “criminal street gang associate” means a person who:

(1) Admits to criminal street gang association; or

(2) meets two or more defining criteria for criminal street gang membership described in subsection (b)(2); and

(e) for purposes of law enforcement identification and tracking only “gang-related incident” means an incident that, upon investigation, meets any of the following conditions:

(1) The participants are identified as criminal street gang members or criminal street gang associates, acting, individually or collectively, to further any criminal purpose of the gang;

(2) a state, county or city law enforcement officer or correctional officer or reliable informant identifies an incident as criminal street gang activity; or

(3) an informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

Sec. 56. Section 209 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 209. (a) Unlawful possession or use of a traffic control signal preemption device is knowingly:

(1) Possessing a traffic control signal preemption device;

(2) using a traffic control signal preemption device;

(3) selling a traffic control signal preemption device; or

(4) purchasing a traffic control signal preemption device.

(b) ~~A person convicted of violating subsection (a)(1) shall be guilty of a class B misdemeanor.~~ *Unlawful possession or use of a traffic control signal preemption device as defined in:*

(1) *Subsection (a)(1) is a class B misdemeanor;*

(2) *subsection (a)(2):*

(A) *Is a severity level 9, nonperson felony, except as provided in subsection (b)(2)(B) or (b)(2)(C);*

(B) *which results in a traffic accident causing injury to any person or damage to any vehicle or other property is a severity level 7, person felony; and*

(C) *which results in a traffic accident causing the death of any person is a severity level 5, person felony.*

(3) *Subsection (a)(3) or (a)(4) is a severity level 9, nonperson felony.*

(c) The provisions of this section shall not apply to the operator, passenger or owner of any of the following authorized emergency vehicles, in the course of such person’s emergency duties:

(1) Publicly owned fire department vehicles;

(2) publicly owned police vehicles; or

(3) motor vehicles operated by ambulance services permitted by the

emergency medical services board under the provisions of K.S.A. 65-6101 et seq., and amendments thereto.

(d) As used in this section, “traffic control signal preemption device” means any device, instrument or mechanism designed, intended or used to interfere with the operation or cycle of a traffic-control signal, as defined in K.S.A. 8-1478, and amendments thereto.

(e) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for battery or any homicide.

Sec. 57. Section 212 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 212. (a) Promoting obscenity is recklessly:

(1) Manufacturing, mailing, transmitting, publishing, distributing, presenting, exhibiting or advertising any obscene material or obscene device;

(2) possessing any obscene material or obscene device with intent to mail, transmit, publish, distribute, present, exhibit or advertise such material or device;

(3) offering or agreeing to manufacture, mail, transmit, publish, distribute, present, exhibit or advertise any obscene material or obscene device; or

(4) producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

(b) Promoting obscenity to minors is promoting obscenity, as defined in subsection (a), where a recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.

(c) (1) Promoting obscenity is a:

(A) Class A nonperson misdemeanor, except as provided in (c)(1)(B); and

(B) severity level 9, person felony upon a second or subsequent conviction.

(2) Promoting obscenity to minors is a:

(A) Class A nonperson misdemeanor, except as provided in (c)(2)(B); and

(B) severity level 8, person felony upon a second or subsequent conviction.

(3) Conviction of a violation of a municipal ordinance prohibiting acts which constitute promoting obscenity or promoting obscenity to minors shall be considered a conviction of promoting obscenity or promoting obscenity to minors for the purpose of determining the number of prior convictions and the classification of the crime under this section.

(d) Upon any conviction of promoting obscenity or promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good

and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity *or promoting obscenity to minors* within two years after such conviction, the defendant shall forfeit the recognizance.

(e) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a rebuttable presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:

(1) The materials or devices were promoted to emphasize their prurient appeal; or

(2) the person is not a wholesaler and promotes the materials or devices in the course of the person's business.

(f) As used in this section:

(1) Any material or performance is "obscene" if:

(A) The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;

(B) the average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy; or

(ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

(C) taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value;

(2) "material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner;

(3) "obscene device" means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy;

(4) "performance" means any play, motion picture, dance or other exhibition performed before an audience;

(5) "sexual intercourse" and "sodomy" mean the same as in section 65 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(6) "wholesaler" means a person who distributes or offers for distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

(g) It shall be a defense to a prosecution for promoting obscenity and promoting obscenity to minors that the:

(1) Persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;

(2) defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or

(3) allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

(h) Notwithstanding the provisions of section 15 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution for promoting obscenity to minors that:

(1) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more; or

(2) an exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

(i) The provisions of this section and the provisions of ordinances of any city prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

Sec. 58. Section 223 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 223. (a) Cruelty to animals is:

(1) Knowingly and maliciously killing, injuring, maiming, torturing, burning or mutilating any animal;

(2) knowingly abandoning any animal in any place without making provisions for its proper care;

(3) having physical custody of any animal and knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal;

(4) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment;

(5) knowingly but not maliciously killing or injuring any animal; or

(6) *knowingly and maliciously* administering any poison to any domestic animal.

(b) Cruelty to animals as defined in:

(1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon conviction of subsection (a)(1) or (a)(6), 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; and

(2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) ~~are~~ *is* a:

(A) Class A nonperson misdemeanor, except as provided in subsection (b)(2)(B); and

(B) nonperson felony upon the second or subsequent conviction of cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5). Upon such conviction, a person shall be sentenced to not less than five days or more than one year's imprisonment and be fined not less than \$500 nor more than \$2,500. 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.

(c) The provisions of this section shall not apply to:

(1) Normal or accepted veterinary practices;

(2) bona fide experiments carried on by commonly recognized research facilities;

(3) killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated, and amendments thereto;

(4) rodeo practices accepted by the rodeo cowboys' association;

(5) the humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter,

pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;

(6) with respect to farm animals, normal or accepted practices of animal husbandry, including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;

(7) the killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;

(8) an animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;

(9) laying an equine down for medical or identification purposes;

(10) normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or

(11) accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.

(d) The provisions of subsection (a)(6) shall not apply to any person exposing poison upon their premises for the purpose of destroying wolves, coyotes or other predatory animals.

(e) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals, ~~as defined in this section~~. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of a duly incorporated humane society or licensed veterinarian for treatment, boarding or other care or, if an officer of such humane society or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. If the animal is placed in the care of an animal shelter, the animal shelter shall notify the owner or custodian, if known or reasonably ascertainable. If the owner or custodian is charged with a violation of this section, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the animal for adoption or euthanize the animal at any time after ~~20~~ 21 days after the owner or cus-

todian is notified or, if the owner or custodian is not known or reasonably ascertainable after ~~20~~ 21 days after the animal is taken into custody, unless the owner or custodian of the animal files a renewable cash or performance bond with the county clerk of the county where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for 30 days. Upon receiving such petition, the court shall determine whether the animal may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal.

(f) The owner or custodian of an animal placed for adoption or killed pursuant to subsection (e) shall not be entitled to recover damages for the placement or killing of such animal unless the owner proves that such placement or killing was unwarranted.

(g) Expenses incurred for the care, treatment or boarding of any animal, taken into custody pursuant to subsection (e), pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, shall be assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime.

(h) Upon the filing of a sworn complaint by any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility alleging the commission of cruelty to animals, the county or district attorney shall determine the validity of the complaint and shall forthwith file charges for the crime if the complaint appears to be valid.

(i) If a person is adjudicated guilty of the crime of cruelty to animals, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.

(j) As used in this section:

- (1) "Equine" means a horse, pony, mule, jenny, donkey or hinny; and
- (2) "maliciously" means a state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse.

Sec. 59. Section 225 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 225. (a) Unlawful conduct of dog fighting is:

- (1) Causing, for amusement or gain, any dog to fight with or injure another dog, *with no requirement of culpable mental state*;
- (2) knowingly permitting such fighting or injuring on premises under one's ownership, charge or control; or

(3) training, owning, keeping, transporting or selling any dog with the intent of having it fight with or injure another dog.

(b) Unlawful possession of dog fighting paraphernalia is possession, with the intent to use in the unlawful conduct of dog fighting, any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia.

(c) Unlawful attendance of dog fighting is, entering or remaining on the premises where the unlawful conduct of dog fighting is occurring, whether the person knows or has reason to know that dog fighting is occurring on the premises.

(d) (1) Unlawful conduct of dog fighting is a severity level 10, non-person felony.

(2) Unlawful possession of dog fighting paraphernalia is a class A non-person misdemeanor.

(3) Unlawful attendance of dog fighting is a class B nonperson misdemeanor.

(e) When a person is arrested under this section, a law enforcement agency may take into custody any dog on the premises where the dog fight is alleged to have occurred and any dog owned or kept on the premises of any person arrested for unlawful conduct of dog fighting, unlawful attendance of dog fighting, or unlawful possession of dog fighting paraphernalia.

(f) When a law enforcement agency takes custody of a dog under this section, such agency may place the dog in the care of a duly incorporated humane society or licensed veterinarian for boarding, treatment or other care. If it appears to a licensed veterinarian that the dog is diseased or disabled beyond recovery for any useful purpose, such dog may be humanely killed. The dog may be sedated, isolated or restrained if such officer, agent or veterinarian determines it to be in the best interest of the dog, other animals at the animal shelter or personnel of the animal shelter. If the dog is placed in the care of an animal shelter, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the dog for adoption or euthanize the dog at any time after ~~20~~ 21 days after the dog is taken into custody, unless the owner or custodian of the dog files a renewable cash or performance bond with the county clerk of the county where the dog is being held, in an amount equal to not less than the cost of care and treatment of the dog for 30 days. Upon receiving such petition, the court shall determine whether the dog may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal. Except as provided in subsection (g), if it appears to the licensed veterinarian by physical examination that the dog has not been trained for aggressive conduct or is a type of dog that is not commonly bred or trained for aggressive conduct, the district or county attorney shall

order that the dog be returned to its owner when the dog is not needed as evidence in a case filed under this section or section 223 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. The owner or keeper of a dog placed for adoption or humanely killed under this subsection shall not be entitled to damages unless the owner or keeper proves that such placement or killing was unwarranted.

(g) If a person is convicted of unlawful conduct of dog fighting, unlawful attendance of dog fighting or unlawful possession of dog fighting paraphernalia, a dog taken into custody pursuant to subsection (e) shall not be returned to such person and the court shall order the owner or keeper to pay to the animal shelter all expenses incurred for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to conviction of the owner or keeper. Disposition of such dog shall be in accordance with section 223 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. If no such conviction results, the dog shall be returned to the owner or keeper and the court shall order the county where the dog was taken into custody to pay to the animal shelter all expenses incurred by the shelter for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to its return.

(h) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for cruelty to animals.

Sec. 60. Section 230 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 230. (a) Promoting prostitution is knowingly:

(1) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management thereof;

(2) permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;

(3) procuring a prostitute for a house of prostitution;

(4) inducing another to become a prostitute;

(5) soliciting a patron for a prostitute or for a house of prostitution;

(6) procuring a prostitute for a patron;

(7) procuring transportation for, paying for the transportation of, or transporting a person within this state with the intention of assisting or promoting that person's engaging in prostitution; or

(8) being employed to perform any act which is prohibited by this section.

(b) (1) Promoting prostitution is a:

~~(1)~~ (A) Class A person misdemeanor when the prostitute is 16 or more years of age, except as provided in subsection ~~(b)(1)(B)~~;

~~(2)~~ (B) severity level 7, person felony when the prostitute is 16 or more years of age and committed by a person who has, prior to the commission of the crime, been convicted of promoting prostitution; and

(3) (C) severity level 6, person felony when the prostitute is under 16 years of age, except as provided in subsection ~~(b)(4); and~~ (b)(2).

(4) (b) (2) *Promoting prostitution or attempt, conspiracy or criminal solicitation to commit promoting prostitution is an off-grid person felony when the offender is 18 years of age or older and the prostitute is less than 14 years of age.*

(c) *If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:*

(1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of promoting prostitution as described in subsection (b)(2);*

(2) *subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of promoting prostitution as described in subsection (b)(2); and*

(3) *subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of promoting prostitution as described in subsection (b)(2).*

Sec. 61. Section 232 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 232. (a) Extortion is:

(1) Intentionally and wrongfully demanding, soliciting or receiving anything of value from the owner, proprietor or other person having a financial interest in a business; and

(2) by means of either a threat, express or implied, or a promise, express or implied, that the person so demanding, soliciting or receiving such thing of value will:

(A) Cause the competition of the person from whom the payment is demanded, solicited or received to be diminished or eliminated;

(B) cause the price of goods or services purchased or sold in the business to be increased, decreased or maintained at a stated level; or

(C) protect the property used in the business or the person or family of the owner, proprietor or other interested person from injury by violence or other unlawful means.

(b) ~~Racketeering~~ Extortion is a severity level 7, nonperson felony.

Sec. 62. Section 242 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 242. (a) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(1) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year;

(2) class B, the sentence for which shall be a definite term of confine-

ment in the county jail which shall be fixed by the court and shall not exceed six months;

(3) class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month; and

(4) unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

(b) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in section ~~4~~ 251 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, instead of or in addition to confinement, as provided in this section.

(c) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(d) Except as provided in subsection (e), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under K.S.A. 8-1599, 41-719 or 41-727 or K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

(e) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (d) are permissive and not mandatory.

Sec. 63. Section 243 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 243. As used in sections 241 through 256, and sections 271 through 286 of chapter 136 of the 2010 Session Laws of Kansas, 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 treat-

ment, 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 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 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 section 284 of *chapter 136 of the 2010 Session Laws of Kansas*, 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 section 271 of *chapter 136 of the 2010 Session Laws of Kansas*, 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. 21-4603~~ *section 271 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 64. Section 247 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 247. (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 section 249 of chapter 136 of the 2010 Session Laws of Kansas, 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 ~~probation or community correctional services~~ *correctional supervision* fee of ~~\$25~~ \$60 if the person was convicted of a misdemeanor or a fee of ~~\$50~~ \$120 if the person was convicted of a felony. In any case the amount of the ~~probation or community correctional services~~ *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 ~~probation or community correctional services~~ *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 ~~probation or community correctional services~~ *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)~~ *(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.

*(d) 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. 65. Section 248 of chapter 136 of the 2010 Session Laws of Kansas

is hereby amended to read as follows: Sec. 248. (a) The period of suspension of sentence, probation or assignment to community corrections fixed by the court shall not exceed two years in misdemeanor cases, subject to renewal and extension for additional fixed periods of two years. Probation, suspension of sentence or assignment to community corrections may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation, suspension of sentence or assignment to community corrections, an order to this effect shall be entered by the court.

(b) The district court having jurisdiction of the offender may parole any misdemeanant sentenced to confinement in the county jail. The period of such parole shall be fixed by the court and shall not exceed two years and shall be terminated in the manner provided for termination of suspended sentence and probation.

(c) For all crimes committed on or after July 1, 1993, the duration of probation in felony cases sentenced for the following severity levels on the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes is as follows:

(1) For nondrug crimes the recommended duration of probations is:

(A) 36 months for crimes in crime severity levels 1 through 5; and

(B) 24 months for crimes in crime severity levels 6 and 7;

(2) for drug crimes the recommended duration of probation is 36 months for crimes in crime severity levels 1 and 2-;

(3) *except as provided further*, in felony cases sentenced at severity levels 9 and 10 on the sentencing guidelines grid for nondrug crimes and severity level 4 on the sentencing guidelines grid for drug crimes, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, ~~or assignment to a community correctional services program as provided under K.S.A. 75-5291 et seq., and amendments thereto~~, of up to 12 months in length;

(4) in felony cases sentenced at severity level 8 on the sentencing guidelines grid for nondrug crimes, ~~and~~ severity level 3 on the sentencing guidelines grid for drug crimes *and felony cases sentenced pursuant to section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, or assignment to a community correctional services program, as provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to 18 months in length;

(5) if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by the length of the probation terms provided in subsections (c)(3) and (c)(4), the court may impose a longer period of probation. Such an increase shall not be considered a departure and shall not be subject to appeal;

(6) *except as provided in subsections (c)(7) and (c)(8)*, the total period

in all cases shall not exceed 60 months, or the maximum period of the prison sentence that could be imposed whichever is longer. Nonprison sentences may be terminated by the court at any time;

(7) if the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. If the defendant is ordered to pay full or partial restitution, the period may be continued as long as the amount of restitution ordered has not been paid; and

(8) the court may modify or extend the offender's period of supervision, pursuant to a modification hearing and a judicial finding of necessity. Such extensions may be made for a maximum period of five years or the maximum period of the prison sentence that could be imposed, whichever is longer, inclusive of the original supervision term.

Sec. 66. Section 244 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 244. (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;

(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 conditions 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 section

249 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 242 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 136 of chapter 136 of the 2010 Session Laws of Kansas, 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 ~~under~~ or aggravated arson as defined in section 98 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 285 of chapter 136 of the 2010 Session Laws of Kansas, 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;*

~~(12)~~ (12) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9) ~~and~~, (10) and (11); or

~~(13)~~ (13) 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 section 177 of chapter 136 of the 2010 Session Laws of Kansas, 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 non-compliance 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 administrative 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 section 242 of chapter 136 of the 2010 Session Laws of Kansas, 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 imposing a fine the court may authorize the payment thereof in installments. 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 correc-

tions 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 section 246 of chapter 136 of the 2010 Session Laws of Kansas, 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. ~~2009~~ 2010 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 section 246 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 305 of chapter 136 of the 2010

*Session Laws of Kansas*, 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 section 305 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 305 of chapter 136 of the 2010 Session Laws of Kansas, 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 section ~~305~~ 248 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 286 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and amendments thereto, the court shall require the defendant who meets the requirements established in section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. ~~2009~~ 2010 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 section ~~305~~ 286 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. For those offenders who are convicted on or after ~~the effective date of this act~~ 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. ~~2009~~ 2010 Supp. 21-36a06, 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 provided 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" ~~have the meanings provided by~~ 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 section 1 of chapter 101 of the 2010 Session Laws of Kansas, 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 assessment 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.*

Sec. 67. Section 254 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 254. (a) (1) Except as provided in subsections (b) and (c), 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) and (c), 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 subsection (c), 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, post-release 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 ~~by~~ in *K.S.A. 21-3405, prior to its repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas*, 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) 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 section 67 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(4) aggravated criminal sodomy as defined in *K.S.A. 21-3506, prior to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(6) sexual exploitation of a child as defined in *K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(7) aggravated incest as defined in *K.S.A. 21-3603, prior to its repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 78 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(9) abuse of a child as defined in *K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(10) capital murder as defined in *K.S.A. 21-3439, prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(11) murder in the first degree as defined in *K.S.A. 21-3401, prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(12) murder in the second degree as defined in *K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(13) voluntary manslaughter as defined in *K.S.A. 21-3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(14) involuntary manslaughter as defined in *K.S.A. 21-3404, prior to*

*its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(15) *sexual battery as defined in K.S.A. 21-3517, prior to its repeal, or section 69 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(17) *a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation;*

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

(19) *any conviction for any offense in effect at any time prior to ~~the effective date of this act~~ July 1, 2011, that is comparable to any offense as provided in this subsection.*

(d) (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 further, there shall be no docket fee for filing a petition pursuant to this section by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after July 1, 2009 through June 30, 2010~~ *April 15, 2010 through June 30, 2011, the supreme court may impose a charge, not to exceed \$10 \$15 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.

(e) 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.

(f) 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. ~~2009~~ 2010 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 pro-

spective 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. ~~2009~~ 2010 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.

(g) 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.

(h) Subject to the disclosures required pursuant to subsection (f), 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.

(i) 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.

Sec. 68. Section 257 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 257. (a) If a defendant is charged with capital murder, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. Such notice shall be filed with the court and served on the defendant or the defendant's attorney not later than ~~five~~ *seven* days after the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of capital murder, shall be sentenced to life without the possibility of parole, and no sentence of death shall be imposed hereunder.

(b) Except as provided in sections 258 and 262 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient

alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a sentence of death shall be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in section 264 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in section 264 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced to life without the possibility of parole. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of life without the possibility of parole and shall commit the defendant to the custody of the secretary of corrections. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(f) Notwithstanding the verdict of the jury, the trial court shall review

any jury verdict imposing a sentence of death hereunder to ascertain whether the imposition of such sentence is supported by the evidence. If the court determines that the imposition of such a sentence is not supported by the evidence, the court shall modify the sentence and sentence the defendant to life without the possibility of parole, and no sentence of death shall be imposed hereunder. Whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

(g) A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the defendant's natural life incarcerated and in the custody of the secretary of corrections. A defendant who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence. Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

Sec. 69. Section 259 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 259. (a) A judgment of conviction resulting in a sentence of death shall be subject to automatic review by ~~an~~ *and* appeal to the supreme court of Kansas in the manner provided by the applicable statutes and rules of the supreme court governing appellate procedure. The review and appeal shall be expedited in every manner consistent with the proper presentation thereof and given priority pursuant to the statutes and rules of the supreme court governing appellate procedure.

(b) The supreme court of Kansas shall consider the question of sentence as well as any errors asserted in the review and appeal and shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.

(c) With regard to the sentence, the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and

(2) whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances.

(d) The court shall be authorized to enter such orders as are necessary to effect a proper and complete disposition of the review and appeal.

Sec. 70. Section 260 of chapter 136 of the 2010 Session Laws of Kan-

sas is hereby amended to read as follows: Sec. 260. (a) Except as provided in ~~section~~ *sections 258 and 262 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if a defendant is convicted of the crime of capital murder and a sentence of death is not imposed pursuant to subsection (e) of section 257 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or requested pursuant to subsection (a) or (b) of section 257 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the defendant shall be sentenced to life without the possibility of parole.

(b) If a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, the court shall determine whether the defendant shall be required to serve a mandatory term of imprisonment of 40 years or for crimes committed on and after July 1, 1999, a mandatory term of imprisonment of 50 years or sentenced as otherwise provided by law.

(c) In order to make such determination, the court may be presented evidence concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in section 264 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the time of sentencing shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) If the court finds that one or more of the aggravating circumstances enumerated in section 264 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to section 263 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The court shall designate, in writing, the statutory aggravating circumstances which it found. The court may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to section 263 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, notwithstanding contrary findings made by the jury or court pursuant to subsection (e) of section 257 of

*chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, for the purpose of determining whether to sentence such defendant to death.

Sec. 71. Section 262 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 262. (a) If, under section 257 of chapter 136 of the 2010 Session Laws of Kansas, 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. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the defendant shall be sentenced in accordance with sections 257, 259, 264, 265, 268 and 269 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.

(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. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the defendant shall be sentenced in accordance with sections 260, 263, 264 and 265 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.

(c) At the hearing, the court shall determine whether the defendant is mentally retarded. 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 ~~10~~ 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, the defendant

shall be sentenced in accordance with sections 257, 259, 264, 265, 268 and 269 of chapter 136 of the 2010 Session Laws of Kansas, 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, the defendant shall be sentenced in accordance with sections 260, 263, 264 and 265 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(f) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is mentally retarded, 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.

(h) As used in this section, “mentally retarded” 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. 72. Section 266 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 266. (a) An aggravated habitual sex offender shall be sentenced to imprisonment for life without the possibility of parole. Such offender shall spend the remainder of the offender’s natural life incarcerated and in the custody of the secretary of corrections. An offender who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

(b) Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

(c) As used in this section:

(1) “Aggravated habitual sex offender” means a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime, as described in subsection (c)(3)(A) through (c)(3)(~~H~~) (H) or (c)(3)(~~I~~) (J); and (B) prior to the conviction of the felony under subparagraph (A), has been convicted ~~on at least two prior conviction events of any sexually violent crime~~ of two or more sexually violent crimes;

(2) ~~“prior conviction event” means one or more felony convictions of a sexually violent crime occurring on the same day and within a single court. These convictions may result from multiple counts within an information or from more than one information. If a person crosses a county line and commits a felony as part of the same criminal act or acts, such felony, if such person is convicted, shall be considered part of the prior conviction event.~~

(3) “Sexually violent crime” means:

(A) Rape, as defined in *K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(B) 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(C) 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) and or (a)(4) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(D) aggravated criminal sodomy, as defined in *K.S.A. 21-3506, prior to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(E) 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 section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(F) sexual exploitation of a child, as defined in *K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(G) aggravated sexual battery, as defined in *K.S.A. 21-3518, prior to its repeal, or section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(H) aggravated incest, as defined in *K.S.A. 21-3603, prior to its repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(I) any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(J) an attempt, conspiracy or criminal solicitation, as defined in *K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of a sexually violent crime as defined in this section; or

(K) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, “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.

Sec. 73. Section 267 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 267. (a) (1) Except as provided in subsection (b) or (d), a defendant who is 18 years of age or older and is convicted of the following crimes committed on or after July 1, 2006, shall be sentenced to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years unless the court determines that the defendant should be sentenced as determined in subsection (a)(2):

(A) Aggravated *human* trafficking, as defined in section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the victim is less than 14 years of age;

(B) rape, as defined in subsection (a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(C) aggravated indecent liberties with a child, as defined in subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(D) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(E) promoting prostitution, as defined in section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the prostitute is less than 14 years of age;

(F) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the child is less than 14 years of age; and

(G) an attempt, conspiracy or criminal solicitation, as defined in section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, of an offense defined in subsections (a)(1)(A) through (a)(1)(F).

(2) The provision of subsection (a)(1) requiring a mandatory minimum term of imprisonment of not less than 25 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to section 266 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 300 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(b) (1) On and after July 1, 2006, if a defendant who is 18 years of age

or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1), a crime in effect at any time prior to ~~May 24, 2007~~ *July 1, 2011*, which is substantially the same as a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as a crime listed in subsection (a)(1), the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years. The provisions of this paragraph shall not apply to a crime committed under section 71 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as section 71 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(2) The provision of subsection (b)(1) requiring a mandatory minimum term of imprisonment of not less than 40 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to section 266, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 480 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(c) When a person is sentenced pursuant to subsection (a) or (b), such person shall be sentenced to a mandatory minimum term of imprisonment of not less than 25 years, 40 years or be sentenced as determined in subsection (a)(2) or subsection (b)(2), whichever is applicable, and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving such mandatory term of imprisonment, and such imprisonment shall not be reduced by the application of good time credits.

(d) (1) On or after July 1, 2006, for a first time conviction of an offense listed in subsection (a)(1), the sentencing judge shall impose the mandatory minimum term of imprisonment provided by subsection (a), unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a departure. If the sentencing judge departs from such mandatory minimum term of imprisonment, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. The departure sentence shall be the sentence pursuant to the revised Kansas sentencing guidelines act, sections 282 through 305 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and, *subject to the provisions of section 299 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, no sentence of a mandatory minimum term of imprisonment shall be imposed hereunder.

(2) As used in this subsection, “mitigating circumstances” shall include, but are not limited to, the following:

- (A) The defendant has no significant history of prior criminal activity;
- (B) the crime was committed while the defendant was under the influence of extreme mental or emotional disturbances;
- (C) the victim was an accomplice in the crime committed by another person, and the defendant’s participation was relatively minor;
- (D) the defendant acted under extreme distress or under the substantial domination of another person;
- (E) the capacity of the defendant to appreciate the criminality of the defendant’s conduct or to conform the defendant’s conduct to the requirements of law was substantially impaired; and
- (F) the age of the defendant at the time of the crime.

(e) *The provisions of K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to any defendant sentenced pursuant to this section.*

Sec. 74. Section 268 of Chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 268. (a) In the event the term of imprisonment for life without the possibility of parole or any provision of section 266 or 267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, authorizing such term is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require no term of imprisonment for life without the possibility of parole and shall sentence the defendant to the maximum term of imprisonment otherwise provided by law.

(b) In the event a sentence of death or any provision of ~~this act~~ chapter 252 of the 1994 Session Laws of Kansas authorizing such sentence is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence and resentence the defendant as otherwise provided by law.

(c) In the event the mandatory term of imprisonment or any provision of chapter 341 of the 1994 Session Laws of Kansas authorizing such mandatory term is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require no mandatory term of imprisonment and shall sentence the defendant as otherwise provided by law.

Sec. 75. Section 269 of chapter 136 of the 2010 Session Laws of Kan-

sas is hereby amended to read as follows: Sec. 269. (a) The provisions of K.S.A. 21-4622 through 21-4630, as they existed immediately prior to July 1, 1994, shall be applicable only to persons convicted of crimes committed on or after July 1, 1990, and before July 1, 1994.

(b) The provisions of K.S.A. 21-4622 through 21-4627 and 21-4629 and 21-4630, as amended on July 1, 1994 *and prior to their repeal, and sections 257, 258, 259, 262, 264, 265 and subsection (b) of section 268 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, shall be applicable only to persons convicted of crimes committed on or after July 1, 1994.

(c) K.S.A. 21-4633 through 21-4640, *prior to their repeal, and sections 260, 261, 262, 263, 264, 265 and subsection (c) of section 268 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, shall be applicable only to persons convicted of crimes committed on or after July 1, 1994.

Sec. 76. Section 271 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 271. (a) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Topeka correctional facility or by the state security hospital. If the offender is sent to the Topeka correctional facility or the state security hospital for a presentence investigation under this section, the correctional facility or hospital may keep the offender confined for a maximum of 60 days, except that an inmate may be held for a longer period of time on order of the secretary, or until the court calls for the return of the offender. While held at the Topeka correctional facility or the state security hospital the defendant may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the correctional facility and the state security hospital. The correctional facility or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its findings and recommendations known to the court in the presentence report.

(b) Except as provided in subsection (c), 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 or, if confinement is for a term less than one year, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. 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;

(4) suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. 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;

(5) assign the defendant to a community correctional services program subject to the provisions of K.S.A. 75-5291, and amendments thereto, and such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(6) assign the defendant to a conservation camp for a period not to exceed six months;

(7) assign the defendant to a house arrest program pursuant to section ~~252~~ 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(8) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (c) of section 242 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court; or

(10) impose any appropriate combination of subsections (b)(1) through (b)(9).

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 section 242 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

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.

In imposing a fine the court may authorize the payment thereof in installments. 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 or conditional release.

The court in committing a defendant to the custody of the secretary of corrections shall fix a maximum term of confinement within the limits provided by law. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

(c) Whenever any juvenile felon, as defined in K.S.A. 38-16,112, prior to its repeal, has been found guilty of a class A or B felony, the court shall commit the defendant to the custody of the secretary of corrections and may impose the fine applicable to the offense.

(d) (1) Except when an appeal is taken and determined adversely to the defendant as provided in subsection (d)(2), at any time within 120 days after a sentence is imposed, after probation or assignment to a community correctional services program has been revoked, the court may modify such sentence, revocation of probation or assignment to a community correctional services program by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits and shall modify such sentence if recommended by the Topeka correctional facility unless the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the inmate will not be served by such modification.

(2) If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 days after the receipt by the clerk of the district court of the mandate from the supreme court or court of appeals.

(e) The court shall modify the sentence at any time before the expiration thereof when such modification is recommended by the secretary of corrections unless the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the inmate will not be served by such modification. The court shall have the power to impose a less severe penalty upon the inmate,

including the power to reduce the minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections, the hearing on the recommendation and the order of modification shall be made in open court. Notice of the recommendation of modification of sentence and the time and place of the hearing thereon shall be given by the inmate, or by the inmate's legal counsel, at least 21 days prior to the hearing to the county or district attorney of the county where the inmate was convicted. After receipt of such notice and at least 14 days prior to the hearing, the county or district attorney shall give notice of the recommendation of modification of sentence and the time and place of the hearing thereon 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 next of kin if the next of kin's address is known to the county or district attorney. Proof of service of each notice required to be given by this subsection shall be filed with the court.

(f) After such defendant has been assigned to a conservation camp but prior to the end of 180 days, the chief administrator of such camp shall file a performance report and recommendations with the court. The court shall enter an order based on such report and recommendations modifying the sentence, if appropriate, by sentencing the defendant to any of the authorized dispositions provided in subsection (b), except to reassign such person to a conservation camp as provided in subsection (b)(6).

(g) 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.

(h) An application for or acceptance of probation, suspended sentence 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.

(i) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(j) The provisions of this section shall apply to crimes committed before July 1, 1993.

Sec. 77. Section 285 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 285. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

SENTENCING RANGE - NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Nonrecord
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for nondrug crimes represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

(A) Prison sentence;

(B) maximum potential reduction to such sentence as a result of good time; and

(C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the:

(A) Prison sentence; and

(B) duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

(g) The sentence for a violation of ~~section 48, and amendments thereto, K.S.A. 21-3415, prior to its repeal~~, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of *subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(h) When a firearm is used to commit any person felony, the offender's

sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(i) (1) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010 Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of chapter 136 of the 2010 Session Laws of Kansas*, section 223 *of chapter 136 of the 2010 Session Laws of Kansas* and section 227 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or section 288 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and section 288 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in section 109 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010 Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of chapter 136 of the 2010 Session Laws of Kansas*, section 223 and section 227 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto; and

(ii) at the time of the conviction under ~~paragraph~~ *subsection (j)(2)(A)(i)* has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, in this state or comparable felony under

the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(ii) at the time of the conviction under ~~paragraph~~ subsection (j)(2)(B)(i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in ~~paragraph~~ subsection (j)(2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) (1) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(2) As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities:

(A) The commission of one or more person felonies; or

(B) the commission of felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto; and

(C) its members have a common name or common identifying sign or symbol; and

(D) its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a)(1) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy, as defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal, subsection (a)(1) or (a)(2) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, or subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be ~~presumed~~ presumptive imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or subsection (a)(2) of section 138 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the

court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in section 89 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of property, as defined in section 89 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary as defined in subsection (a) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary as defined in subsection (a) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or the sentence for a felony violation of theft of property as defined in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary *or aggravated burglary* as defined in section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary *or aggravated burglary* as defined in section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas; or the sentence for a violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period

of postrelease supervision. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) As used in this section, an “optional nonprison sentence” is a sentence which the court may impose, in lieu of the presumptive sentence, upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(r) The sentence for a violation of subsection (c)(2) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) *The sentence for a violation of section 76 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(t) (1) *If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months' imprisonment.*

(2) *The sentence imposed pursuant to subsection (t)(1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(3) *As used in this subsection, “ballistic resistant material” means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.*

Sec. 78. Section 291 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 291. (a) Criminal history categories contained in the sentencing guidelines grids are based on the following types of prior convictions: Person felony adult convictions, nonperson felony adult convictions, person felony juvenile adjudications, nonperson felony juvenile adjudications, person misdemeanor adult convictions, non-

person class A misdemeanor adult convictions, person misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications, select class B nonperson misdemeanor adult convictions, select class B nonperson misdemeanor juvenile adjudications and convictions and adjudications for violations of municipal ordinances or county resolutions which are comparable to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor or nonperson class A misdemeanor. A prior conviction is any conviction, other than another count in the current case which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203, and amendments thereto, which occurred prior to sentencing in the current case regardless of whether the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case.

(b) A class B nonperson select misdemeanor is a special classification established for weapons violations. Such classification shall be considered and scored in determining an offender's criminal history classification.

(c) Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.

(d) Except as provided in section 296 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

(1) Only verified convictions will be considered and scored.

(2) All prior adult felony convictions, including expungements, will be considered and scored.

(3) There will be no decay factor applicable for:

(A) Adult convictions;

(B) a juvenile adjudication for an offense which would constitute a person felony if committed by an adult;

(C) a juvenile adjudication for an offense committed before July 1, 1993, which would have been a class A, B or C felony, if committed by an adult; or

(D) a juvenile adjudication for an offense committed on or after July 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if committed by an adult.

(4) Except as otherwise provided, a juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25, and the juvenile adjudication is for an offense:

(A) Committed before July 1, 1993, which would have been a class D or E felony if committed by an adult;

(B) committed on or after July 1, 1993, which would be a nondrug level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed by an adult; or

(C) which would be a misdemeanor if committed by an adult.

(5) All person misdemeanors, class A nonperson misdemeanors and class B select nonperson misdemeanors, and all municipal ordinance and county resolution violations comparable to such misdemeanors, shall be considered and scored.

(6) Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

(7) Prior convictions of a crime defined by a statute which has since been repealed shall be scored using the classification assigned at the time of such conviction.

(8) Prior convictions of a crime defined by a statute which has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes.

(9) Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level or applicable penalties, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

Sec. 79. Section 292 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 292. In addition to the provisions of section 291 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in *K.S.A. 21-3408, prior to its repeal, or subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of *criminal possession of a firearm as defined in subsection (a)(1) or (a)(5) of K.S.A. 21-4204, prior to its repeal, criminal use of weapons as defined in subsection (a)(8) or (a)(13) (a)(10) or (a)(11) of section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or unlawful possession of a firearm on the grounds or in the state capitol building as defined in section 194, and amendments thereto as in effect on June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal*, will be scored as a select class B nonperson misdemeanor conviction

or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of subsection (a)(3) of section 40 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in *subsection (a) of K.S.A. 21-3715, prior to its repeal, or subsection (a)(1) of section 93 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in *subsection (b) or (c) of K.S.A. 21-3715, prior to its repeal, or subsection (a)(2) or (a)(3) of section 93 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

The facts required to classify prior burglary adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(f) Except as provided in *subsections (d)(4), (d)(5) or (d)(6) of K.S.A. 21-4710, prior to its repeal, or subsections (d)(3)(B), (d)(3)(C), (d)(3)(D)*

and (d)(4) of section 291 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in *K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

Sec. 80. Section 294 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 294. (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction.

(2) If the defendant desires to do so, a summary of the defendant's version of the crime.

(3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block which presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal or K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and amendments thereto, and meet the requirements of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the drug abuse assessment as provided in section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(10) For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-4162, prior to their repeal or K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and amendments thereto, the drug abuse assessment as provided in section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(c) The presentence report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to the parties, the sentencing judge, the department of corrections, and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220, and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.

(d) The criminal history worksheet will not substitute as a presentence report.

(e) The presentence report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports.

(f) *Except as provided in section 295 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, the court may take judicial notice in a subsequent felony proceeding of an earlier presentence report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.

(g) All presentence reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.

Sec. 81. Section 298 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 298. (a) (1) Whenever a person is convicted of a felony, the court upon motion of either the defendant or the state, shall hold a hearing to consider imposition of a departure sentence other than an upward durational departure sentence. The motion shall state the type of departure sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The county or district attorney shall notify the victim of a crime or the victim's family of the right to be present at the hearing. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecutor copies of the presentence investigation report.

(2) At the conclusion of the hearing or within ~~20~~ 21 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If the court decides to depart on its own volition, without a motion from the state or the defendant, the court ~~must~~ shall notify all parties of its intent and allow reasonable time for either party to respond if requested. The notice shall state the type of departure intended by the court and the reasons and factors relied upon.

(4) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure as provided in this subsection regardless of whether a hearing is requested.

(b) (1) Upon motion of the county or district attorney to seek an upward durational departure sentence, the court shall consider imposition of such upward durational departure sentence in the manner provided in subsection (b)(2). The county or district attorney shall file such motion to seek an upward durational departure sentence not less than 30 days prior to the date of trial or if the trial date is to take place in less than 30 days then within ~~five~~ seven days from the date of the arraignment.

(2) The court shall determine if the presentation of any evidence regarding the alleged fact or factors that may increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be presented to a jury and proved beyond a reasonable doubt during the trial of the matter or whether such evidence should be submitted to the jury in a separate departure sentencing hearing following the determination of the defendant's innocence or guilt.

(3) If the presentation of the evidence regarding the alleged fact or factors is submitted to the jury during the trial of the matter as determined by the court, then the provisions of subsections (b)(5), (b)(6) and (b)(7) shall be applicable.

(4) If the court determines it is in the interest of justice, the court shall conduct a separate departure sentence proceeding to determine whether the defendant may be subject to an upward durational departure sentence. Such proceeding shall be conducted by the court before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the upward durational departure sentence proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the upward durational departure sentence proceeding, the court may conduct such upward durational departure sentence proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. Any decision of an upward durational departure sentence proceeding shall be decided by a unanimous decision of the jury. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the upward durational departure sentence proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the upward durational departure sentence proceeding has been waived or the trial jury has been waived, the upward durational departure sentence proceeding shall be conducted by the court.

(5) In the upward durational departure sentence proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of determining if any specific factors exist that may serve to enhance the maximum sentence as provided by section 296 or 297 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Only such evidence as the state has made known to the defendant prior to the upward durational departure sentence proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the upward durational departure sentence proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral arguments.

(6) The court shall provide oral and written instructions to the jury to guide its deliberations.

(7) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more specific factors exist that may serve to enhance the maximum sentence, the defendant may be sentenced pursuant to sections 296 through 299 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation that one or more of the specific factors that may serve to enhance the maximum sentence exists, shall designate in writing, signed by the foreman of the jury, the specific factor or factors which the jury found beyond a reasonable

doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict of finding any of the specific factors, the court shall dismiss the jury and shall only impose a sentence as provided by law. In nonjury cases, the court shall follow the requirements of this subsection in determining if one or more of the specific factors exist that may serve to enhance the maximum sentence.

Sec. 82. Section 299 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 299. (a) When a departure sentence is appropriate, the sentencing judge may depart from the sentencing guidelines as provided in this section. The sentencing judge shall not impose a downward dispositional departure sentence for any crime of extreme sexual violence, as defined in section 296, and amendments thereto. The sentencing judge shall not impose a downward durational departure sentence for any crime of extreme sexual violence, as defined in section 296, and amendments thereto, to less than 50% of the center of the range of the sentence for such crime.

(b) When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The judge shall consider and apply the sentencing guidelines, ~~which is~~ to impose a sentence that is proportionate to the severity of the crime of conviction and the offender's criminal history; and

(2) the presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term.

(c) When a sentencing judge imposes a prison term as a dispositional departure:

(1) The judge shall consider and apply ~~the primary purpose of~~ the sentencing guidelines, ~~which is~~ to impose a sentence that is proportionate to the severity of the crime of conviction; and

(2) the term of imprisonment shall not exceed the maximum duration of the presumptive imprisonment term listed within the sentencing grid. Any sentence inconsistent with the provisions of this section shall constitute an additional departure and shall require substantial and compelling reasons independent of the reasons given for the dispositional departure.

(d) If the sentencing judge imposes a nonprison sentence as a dispositional departure from the guidelines, the recommended duration shall be as provided in subsection (c) of section 248 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 83. Section 302 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 302. (a) The secretary of corrections is hereby authorized to adopt rules and regulations providing for a system of good time calculations. Such rules and regulations shall provide circumstances upon which an inmate may earn good time credits and for the forfeiture of earned credits. Such circumstances may include

factors related to program and work participation and conduct and the inmate's willingness to examine and confront past behavioral patterns that resulted in the commission of the inmate's crimes.

(b) For purposes of determining release of an inmate, the following shall apply with regard to good time calculations:

(1) Good behavior by inmates is the expected norm and negative behavior will be punished; and

(2) the amount of good time which can be earned by an inmate and subtracted from any sentence is limited to:

(A) For a crime committed on or after July 1, 1993, an amount equal to 15% of the prison part of the sentence; or

(B) for a drug severity level 3 or 4 or a nondrug severity level 7 through 10 crime committed on or after January 1, 2008, an amount equal to 20% of the prison part of the sentence.

(c) Any time which is earned and subtracted from the prison part of the sentence of any inmate pursuant to good time calculation shall be added to such inmate's postrelease supervision term.

(d) An inmate shall not be awarded good time credits pursuant to this section for any review period established by the secretary of corrections in which a court finds that the inmate has done any of the following while in the custody of the secretary of corrections:

(1) Filed a false or malicious action or claim with the court;

(2) brought an action or claim with the court solely or primarily for delay or harassment;

(3) testified falsely or otherwise submitted false evidence or information to the court;

(4) attempted to create or obtain a false affidavit, testimony or evidence; or

(5) abused the discovery process in any judicial action or proceeding.

(e) (1) For purposes of determining release of an inmate who is serving only a sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 or 4 crime committed on or after January 1, 2008, the secretary of corrections is hereby authorized to adopt rules and regulations regarding program credit calculations. Such rules and regulations shall provide circumstances upon which an inmate may earn program credits and for the forfeiture of earned credits and such circumstances may include factors substantially related to program participation and conduct. In addition to any good time credits earned and retained, the following shall apply with regard to program credit calculations:

(A) A system shall be developed whereby program credits may be earned by inmates for the successful completion of requirements for a general education diploma, a technical or vocational training program, a substance abuse treatment program or any other program designated by the secretary which has been shown to reduce offender's risk after release; and

(B) the amount of time which can be earned and retained by an inmate

for the successful completion of programs and subtracted from any sentence is limited to not more than 60 days.

(2) Any time which is earned and subtracted from the prison part of the sentence of any inmate pursuant to program credit calculation shall be added to such inmate's postrelease supervision ~~obligation~~ term, if applicable.

(3) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, a defendant shall only be eligible for program credits if such crimes are a nondrug severity level 4 through 10 or a drug severity level 3 or 4.

(4) Program credits shall not be earned by any offender successfully completing a sex offender treatment program.

(5) The secretary of corrections shall report to the Kansas sentencing commission and the Kansas reentry policy council the data on the program credit calculations.

Sec. 84. K.S.A. 22-3427 as amended by section 306 of chapter 136 of the 2010 Session Laws of Kansas, 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 ~~Topeka correctional facility east of the~~ state security hospital, to the officer having the offender in custody for delivery with the offender to the correctional institution.

Sec. 85. K.S.A. 2010 Supp. 8-116a is hereby amended to read as follows: 8-116a. (a) Except as provided in K.S.A. 8-170, and amendments thereto, when an application is made for a vehicle which has been assembled, reconstructed, reconstituted or restored from one or more vehicles, or the proper identification number of a vehicle is in doubt, the procedure in this section shall be followed. The owner of the vehicle shall request the Kansas highway patrol to check the vehicle and the highway patrol shall within a reasonable period of time perform such vehicle check. At the time of such check the owner shall supply the highway patrol with information concerning the history of the various parts of the vehicle. Such information

shall be supplied by affidavit of the owner, if so requested by the highway patrol. If the highway patrol is satisfied that the vehicle contains no stolen parts, it shall assign an existing or new identification number to the vehicle and direct the places and manner in which the identification number is to be located and affixed or implanted. A charge of \$10 per hour or part thereof, with a minimum charge of \$10, shall be made to the owner of a vehicle requesting check under this subsection, and such charge shall be paid prior to the check under this section. When a check has been made under subsection (b), not more than 60 days prior to a check of the same vehicle identification number, requested by the owner of the vehicle to obtain a regular certificate of title in lieu of a nonhighway certificate of title or obtain a rebuilt salvage title in lieu of a salvage title, no charge shall be made for such second check.

(b) Any person making application for any original Kansas title for a used vehicle which, at the time of making application, is titled in another jurisdiction, as a condition precedent to obtaining any Kansas title, shall have such vehicle checked by the Kansas highway patrol for verification that the vehicle identification number shown on the foreign title is genuine and agrees with the identification number on the vehicle. Checks under this section may include inspection for possible violation of ~~K.S.A. 21-3757~~ *section 121 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or other evidence of possible fraud. The verification shall be made upon forms prescribed by the division of vehicles which shall contain such information as the secretary of revenue shall require by rules and regulations. A charge of \$10 per hour or part thereof, with a minimum charge of \$10, shall be made for checks under this subsection. When a vehicle is registered in another state, but is financed by a Kansas financial institution and is repossessed in another state and such vehicle will not be returned to Kansas, the check required by this subsection (b) shall not be required to obtain a valid Kansas title or registration.

(c) As used in this act, “identification number” or “vehicle identification number” means an identifying number, serial number, engine number, transmission number or other distinguishing number or mark, placed on a vehicle, engine, transmission or other essential part by its manufacturer or by authority of the division of vehicles or the Kansas highway patrol or in accordance with the laws of another state or country.

(d) The checks made under subsection (b) may be made by:

- (1) A designee of the superintendent of the Kansas highway patrol; or
- (2) an employee of a new vehicle dealer, as defined in subsection (b) of K.S.A. 8-2401, and amendments thereto, for the purposes provided for in subsection (f). For checks made by a designee, \$1 of each charge shall be remitted to the Kansas highway patrol and the balance of such charges shall be retained by such designee. When a check is made under either subsection (a) or (b) by personnel of the Kansas highway patrol or when a

check is made under subsection (b) by an employee of a new vehicle dealer, the entire amount of the charge therefor shall be paid to the highway patrol.

(e) There is hereby created the vehicle identification number fee fund. The Kansas highway patrol shall remit all moneys received by the Kansas highway patrol from fees collected under subsection (d) 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 vehicle identification number fee fund. All expenditures from the vehicle identification number fee 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 superintendent of the Kansas highway patrol or by a person or persons designated by the superintendent.

(f) An employee of a new vehicle dealer, who has received initial training and certification from the highway patrol, and has met continuing certification requirements, in accordance with rules and regulations adopted by the superintendent of the highway patrol, may provide the checks under subsection (b), in accordance with rules and regulations adopted by the superintendent of the highway patrol, on motor vehicles repurchased or reacquired by a manufacturer, distributor or financing subsidiary of such manufacturer and which are purchased by the new vehicle dealer. At any time, after a hearing in accordance with the provisions of the Kansas administrative procedure act, the superintendent of the highway patrol may revoke, suspend, decline to renew or decline to issue certification for failure to comply with the provisions of this subsection, including any rules and regulations.

Sec. 86. K.S.A. 8-254 is hereby amended to read as follows: 8-254. (a) Subject to the provisions of subsection (b), the division shall revoke a person's driving privileges upon receiving a record of the person's conviction of any of the following offenses, including municipal violations, when the conviction has become final, or upon receiving a record of a person's adjudication as a juvenile offender for commission of an act which, if committed by a person 18 or more years of age, would constitute any of the following offenses when the adjudication has become final:

(1) ~~Aggravated vehicular homicide~~ *Involuntary manslaughter*, as defined by ~~K.S.A. 21-3405a~~ *in subsection (a)(2) of section 40 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the crime is committed while committing a violation of K.S.A. 8-1566 or *subsection (a) of 8-1568*, and amendments thereto, or the ordinance of a city or resolution of a county which prohibits any acts prohibited by those statutes;

(2) *vehicular homicide*, as defined by ~~K.S.A. 21-3405~~ *in section 41 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(3) ~~vehicular~~ *battery*, as defined by ~~K.S.A. 21-3405b~~ *in subsection (a)(1) of section 48 of chapter 136 of the 2010 Session Laws of Kansas*,

and amendments thereto, if the crime is committed while committing a violation of K.S.A. 8-1566 or 8-1568, and amendments thereto, or the ordinance of a city or resolution of a county which prohibits the acts prohibited by those statutes;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) conviction, or forfeiture of bail not vacated, upon a charge of reckless driving;

(6) conviction, or forfeiture of bail not vacated of any felony in the commission of which a motor vehicle is used; or

(7) fleeing or attempting to elude a police officer as provided in K.S.A. 8-1568, and amendments thereto, or conviction of violation of an ordinance of any city or a law of another state which is in substantial conformity with such statute.

(b) In lieu of revoking a person's driving privileges as provided by subsection (a), the court in which the person is convicted or adjudicated may place restrictions on the person's driving privileges as provided by K.S.A. 8-292, and amendments thereto, unless the violation was committed while operating a commercial motor vehicle, as defined in K.S.A. 8-2,128. Driving privileges are to be automatically revoked if the violation which leads to the subsequent conviction occurs in a commercial motor vehicle, as defined in K.S.A. 8-2,128.

Sec. 87. K.S.A. 2010 Supp. 8-255 is hereby amended to read as follows: 8-255. (a) The division is authorized to restrict, suspend or revoke a person's driving privileges upon a showing by its records or other sufficient evidence the person:

(1) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(2) has been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period;

(3) is incompetent to drive a motor vehicle;

(4) has been convicted of a moving traffic violation, committed at a time when the person's driving privileges were restricted, suspended or revoked; or

(5) is a member of the armed forces of the United States stationed at a military installation located in the state of Kansas, and the authorities of the military establishment certify that such person's on-base driving privileges have been suspended, by action of the proper military authorities, for violating the rules and regulations of the military installation governing the movement of vehicular traffic or for any other reason relating to the per-

son's inability to exercise ordinary and reasonable control in the operation of a motor vehicle.

(b) (1) The division shall:

(A) Suspend a person's driving privileges:

(i) When required by K.S.A. 8-262, 8-1014, ~~21-3765~~ or 41-727, and amendments thereto, ~~and shall;~~

(ii) upon a person's second conviction of theft, as defined in subsection (a)(5) of section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, for six months; and

(iii) upon a person's third or subsequent conviction of theft, as defined in subsection (a)(5) of section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, for one year;

(B) disqualify a person's privilege to drive commercial motor vehicles when required by K.S.A. 8-2,142, and amendments thereto. ~~The division shall; and~~

(C) restrict a person's driving privileges when required by K.S.A. 2010 Supp. 39-7,155, and amendments thereto.

(2) As used in this subsection, "conviction" means a final conviction without regard to whether the sentence was suspended or probation granted after such conviction. Forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. "Conviction" includes being convicted of a violation of K.S.A. 21-3765, prior to its repeal, or subsection (a)(5) of section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(c) When the action by the division restricting, suspending, revoking or disqualifying a person's driving privileges is based upon a report of a conviction or convictions from a convicting court, the person may not request a hearing but, within 30 days after notice of restriction, suspension, revocation or disqualification is mailed, may submit a written request for administrative review and provide evidence to the division to show the person whose driving privileges have been restricted, suspended, revoked or disqualified by the division was not convicted of the offense upon which the restriction, suspension, revocation or disqualification is based. Within 30 days of its receipt of the request for administrative review, the division shall notify the person whether the restriction, suspension, revocation or disqualification has been affirmed or set aside. The request for administrative review shall not stay any action taken by the division.

(d) Upon restricting, suspending, revoking or disqualifying the driving privileges of any person as authorized by this act, the division shall immediately notify the person in writing. Except as provided by K.S.A. 8-1002 and 8-2,145, and amendments thereto, and subsections (c) and (g), if the person makes a written request for hearing within 30 days after such notice of restriction, suspension or revocation is mailed, the division shall afford the person an opportunity for a hearing as early as practical not

sooner than five days nor more than 30 days after such request is mailed. If the division has not revoked or suspended the person's driving privileges or vehicle registration prior to the hearing, the hearing may be held within not to exceed 45 days. Except as provided by K.S.A. 8-1002 and 8-2,145, and amendments thereto, the hearing shall be held in the person's county of residence or a county adjacent thereto, unless the division and the person agree that the hearing may be held in some other county. Upon the hearing, the director or the director's duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require an examination or reexamination of the person. When the action proposed or taken by the division is authorized but not required, the division, upon the hearing, shall either rescind or affirm its order of restriction, suspension or revocation or, good cause appearing therefor, extend the restriction or suspension of the person's driving privileges, modify the terms of the restriction or suspension or revoke the person's driving privileges. When the action proposed or taken by the division is required, the division, upon the hearing, shall either affirm its order of restriction, suspension, revocation or disqualification, or, good cause appearing therefor, dismiss the administrative action. If the person fails to request a hearing within the time prescribed or if, after a hearing, the order of restriction, suspension, revocation or disqualification is upheld, the person shall surrender to the division, upon proper demand, any driver's license in the person's possession.

(e) In case of failure on the part of any person to comply with any subpoena issued ~~in~~ on behalf of the division or the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, the district court of any county, on application of the division, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. Each witness who appears before the director or the director's duly authorized agent by order or subpoena, other than an officer or employee of the state or of a political subdivision of the state, shall receive for the witness' attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers sworn to by the witness.

(f) The division, in the interest of traffic and safety, may establish or contract with a private individual, corporation, partnership or association for the services of driver improvement clinics throughout the state and, upon reviewing the driving record of a person whose driving privileges are subject to suspension under subsection (a)(2), may permit the person to retain such person's driving privileges by attending a driver improvement clinic. Any person other than a person issued a commercial driver's license under K.S.A. 8-2,125 et seq., and amendments thereto, desiring to attend a driver improvement clinic shall make application to the division and such application shall be accompanied by the required fee. The secretary of revenue

shall adopt rules and regulations prescribing a driver's improvement clinic fee which shall not exceed \$500 and such rules and regulations deemed necessary for carrying out the provisions of this section, including the development of standards and criteria to be utilized by such driver improvement clinics. Amounts received under this subsection 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 same in the state treasury as prescribed by subsection (f) of K.S.A. 8-267, and amendments thereto.

(g) When the action by the division restricting a person's driving privileges is based upon certification by the secretary of social and rehabilitation services pursuant to K.S.A. 2010 Supp. 39-7,155, and amendments thereto, the person may not request a hearing but, within 30 days after notice of restriction is mailed, may submit a written request for administrative review and provide evidence to the division to show the person whose driving privileges have been restricted by the division is not the person certified by the secretary of social and rehabilitation services, did not receive timely notice of the proposed restriction from the secretary of social and rehabilitation services or has been decertified by the secretary of social and rehabilitation services. Within 30 days of its receipt of the request for administrative review, the division shall notify the person whether the restriction has been affirmed or set aside. The request for administrative review shall not stay any action taken by the division.

(h) *Any person whose driving privileges have been suspended under subsection (b)(1)(A)(ii) or (b)(1)(A)(iii), shall pay a reinstatement fee in the amount of \$100 to the division. The division shall remit all revenues received from such fees, at least monthly, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, for deposit in the state treasury and credit to the state highway fund.*

Sec. 88. K.S.A. 2010 Supp. 8-262 is hereby amended to read as follows: 8-262. (a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and amendments thereto, shall be guilty of a class B nonperson misdemeanor on the first conviction and a class A nonperson misdemeanor on the second or subsequent conviction.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, and amendments thereto, to the return of such person's driver's license.

(3) Except as otherwise provided by subsection (a)(4) or (c), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) Except as otherwise provided by subsection (c), if a person: (A) Is

convicted of a violation of this section, committed while the person's privilege to drive or privilege to obtain a driver's license was suspended or revoked for a violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of any city or resolution of any county or a law of another state, which ordinance or law prohibits the acts prohibited by that statute; and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive or privilege to obtain a driver's license was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(b) The division, upon receiving a record of the conviction of any person under this section, or any ordinance of any city or resolution of any county or a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

(c) (1) The person found guilty of a class A nonperson misdemeanor on a third or subsequent conviction of this section shall be sentenced to not less than 90 days imprisonment and fined not less than \$1,500 if such person's privilege to drive a motor vehicle is canceled, suspended or revoked because such person:

(A) Refused to submit and complete any test of blood, breath or urine requested by law enforcement excluding the preliminary screening test as set forth in K.S.A. 8-1012, and amendments thereto;

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

(C) was convicted of vehicular homicide, K.S.A. 21-3405, *prior to its repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, *prior to its repeal, or involuntary manslaughter as defined in subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or any other murder or manslaughter crime resulting from the operation of a motor vehicle; or

(D) was convicted of being a habitual violator, K.S.A. 8-287, and amendments thereto.

(2) The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end

of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or any municipal ordinance to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(d) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or resolution of any county or a law of another state which is in substantial conformity with this section.

Sec. 89. K.S.A. 8-285 is hereby amended to read as follows: 8-285. Except as otherwise provided in this section, as used in this act, the words and phrases defined in K.S.A. 8-234a, and amendments thereto, shall have the meanings ascribed to them therein. The term "habitual violator" means any resident or nonresident person who, within the immediately preceding five years, has been convicted in this or any other state:

(a) Three or more times of:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, *prior to its repeal, or in section 41 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or as prohibited by any ordinance of any city in this state or any law of another state which is in substantial conformity with that statute;

(2) violating K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any city in this state or any law of another state, which ordinance or law declares to be unlawful the acts prohibited by that statute;

(3) 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 while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and amendments thereto, or, as prohibited by any ordinance of any city in this state or any law of another state which is in substantial conformity with those statutes;

(4) 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;

(5) 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;

(6) any crime punishable as a felony, if a motor vehicle was used in the perpetration of the crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602 through 8-1604, and amendments thereto, or

required by any ordinance of any city in this state or a law of another state which is in substantial conformity with those statutes; or

(8) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage or an ordinance of any city in this state, which is in substantial conformity with such statute.

(b) Three or more times, either singly or in combination, of any of the offenses enumerated in subsection (a).

For the purpose of subsection (a)(2), in addition to the definition of ‘‘conviction’’ otherwise provided by law, conviction includes, but is not limited to, a diversion agreement entered into in lieu of further criminal proceedings, or a plea of nolo contendere, on a complaint, indictment, information, citation or notice to appear alleging a violation of K.S.A. 8-1567, and amendments thereto, or an ordinance of a city in this state or law of another state, which ordinance or law prohibits the acts prohibited by that statute.

Sec. 90. K.S.A. 2010 Supp. 8-287 is hereby amended to read as follows: 8-287. Operation of a motor vehicle in this state while one’s driving privileges are revoked pursuant to K.S.A. 8-286, and amendments thereto, is a class A nonperson misdemeanor. The person found guilty of a third or subsequent conviction of this section shall be sentenced to not less than 90 days imprisonment and fined not less than \$1,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days’ imprisonment. The 90 days’ imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours’ imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or any municipal ordinance to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours’ imprisonment.

Sec. 91. K.S.A. 2010 Supp. 8-2,144 is hereby amended to read as follows: 8-2,144. (a) No person shall drive any commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this state while:

(1) The alcohol concentration in the person’s blood or breath, as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .04 or more;

(2) the alcohol concentration in the person’s blood or breath, as measured within two hours of the time of driving a commercial motor vehicle, is .04 or more; or

(3) committing a violation of subsection (a) of K.S.A. 8-1567, and

amendments thereto, or the ordinance of a city or resolution of a county which prohibits any of the acts prohibited thereunder.

(b) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion, 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(c) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(d) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court also requires as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a

house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(e) The court shall report every conviction of a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state.

(f) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2,142, and amendments thereto.

(g) For the purpose of this section, "alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

Sec. 92. K.S.A. 2010 Supp. 8-1013 is hereby amended to read as follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto, and this section:

(a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(b) (1) "Alcohol or drug-related conviction" means any of the following: (A) Conviction of vehicular battery or aggravated vehicular homicide, if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, or conviction of a violation of K.S.A. 8-1567 and amendments thereto; (B) conviction of a violation of a law of another state which would constitute a crime described in subsection (b)(1)(A) if committed in this state; (C) conviction of a violation of an ordinance of a city in this state or a resolution of a county in this state which would constitute a crime described in subsection (b)(1)(A), whether or not such conviction is in a court of record; or (D) conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-1567, and amendments thereto, or would constitute a crime described in subsection (b)(1)(A) if committed off a military reservation in this state.

(2) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence: (A) "Alcohol or drug-related conviction" also includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (b)(1), including a diversion agreement entered into prior to the effective date of this act; and (B) it is irrelevant whether an

offense occurred before or after conviction or diversion for a previous offense.

(c) “Division” means the division of vehicles of the department of revenue.

(d) “Ignition interlock device” means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.

(e) “Occurrence” means a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest, including an arrest which occurred prior to the effective day of this act.

(f) “Other competent evidence” includes: (1) Alcohol concentration tests obtained from samples taken two hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(g) “Samples” includes breath supplied directly for testing, which breath is not preserved.

(h) “Test failure” or “fails a test” refers to a person’s having results of a test administered pursuant to this act, other than a preliminary screening test, which show an alcohol concentration of .08 or greater in the person’s blood or breath, and includes failure of any such test on a military reservation.

(i) “Test refusal” or “refuses a test” refers to a person’s failure to submit to or complete any test, other than a preliminary screening test, in accordance with this act, and includes refusal of any such test on a military reservation.

(j) “Law enforcement officer” has the meaning provided by ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of K.S.A. 8-1567, and amendments thereto, if committed off a military reservation in this state.

Sec. 93. K.S.A. 2010 Supp. 8-1102 is hereby amended to read as follows: 8-1102. (a) (1) A person shall not use the public highway to abandon vehicles or use the highway to leave vehicles unattended in such a manner as to interfere with public highway operations. When a person leaves a motor vehicle on a public highway or other property open to use by the public, the public agency having jurisdiction of such highway or other property open to use by the public, after 48 hours or when the motor vehicle interferes with public highway operations, may remove and impound the motor vehicle.

(2) Any motor vehicle which has been impounded as provided in this section for 30 days or more shall be disposed of in the following manner: If such motor vehicle has displayed thereon a registration plate issued by the division of vehicles and has been registered with the division, the public

agency shall request verification from the division of vehicles of the last registered owner and any lienholders, if any. Such verification request shall be submitted to the division of vehicles not more than 30 days after such agency took possession of the vehicle. The public agency shall mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall state that if the owner or lienholder does not claim such motor vehicle and pay the removal and storage charges incurred by such public agency on it within 15 days from the date of the mailing of the notice, that it will be sold at public auction to the highest bidder for cash. The notice shall be mailed within 10 days after receipt of verification of the last owner and any lienholders, if any, as provided in this subsection.

After 15 days from date of mailing notice, the public agency shall publish a notice once a week for two consecutive weeks in a newspaper of general circulation in the county where such motor vehicle was abandoned and left, which notice shall describe the motor vehicle by name of maker, model, serial number, and owner, if known, and stating that it has been impounded by the public agency and that it will be sold at public auction to the highest bidder for cash if the owner thereof does not claim it within 10 days of the date of the second publication of the notice and pay the removal and storage charges, and publication costs incurred by the public agency. If the motor vehicle does not display a registration plate issued by the division of vehicles and is not registered with the division, the public agency after 30 days from the date of impoundment, shall request verification from the division of vehicles of the last registered owner and any lienholders, if any. Such verification request shall be submitted to the division of vehicles no more than 30 days after such agency took possession of the vehicle. The public agency shall mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall state that if the owner or lienholder does not claim such motor vehicle and pay the removal and storage charges incurred by such public agency on it within 15 days from the date of the mailing of the notice, it will be sold at public auction to the highest bidder for cash. The notice shall be mailed within 10 days after receipt of verification of the last owner and any lienholders, if any, as provided in this subsection. After 15 days from the date of mailing notice, the public agency shall publish a notice in a newspaper of general circulation in the county where such motor vehicle was abandoned and left, which notice shall describe the motor vehicle by name of maker, model, color and serial number and shall state that it has been impounded by said public agency and will be sold at public auction to the highest bidder for cash, if the owner thereof does not claim it within 10 days of the date of

the second publication of the notice and pay the removal and storage charges incurred by the public agency.

When any public agency has complied with the provisions of this section with respect to an abandoned motor vehicle and the owner thereof does not claim it within the time stated in the notice and pay the removal and storage charges and publication costs incurred by the public agency on such motor vehicle, the public agency may sell the motor vehicle at public auction to the highest bidder for cash.

(3) After any sale pursuant to this section, the purchaser may file proof thereof with the division of vehicles, and the division shall issue a certificate of title to the purchaser of such motor vehicle. All moneys derived from the sale of motor vehicles pursuant to this section, after payment of the expenses of the impoundment and sale, shall be paid into the fund of the public agency which is used by it for the construction or maintenance of highways.

(b) Any person who abandons and leaves a vehicle on real property, other than public property or property open to use by the public, which is not owned or leased by such person or by the owner or lessee of such vehicle shall be guilty of criminal trespass, as defined by ~~K.S.A. 21-3721~~ *in section 94 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and upon request of the owner or occupant of such real property, the public agency in whose jurisdiction such property is situated may remove and dispose of such vehicle in the manner provided in subsection (a), except that the provisions of subsection (a) requiring that a motor vehicle be abandoned for a period of time in excess of 48 hours prior to its removal shall not be applicable to abandoned vehicles which are subject to the provisions of this subsection. Any person removing such vehicle from the real property at the request of such public agency shall have a possessory lien on such vehicle for the costs incurred in removing, towing and storing such vehicle.

(c) Whenever any motor vehicle has been left unattended for more than 48 hours or when any unattended motor vehicle interferes with public highway operations, any law enforcement officer is hereby authorized to move such vehicle or cause to have the vehicle moved as provided in K.S.A. 8-1103 et seq., and amendments thereto.

(d) The notice provisions of this section shall apply to any motor vehicle which has been impounded as provided in K.S.A. 8-1567, and amendments thereto.

(e) Any person attempting to recover a motor vehicle impounded as provided in this section or in accordance with a city ordinance or county resolution providing for the impoundment of motor vehicles, shall show proof of valid registration and ownership of the motor vehicle to the public agency before obtaining the motor vehicle. In addition, the public agency may require payment of all reasonable costs associated with the impound-

ment of the motor vehicle, including transportation and storage fees, prior to release of the motor vehicle.

Sec. 94. K.S.A. 8-1450 is hereby amended to read as follows: 8-1450. “Police officer” means every law enforcement officer, as defined by ~~K.S.A. 21-3110~~ *in section 11 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Sec. 95. K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person’s blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person’s blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somni-facient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months’ imprisonment, or in the court’s discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours’ imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall

be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) (1) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of ~~K.S.A. 21-4704~~ *section 285 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental

health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

At the time of the filing of the judgment form or journal entry as required by ~~K.S.A. 21-4620~~ or *section 280 of chapter 136 of the 2010 Session Laws of Kansas* or K.S.A. 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

(g) (1) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 180 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 180 days' imprisonment. The 180 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 144 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of ~~K.S.A. 21-4704~~ *section 285 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. The person shall remain imprisoned at the state

facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

At the time of the filing of the judgment form or journal entry as required by ~~K.S.A. 21-4620~~ or *section 280 of chapter 136 of the 2010 Session Laws of Kansas* or K.S.A. 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(i) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(j) In lieu of payment of a fine imposed pursuant to this section, 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 not later than one year after the fine is imposed 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.

(k) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(l) (1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.

(2) Any personal property in a vehicle impounded or immobilized pur-

suant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(3) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(m) (1) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(2) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

(n) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(o) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(p) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction,

shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(q) (1) (A) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

(B) On and after July 1, 2007, and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony.

(C) Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or

immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(r) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(2) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

(3) If the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution.

(s) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(t) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

(u) Upon a third or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(v) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(3) “Drug” includes toxic vapors as such term is defined in K.S.A. ~~2009~~ 2010 Supp. 21-36a12, and amendments thereto.

(w) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

(x) Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-sentence evaluation shall be made available, and shall be considered by the sentencing court.

Sec. 96. K.S.A. 2010 Supp. 8-2106 is hereby amended to read as follows: 8-2106. (a) A law enforcement officer may prepare and deliver to a person a written traffic citation on a form approved by the division of motor vehicles, if the law enforcement officer stops the person for a violation of:

(1) The uniform act regulating traffic on highways, which violation is a misdemeanor or a traffic infraction;

(2) K.S.A. 8-262, 8-287, 8-2,144, ~~21-3610, 21-3610a, 21-3722, 21-3724, 21-3725, 21-3728, 21-4101, 8-1599, 40-3104, 40-3106, 41-715, 41-724, 41-727, 47-607, 66-1,111, 66-1,129, 66-1,139, 66-1,140, 66-273, 66-1314, 66-1324, 66-1330, 66-1331, 66-1332, 68-2104, 68-2106; or~~ subsection (b) of K.S.A. 79-34,122, or ~~K.S.A. 8-1599~~ *subsection (a) of section 84, section 96, section 101, section 102, subsection (a) of section 103, or section 181 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(3) K.S.A. 31-155 and amendments thereto involving transportation of bottle rockets;

(4) K.S.A. 66-1314 or 66-1328, and amendments thereto, and any rules and regulations adopted pursuant thereto;

(5) any rules and regulations adopted pursuant to K.S.A. 2-1212, 68-2001 or 31-146, and amendments thereto;

(6) any rules and regulations adopted pursuant to K.S.A. 31-133 and amendments thereto relating to transportation of materials or fuel; or

(7) K.S.A. 8-1343 through 8-1347 and amendments thereto relating to the child passenger safety act; or

(8) K.S.A. 8-2501 through 8-2507 and amendments thereto relating to the safety belt use act.

(b) The citation shall contain a notice to appear in court, the name and address of the person, the type of vehicle the person was driving, whether hazardous materials were being transported, whether an accident occurred,

the state registration number of the person's vehicle, if any, a statement whether the vehicle is a commercial vehicle, whether the person is licensed to drive a commercial motor vehicle, the offense or offenses charged, the time and place when and where the person shall appear in court, the signature of the law enforcement officer, and any other pertinent information.

(c) The time specified in the notice to appear shall be at least five days after the alleged violation unless the person charged with the violation demands an earlier hearing.

(d) The place specified in the notice to appear shall be before a judge of the district court within the county in which the offense is alleged to have been committed.

(e) Except in the circumstances to which subsection (a) of K.S.A. 8-2104, and amendments thereto, apply, in the discretion of the law enforcement officer, a person charged with a misdemeanor may give written promise to appear in court by signing at least one copy of the written citation prepared by the law enforcement officer, in which event the law enforcement officer shall deliver a copy of the citation to the person and shall not take the person into physical custody.

(f) When a person is charged with a traffic infraction, the notice to appear shall provide a place where the person may make a written entry of appearance, waive the right to a trial and plead guilty or no contest. Such notice to appear shall contain a provision that the person's failure to either pay such fine and court costs or appear at the specified time may result in suspension of the person's drivers' license as provided in K.S.A. 8-2110, and amendments thereto. The notice to appear shall provide a space where the law enforcement officer shall enter the appropriate fine specified in the uniform fine schedule contained in K.S.A. 8-2118, and amendments thereto, for the violation charged and court costs in the amount provided by law. If the notice to appear does not do so, the law enforcement officer shall provide a person charged with a traffic infraction a form explaining the person's right to appear and right to a trial and the person's right to pay the appropriate fine and court costs prior to the appearance date. The law enforcement officer shall provide the person with the address of the court to which the written entry of appearance, waiver of trial, plea of guilty or no contest and payment of fine and court costs shall be mailed.

(g) Any officer violating any of the provisions of subsection (f) is guilty of misconduct in office and shall be subject to removal from office.

Sec. 97. K.S.A. 2010 Supp. 8-2117 is hereby amended to read as follows: 8-2117. (a) Subject to the provisions of this section, a court of competent jurisdiction may hear prosecutions of traffic offenses involving any child 14 or more years of age but less than 18 years of age. The court hearing the prosecution may impose any fine authorized by law for a traffic offense, including a violation of K.S.A. 8-1567 and amendments thereto, and may order that the child be placed in a juvenile detention facility, as

defined by K.S.A. 2010 Supp. 38-2302, and amendments thereto, for not more than 10 days. If the child is less than 18 years of age, the child shall not be incarcerated in a jail as defined by K.S.A. 2010 Supp. 38-2302, and amendments thereto. If the statute under which the child is convicted requires a revocation or suspension of driving privileges, the court shall revoke or suspend such privileges in accordance with that statute. Otherwise, the court may suspend the license of any person who is convicted of a traffic offense and who was under 18 years of age at the time of commission of the offense. Suspension of a license shall be for a period not exceeding one year, as ordered by the court. Upon suspending any license pursuant to this section, the court shall require that the license be surrendered to the court and shall transmit the license to the division of vehicles with a copy of the court order showing the time for which the license is suspended. The court may modify the time for which the license is suspended, in which case it shall notify the division of vehicles in writing of the modification. After the time period has passed for which the license is suspended, the division of vehicles shall issue an appropriate license to the person whose license had been suspended, upon successful completion of the examination required by K.S.A. 8-241 and amendments thereto and upon proper application and payment of the required fee unless the child's driving privileges have been revoked, suspended or canceled for another cause and the revocation, suspension or cancellation has not expired.

(b) Instead of suspending a driver's license pursuant to this section, the court may place restrictions on the child's driver's privileges pursuant to K.S.A. 8-292 and amendments thereto.

(c) Instead of the penalties provided in subsections (a) and (b), the court may place the child under a house arrest program, pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and sentence the child to the same sentence as an adult traffic offender under K.S.A. 8-2116, and amendments thereto.

(d) As used in this section, "traffic offense" means a violation of the uniform act regulating traffic on highways, a violation of articles 1 and 2 of chapter 8 of the Kansas Statutes Annotated and a violation of K.S.A. 40-3104, and amendments thereto. Traffic offenses shall include a violation of a city ordinance or county resolution which prohibits acts which would constitute a violation of the uniform act regulating traffic on highways, a violation of articles 1 and 2 of chapter 8 of the Kansas Statutes Annotated, or a violation of K.S.A. 40-3104, and amendments thereto, and any violation of a city ordinance or county resolution which prohibits acts which are not violations of state laws and which relate to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind.

Sec. 98. K.S.A. 2010 Supp. 8-2410 is hereby amended to read as fol-

laws: 8-2410. (a) A license may be denied, suspended or revoked or a renewal may be refused by the director on any of the following grounds:

- (1) Proof of financial unfitness of the applicant;
- (2) material false statement in an application for a license;
- (3) filing a materially false or fraudulent tax return as certified by the director of taxation;
- (4) negligently failing to comply with any applicable provision of this act or any applicable rule or regulation adopted pursuant thereto;
- (5) knowingly defrauding any retail buyer to the buyer's damage;
- (6) negligently failing to perform any written agreement with any buyer;
- (7) failure or refusal to furnish and keep in force any required bond;
- (8) knowingly making a fraudulent sale or transaction;
- (9) knowingly engaging in false or misleading advertising;
- (10) willful misrepresentation, circumvention or concealment, through a subterfuge or device, of any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer;
- (11) negligent use of fraudulent devices, methods or practices in contravention of law with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;
- (12) knowingly violating any law relating to the sale, distribution or financing of vehicles;
- (13) being a first or second stage manufacturer of vehicles, factory branch, distributor, distributor or factory representative, officer, agent or any representative thereof, who has:
  - (A) Required any new vehicle dealer to order or accept delivery of any new motor vehicle, part or accessory of such part, equipment or any other commodity not required by law, or not necessary for the repair or service, or both, of a new motor vehicle which was not ordered by the new vehicle dealer;
  - (B) unfairly, without due regard to the equities of the vehicle dealer, and without just provocation, canceled, terminated or failed to renew a franchise agreement with any new vehicle dealer; or
  - (C) induced, or has attempted to induce, by coercion, intimidation or discrimination, any vehicle dealer to involuntarily enter into any franchise agreement with such first or second stage manufacturer, factory branch, distributor, or any representative thereof, or to do any other act to a vehicle dealer which may be deemed a violation of this act, or the rules and regulations adopted or orders promulgated under authority of this act, by threatening to cancel or not renew a franchise agreement existing between such parties;
- (14) being a first or second stage manufacturer, or distributor who for the protection of the buying public fails to specify in writing the delivery and preparation obligations of its vehicle dealers prior to delivery of new vehicles to new vehicle dealers. A copy of such writing shall be filed with

the division by every licensed first or second stage manufacturer of vehicles and the contents thereof shall constitute the vehicle dealer's only responsibility for product liability as between the vehicle dealer and the first or second stage manufacturer. Any mechanical, body or parts defects arising from any express or implied warranties of the first or second stage manufacturer shall constitute the product or warranty liability of the first or second stage manufacturer. The first or second stage manufacturer shall reasonably compensate any authorized vehicle dealer for the performance of delivery and preparation obligation;

(15) being a first or second stage manufacturer of new vehicles, factory branch or distributor who fails to supply a new vehicle dealer with a reasonable quantity of new vehicles, parts and accessories, in accordance with the franchise agreement. It shall not be deemed a violation of this act if such failure is attributable to factors reasonably beyond the control of such first or second stage manufacturer, factory branch or distributor;

(16) knowingly used or permitted the use of dealer plates contrary to law;

(17) has failed or refused to permit an agent of the division, during the licensee's regular business hours, to examine or inspect such dealer's records pertaining to titles and purchase and sale of vehicles;

(18) has failed to notify the division within 10 days of dealer's plates that have been lost, stolen, mutilated or destroyed;

(19) has failed or refused to surrender their dealer's license or dealer's plates to the division or its agent upon demand;

(20) has demonstrated that such person is not of good character and reputation in the community in which the dealer resides;

(21) has, within five years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violations of any law of any state or the United States in connection with such person's operation as a dealer or salesperson;

(22) has cross-titled a title to any purchaser of any vehicle. Cross-titling shall include, but not by way of limitation, a dealer or broker or the authorized agent of either selling or causing to be sold, exchanged or transferred any vehicle and not showing a complete chain of title on the papers necessary for the issuance of title for the purchaser. The selling dealer's name must appear on the assigned first or second stage manufacturer's certificate of origin or reassigned certificate of title;

(23) has changed the location of such person's established place of business or supplemental place of business prior to approval of such change by the division;

(24) having in such person's possession a certificate of title which is not properly completed, otherwise known as an "open title";

(25) doing business as a vehicle dealer other than at the dealer's established or supplemental place of business, with the exception that dealers

selling new recreational vehicles may engage in business at other than their established or supplemental place of business for a period not to exceed 15 days;

(26) any violation of K.S.A. 8-126 et seq., and amendments thereto, in connection with such person's operation as a dealer;

(27) any violation of K.S.A. 8-116, and amendments thereto;

(28) any violation of ~~K.S.A. 21-3757~~ *section 121 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(29) any violation of K.S.A. 79-1019, 79-3294 et seq., or 79-3601 et seq., and amendments thereto;

(30) failure to provide adequate proof of ownership for motor vehicles in the dealer's possession;

(31) being a first or second stage manufacturer who fails to provide the director of property valuation all information necessary for vehicle identification number identification and determination of vehicle classification at least 90 days prior to release for sale of any new make, model or series of vehicles; or

(32) displaying motor vehicles at a location other than at the dealer's established place of business or supplemental place of business without obtaining the authorization required in K.S.A. 8-2435, and amendments thereto.

(b) In addition to the provisions of subsection (a), and notwithstanding the terms and conditions of any franchise agreement, including any policy, bulletin, practice or guideline with respect thereto or performance thereunder, no first or second stage manufacturer of vehicles, factory branch, distributor, distributor or factory representative, officer or agent or any representative thereof, or any other person may do or cause to be done any of the following acts or practices referenced in this subsection, all of which are also declared to be a violation of the vehicle dealers and manufacturers licensing act, and amendments thereto:

(1) Through the use of a written instrument or otherwise, unreasonably fail or refuse to offer to its same line-make new vehicle dealers all models manufactured for that line-make, or unreasonably require a dealer to: (A) Pay any extra fee;

(B) purchase unreasonable advertising displays or other materials; or

(C) remodel, renovate or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles. The provisions of this subsection shall not apply to manufacturers of recreational vehicles;

(2) require a change in the capital structure of the new vehicle dealership, or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer and in accordance with uniformly applied criteria;

(3) discriminate unreasonably among competing dealers of the same line-make in the sale of vehicles or availability of incentive programs or

sales promotion plans or other similar programs, unless justified by obsolescence;

(4) unless required by subpoena or as otherwise compelled by law: (A) Require a new vehicle dealer to release, convey or otherwise provide customer information if to do so is unlawful, or if the customer objects in writing to doing so, unless the information is necessary for the first or second stage manufacturer of vehicles, factory branch or distributor to meet its obligations to consumers or the new vehicle dealer, including vehicle recalls or other requirements imposed by state or federal law; or

(B) release to any unaffiliated third party any customer information which has been provided by the dealer to the manufacturer;

(5) unless the parties have reached a voluntary agreement where separate and adequate consideration has been offered and accepted in exchange for altering or foregoing the following limitations, through the use of written instrument, or otherwise:

(A) Prohibit or prevent a dealer from acquiring, adding or maintaining a sales or service operation for another line-make at the same or expanded facility at which the dealership is located if the prohibition or prevention of such arrangements would be unreasonable in light of all existing circumstances including, but not limited to, debt exposure, cost, return on investment, the dealer's and manufacturer's business plans and other financial and economic conditions and considerations;

(B) require a dealer to establish or maintain exclusive facilities, personnel or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including, but not limited to, debt exposure, cost, return on investment, the dealer's and manufacturer's business plans and other financial and economic conditions and considerations;

(C) to require a dealer to build or relocate and build new facilities, or make a material alteration, expansion or addition to any dealership facility, unless the requirement is reasonable in light of all existing conditions, including, but not limited to, debt exposure, cost, return on investment, the dealer's and manufacturer's business plans and other financial and economic conditions and considerations;

(6) through the use of written instrument, or otherwise, require, coerce or force a dealer to underutilize its facilities by requiring the dealer to exclude or remove operations for the display, sale or service of any vehicle for which the dealer has a franchise agreement, except that in light of all existing circumstances the dealer must comply with reasonable facilities requirements. The requirement for a dealer to meet reasonable facilities requirements shall not include any requirement that a dealer establish or maintain exclusive facilities.

In the event a dealer decides to add an additional franchise agreement to sell another line-make of new vehicles of a different first or second stage manufacturer or distributor from that currently sold in its existing facility,

it shall be a rebuttable presumption that the decision to do so is reasonable. Any dealer adding a franchise agreement for an existing facility shall provide 60 days written notice of its intent to those other parties to franchise agreements it may have. The other party must respond to such notice within 60 days by requesting a hearing before the director in accordance with K.S.A. 8-2411, and amendments thereto. Consent shall be deemed to have been given approving the addition of the line-make if no hearing is timely requested. A party objecting to the addition shall have the burden to overcome such presumption by a preponderance of the evidence;

(7) (A) through the use of written instrument, or otherwise, directly or indirectly condition the awarding of a franchise agreement to a prospective dealer, the addition of a line-make or franchise agreement to an existing dealer, the renewal of a franchise agreement, the approval of a dealer or facility relocation, the acquisition of a franchise agreement or the approval of a sale or transfer of a franchise agreement or other arrangement on the willingness of a dealer or a prospective dealer to enter into a site control agreement or exclusive use agreement as defined in this subsection;

(B) as used in this paragraph, “site control agreement” and “exclusive use agreement” include any agreement by or required by the first or second stage manufacturer of vehicles, factory branch or distributor (“manufacturer parties” in this paragraph) that has the effect of either:

(i) Requiring that the dealer establish or maintain exclusive dealership facilities in violation of the dealer and manufacturers licensing act;

(ii) restricting the ability of the dealer, or the ability of the dealer’s lessor in the event the dealership facility is being leased, to transfer, sell, lease or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease or other similar agreement; or

(iii) which gives control of the premises to a designated party. “Site control agreement” and “exclusive use agreement” also include manufacturer parties restricting the ability of a dealer to transfer, sell or lease the dealership premises by right of first refusal to purchase or lease, option to purchase, or option to lease, except as otherwise allowed by K.S.A. 8-2416, and amendments thereto, except that voluntary agreements where separate and adequate consideration has been offered and accepted are excluded;

(8) through the use of written instrument, or otherwise, require adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements by law, the following shall apply:

(A) A performance standard, sales objective or program for measuring dealer performance that may have a material effect on a dealer, including the dealer’s right to payment under any incentive or reimbursement program and the application of the standard, sales objective or program by a manufacturer, distributor or factory branch shall be fair, reasonable, equitable and based on accurate information;

(B) a dealer that claims that the application of a performance standard,

sales objective or program for measuring dealership performance does not meet the standards listed in subparagraph (A) may request a hearing before the director pursuant to K.S.A. 8-2411, and amendments thereto; and

(C) a first or second stage manufacturer of vehicles, factory branch or distributor has the burden of proving by a preponderance of the evidence that the performance standard, sales objective or program for measuring dealership information complies with this subsection;

(9) in addition to any other provisions of law, a franchise agreement or other contract offered to a dealer by a first or second stage manufacturer of vehicles, factory branch or distributor may not contain any provision requiring a dealer to pay the attorney's fees of the first or second stage manufacturer of vehicles, factory branch or distributor related to disputes between the parties.

(c) The director may deny the application for the license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(d) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of its salespersons or representatives while acting as its agent.

(e) Any licensee or other person aggrieved by a final order of the director, may appeal to the district court as provided by the Kansas judicial review act.

(f) The revocation or suspension of a first or second stage manufacturer's or distributor's license may be limited to one or more municipalities or counties or any other defined trade area.

Sec. 99. K.S.A. 9-2004 is hereby amended to read as follows: 9-2004. (a) Every officer or employee of a bank or trust company required by this act to take an oath or affirmation, who shall willfully swear or affirm falsely, shall be guilty of perjury, and upon conviction shall be punished as provided by ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(b) (1) A violation of subsection (a) as provided in ~~subsection (b)(1) of K.S.A. 21-3805~~ *(b)(2) of section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, is a severity level 7, nonperson felony.

(2) A violation of subsection (a) as provided in ~~subsection (b)(2) of K.S.A. 21-3805~~ *(b)(1) of section 128 of chapter 136 of the 2010 Session*

*Laws of Kansas*, and amendments thereto, is a severity level 9, nonperson felony.

Sec. 100. K.S.A. 2010 Supp. 12-16,119 is hereby amended to read as follows: 12-16,119. (a) Any person convicted or diverted, or adjudicated or diverted under a preadjudication program, pursuant to K.S.A. 22-2906 et seq., K.S.A. 2010 Supp. 38-2346 et seq., or 12-4414 et seq., and amendments thereto, of a misdemeanor or felony contained in chapters 8, ~~24~~, 41 or 65 of the Kansas Statutes Annotated, or *the Kansas criminal code*, and amendments thereto, where fingerprints are required pursuant to K.S.A. 21-2501, and amendments thereto, shall pay a separate court cost if the board of county commissioners or by the governing body of a city, where a city operates a detention facility, votes to adopt such a fee as a booking or processing fee for each complaint.

(b) Such fee shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense.

(c) Disbursements of these fees shall be to the general fund of the governing body responsible for the funding of the sheriff, police department or countywide law enforcement agency that obtains the fingerprints.

(d) Such fee shall not exceed \$45.

Sec. 101. K.S.A. 2010 Supp. 12-4104 is hereby amended to read as follows: 12-4104. (a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city, including concurrent jurisdiction to hear and determine a violation of an ordinance when the elements of such ordinance violation are the same as the elements of a violation of one of the following state statutes and would constitute, and be punished as, a felony if charged in district court:

(1) K.S.A. 8-1567, and amendments thereto, driving under the influence;

(2) ~~K.S.A. 21-3412a~~ *section 49 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, domestic battery;

(3) ~~K.S.A. 21-3701~~ *section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, theft;

(4) ~~K.S.A. 21-3707~~ *section 107 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, giving a worthless check; or

(5) subsection (b)(3) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto, possession of marijuana.

(b) Search warrants shall not issue out of a municipal court.

Sec. 102. K.S.A. 2010 Supp. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsection (b) or (c), 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) or (c), 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 section 41 of chapter 136 of the 2010 Session Laws of Kansas*, 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 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, ~~and amendments thereto~~ *prior to its repeal*.

(c) 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. 8-1567 or 8-2,144, and amendments thereto.

(d) 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 pur-

suant 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 board.

(e) 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.

(f) 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. 2010 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.

(g) 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.

(h) Subject to the disclosures required pursuant to subsection (f), 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.

(i) 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 re-

quest 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 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 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. 103. K.S.A. 2010 Supp. 12-4516a is hereby amended to read as follows: 12-4516a. (a) Any person who has been arrested on a violation of a city ordinance of this state may petition the 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. 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.

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, except that no fee shall be charged to a person who was arrested as a result of

being a victim of identity theft under K.S.A. 21-4018, *prior to its repeal, or section 177 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. 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 interest 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 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;

(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) 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) 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.

Sec. 104. K.S.A. 2010 Supp. 12-4517 is hereby amended to read as follows: 12-4517. (a) (1) The municipal court judge shall ensure that all persons convicted of violating municipal ordinance provisions that prohibit conduct comparable to a class A or B misdemeanor or assault as defined in ~~K.S.A. 21-3408~~ *subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, under a Kansas criminal statute are fingerprinted and processed.

(2) The municipal court judge shall ensure that all persons arrested or charged with a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto, are fingerprinted and processed at the time of booking or first appearance, whichever occurs first.

(b) The municipal court judge shall order the individual to be fingerprinted at an appropriate location as determined by the municipal court judge. Failure of the person to be fingerprinted after court order issued by the municipal judge shall constitute contempt of court. To reimburse the city or other entity for costs associated with fingerprinting, the municipal court judge may assess reasonable court costs, in addition to other court costs imposed by the state or municipality.

Sec. 105. K.S.A. 2010 Supp. 17-12a508 is hereby amended to read as follows: 17-12a508. (a) Criminal penalties. (1) Except as provided in subsections (a)(2) through (a)(4), a conviction for an intentional violation of the Kansas uniform securities act, or a rule adopted or order issued under this act, except K.S.A. 17-12a504, and amendments thereto, or the notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and amendments thereto, is a severity level 7, nonperson felony. An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(2) A conviction for an intentional violation of K.S.A. 17-12a501 or 17-12a502, and amendments thereto, if the violation resulted in a loss of an amount of:

- (A) \$1,000,000 or more is a severity level 2, nonperson felony;
- (B) at least \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony;
- (C) at least \$100,000 but less than \$250,000 is a severity level 4, nonperson felony;
- (D) at least \$25,000 but less than \$100,000 is a severity level 5, nonperson felony; or
- (E) less than \$25,000 is a severity level 6, nonperson felony.

(3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-12a401(a), 17-12a402(a), 17-12a403(a) or 17-12a404(a), and amendments thereto, is:

- (A) A severity level 5, nonperson felony if the violation resulted in a loss of \$100,000 or more;
- (B) a severity level 6, nonperson felony if the violation resulted in a loss of at least \$25,000 but less than \$100,000; or
- (C) a severity level 7, nonperson felony if the violation resulted in a loss of less than \$25,000.

(4) A conviction for an intentional violation of:

(A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or an order to cease and desist issued by the administrator pursuant to K.S.A. 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level 5, nonperson felony.

(B) K.S.A. 17-12a401(c), 17-12a403(c) or 17-12a506, and amendments thereto, is a severity level 6, nonperson felony.

(C) K.S.A. 17-12a402(d) or 17-12a403(d), and amendments thereto, is a severity level 7, nonperson felony.

(5) Any violation of K.S.A. 17-12a301, 17-12a401(a), 17-12a402(a), 17-12a403(a), 17-12a404(a), 17-12a501 or 17-12a502, and amendments thereto, resulting in a loss of \$25,000 or more shall be presumed imprisonment.

(b) Statute of Limitations. Except as provided by subsection ~~(5) of K.S.A. 21-3106~~ (e) of section 7 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, no prosecution for any crime under this act may be commenced more than 10 years after the alleged violation if the victim is the Kansas public employees retirement system and no prosecution for any other crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(c) Criminal reference. The administrator may refer such evidence as

may be available concerning violations of this act or of any rules and regulations or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the administrator prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the administrator, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney. If an attorney employed by the administrator acts as a special prosecutor, the administrator may pay extradition and witness expenses associated with the case.

(d) No limitation on other criminal enforcement. This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

Sec. 106. K.S.A. 19-101d is hereby amended to read as follows: 19-101d. (a) (1) The board of county commissioners of any county shall have the power to enforce all resolutions passed pursuant to county home rule powers, as designated by K.S.A. 19-101c, and amendments thereto. Resolutions may be enforced by enjoining violations, by prescribing penalties for violations by fine, by confinement in the county jail or by both fine and confinement. Unless otherwise provided by the resolution that defines and makes punishable the violation of such resolution, the penalty imposed shall be in accordance with the penalties established by law for conviction of a class C misdemeanor. In no event shall the penalty imposed for the violation of a resolution exceed the penalties established by law for conviction of a class B misdemeanor.

(2) Prosecution for any violation shall be commenced in the district court in the name of the county and, except as provided in subsection (b), shall be conducted in the manner provided by law for the prosecution of misdemeanor violations of state laws. Writs and process necessary for the prosecution of such violations shall be in the form prescribed by the judge or judges of the courts vested with jurisdiction of such violations by this act, and shall be substantially in the form of writs and process issued for the prosecution of misdemeanor violations of state laws. Each county shall provide all necessary supplies, forms and records at its own expense.

(b) (1) In addition to all other procedures authorized for the enforcement of county codes and resolutions, in Crawford, Douglas, Franklin, Jefferson,

Johnson, Leavenworth, Miami, Riley, Sedgwick, Shawnee and Wyandotte counties, the prosecution for violation of codes and resolutions adopted by the board of county commissioners may be commenced in the district court in the name of the county and may be conducted, except as otherwise provided in this section, in the manner provided for and in accordance with the provisions of the code for the enforcement of county codes and resolutions.

(2) The board of county commissioners of any county which has not provided for the enforcement of county codes and resolutions in accordance with provisions of the code for enforcement of county codes and resolutions on or before July 1, 2007, and which desires to utilize the provisions of the code for enforcement of county codes and resolutions set forth in article 47 of chapter 19 of the Kansas Statutes Annotated, and amendments thereto, shall cause a notice of its intention to utilize the provisions of the code for enforcement of county codes and resolutions set forth in article 47 of chapter 19 of the Kansas Statutes Annotated, and amendments thereto, be published in the official newspaper of the county. If within 30 days next following the date of the publication of such notice a petition, signed by electors equal in number to not less than 5% of the electors of the county, requesting an election thereon, shall be filed in the office of the county election officer, no utilization of the provisions of the code for enforcement of county codes and resolutions set forth in article 47 of chapter 19 of the Kansas Statutes Annotated, and amendments thereto, may be made without such proposition having first been submitted to and having been approved by a majority of the electors of the county voting at an election called and held thereon. Any election shall be called, noticed and held in the manner provided by K.S.A. 10-120, and amendments thereto.

(3) For the purposes of aiding in the enforcement of county codes and resolutions, the board of county commissioners may employ or appoint code enforcement officers for the county who shall have power to sign, issue and execute notices to appear and uniform citations or uniform complaints and notices to appear, as provided in the appendix of forms of the code contained in this act to enforce violations of county codes and resolutions, but shall have no power to issue warrants or make arrests. All warrants shall be issued and arrests made by law enforcement officers pursuant to and in the manner provided in ~~chapter 21 of the Kansas Statutes Annotated~~ *the Kansas criminal code*.

(4) The board of county commissioners may employ or appoint attorneys for the purpose of prosecuting actions for the enforcement of county codes and resolutions. The attorneys shall have the duties, powers and authorities provided by the board that are necessary to prosecute actions under the code.

(5) All costs for the enforcement and prosecution of violations of county codes and resolutions, except for compensation and expenses of the district court judge, shall be paid from the revenues of the county. The

board of county commissioners may establish a special law enforcement fund for the purpose of paying for the costs of code enforcement within the county.

(c) Notwithstanding the provisions of subsection (b), any action commenced in the district court for the enforcement of county codes and resolutions, in which a person may be subject to detention or arrest or in which an accused person, if found guilty, would or might be deprived of the person's liberty, shall be conducted in the manner provided by law for the prosecution of misdemeanor violations of state laws under the Kansas code of criminal procedure and not under the code for the enforcement of county codes and resolutions.

Sec. 107. K.S.A. 19-27,139 is hereby amended to read as follows: 19-27,139. Any person violating the rules and regulations adopted under authority of this act, shall, upon conviction, be deemed guilty of a misdemeanor and punished as provided in ~~K.S.A. 21-112~~ *section 242 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

Sec. 108. K.S.A. 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 sections 87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 92, section 101, subsection (a) of section 103, section 106, section 107, section 116, section 117, section 118 and section 123 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 55 or section 63 of chapter 136 of the 2010 Session Laws of Kansas, 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 board to order restitution, and prescribe the manner and conditions of payment of restitution, as allowed by law.

Sec. 109. K.S.A. 20-369, as amended by section 4 of chapter 101 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: 20-369. (a) If a judicial district creates a local fund, the court may impose a fee as provided in this section against any defendant for crimes involving a family or household member as provided in ~~K.S.A. 21-3412a~~ *section 49 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and against any defendant found to have committed a domestic violence offense pursuant to section 1 of chapter 101 of the 2010 Session Laws of Kansas, and amendments thereto. The chief judge of each judicial district where such fee is imposed shall set the amount of such fee by rules adopted in such judicial district in an amount not to exceed \$100 per case.*

(b) Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the chief judge under this act. All moneys collected by this section shall be paid into the domestic violence special programs fund in the county where the fee is collected, as established by the judicial district.

(c) Expenditures made in each judicial district shall be determined by the chief judge and shall be paid to domestic violence programs administered by the court and to local programs within the judicial district that enhance a coordinated community justice response to the issue of domestic violence.

Sec. 110. K.S.A. 2010 Supp. 20-2207 is hereby amended to read as follows: 20-2207. (a) The judicial council may fix, charge and collect fees for sale and distribution of legal publications in order to recover direct and indirect costs incurred for preparation, publication and distribution of legal publications. The judicial council may request and accept gifts, grants and donations from any person, firm, association or corporation or from the federal government or any agency thereof for preparation, publication or distribution of legal publications.

(b) The publications fee fund of the judicial council which was estab-

lished in the state treasury pursuant to appropriation acts is hereby continued in existence and shall be administered by the judicial council. Revenue from the following sources shall be deposited in the state treasury and credited to such fund:

(1) All moneys received by or for the judicial council from fees collected under this section; and

(2) all moneys received as gifts, grants or donations for preparation, publication or distribution of legal publications.

(c) Moneys deposited in the publications fee fund of the judicial council may be expended for operating expenditures related to preparation, publication and distribution of legal publications of the judicial council and for operating expenses that are not related to publication activities; ~~including expenditures to fund the Kansas criminal code recodification commission on July 1, 2009, through June 30, 2010.~~

(d) All expenditures from the publications 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 chairperson of the judicial council or the chairperson's designee.

Sec. 111. K.S.A. 2010 Supp. 20-2208 is hereby amended to read as follows: 20-2208. There is hereby established in the state treasury the judicial council fund. All expenditures from the judicial council fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to expenditures approved by the chairperson of the Kansas judicial council or by a person or persons designated by the chairperson of the Kansas judicial council. ~~Expenditures from the judicial council fund may be made to fund the Kansas criminal code recodification commission on July 1, 2009, through June 30, 2010.~~

Sec. 112. K.S.A. 2010 Supp. 20-3207 is hereby amended to read as follows: 20-3207. On and after July 1, 2006, there is hereby established in the state treasury the judicial performance fund. All moneys credited to the fund shall be used for the judicial performance evaluation process; ~~except on July 1, 2009, through June 30, 2010, moneys credited to the fund may be used to fund the Kansas criminal code recodification commission.~~ All expenditures from the judicial performance fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to expenditures approved by the chairperson of the Kansas judicial council or by the person or persons designated by the chairperson of the Kansas judicial council.

Sec. 113. K.S.A. 2010 Supp. 22-2310 is hereby amended to read as follows: 22-2310. (a) All law enforcement agencies in this state shall adopt written policies regarding allegations of stalking as provided in subsection (b). These policies shall be made available to all officers of such agency.

(b) Such written policies shall include, but not be limited to, the following:

(1) A statement directing that the officers shall make an arrest when they have probable cause to believe that a crime is being committed or has been committed;

(2) a statement defining stalking pursuant to ~~K.S.A. 21-3438~~ *section 62 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(3) a statement describing the dispatchers' responsibilities;

(4) a statement describing the responding officers' responsibilities and procedures to follow when responding to an allegation of stalking and the suspect is at the scene;

(5) a statement describing the responding officers' responsibilities and procedures to follow when responding to an allegation of stalking and the suspect has left the scene;

(6) procedures for both misdemeanor and felony cases;

(7) procedures for law enforcement officers to follow when handling an allegation of stalking involving court orders, including any protective order as defined by ~~K.S.A. 21-3843~~ *section 149 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(8) a statement that the law enforcement agency shall provide the following information to victims, in writing:

(A) Availability of emergency and medical telephone numbers, if needed;

(B) the law enforcement agency's report number;

(C) the address and telephone number of the prosecutor's office the victim should contact to obtain information about victims' rights pursuant to K.S.A. 74-7333 and 74-7335, and amendments thereto;

(D) the name and address of the crime victims' compensation board and information about possible compensation benefits;

(E) advise the victim that the details of the crime may be made public;

(F) advise the victim of such victims' rights under K.S.A. 74-7333 and 74-7335, and amendments thereto; and

(G) advise the victim of known available resources which may assist the victim; and

(9) whether an arrest is made or not, a standard offense report shall be completed on all such incidents and sent to the Kansas bureau of investigation.

(c) No law enforcement agency or employee of such agency acting within the scope of employment shall be liable for damages resulting from the adoption or enforcement of any policy adopted under this section.

Sec. 114. K.S.A. 2010 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, 2011, the supreme court may impose an additional charge, not to exceed \$15 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 section 177 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. 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) 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) 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) 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. 115. K.S.A. 22-2411 is hereby amended to read as follows: 22-2411. (a) A federal law enforcement officer who enters this state may arrest a person, without a warrant, when in the judgment of the federal law enforcement officer a person:

(1) Asserts physical force or uses forcible compulsion likely to cause death or great bodily harm to any person; or

(2) is committing an inherently dangerous felony as defined in ~~K.S.A. 21-3436~~ *section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(b) To provide assistance to law enforcement officers, a federal law enforcement officer shall have the same authority as a law enforcement officer where:

(1) The federal law enforcement officer is rendering assistance at the request of any law enforcement officer; or

(2) the federal law enforcement officer is effecting an arrest or providing assistance as part of a bona fide task force or joint investigation in which law enforcement officers are participating.

(c) Any lawful actions pursuant to this section shall be deemed to be within the scope of the federal law enforcement officer's employment.

(d) As used in this section:

(1) "Federal law enforcement officer" means a person employed by the United States government and assigned to the federal bureau of investigation who is empowered to effect an arrest with or without a warrant for violation of the United States code and who is authorized to carry a firearm in the performance of the person's official duties as a federal law enforcement officer.

(2) "Law enforcement officer" has the meaning ascribed thereto in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(e) This section shall be a part of and supplemental to the Kansas ~~criminal~~ *code of criminal procedure*.

Sec. 116. K.S.A. 2010 Supp. 22-2512 is hereby amended to read as follows: 22-2512. (1) Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the magistrate, and shall be so kept as long as necessary for the purpose of being produced as evidence on any trial. The property seized may not be taken from the officer having it in custody so long as it is or may be required as evidence in any trial. The officer seizing the property shall give a receipt to the person detained or arrested particularly describing each article of property being held and shall file a copy of such receipt with the magistrate before whom the person detained or arrested is taken. Where seized property is no longer required as evidence in the prosecution of any indictment or information, the court which has jurisdiction of such property may transfer the same to the jurisdiction of any

other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

(2) (a) Notwithstanding the provisions of subsection (1) and with the approval of the affected court, any law enforcement officer who seizes hazardous materials as evidence related to a criminal investigation may collect representative samples of such hazardous materials, and lawfully destroy or dispose of, or direct another person to lawfully destroy or dispose of the remaining quantity of such hazardous materials.

(b) In any prosecution, representative samples of hazardous materials accompanied by photographs, videotapes, laboratory analysis reports or other means used to verify and document the identity and quantity of the material shall be deemed competent evidence of such hazardous materials and shall be admissible in any proceeding, hearing or trial as if such materials had been introduced as evidence.

(c) As used in this section, the term “hazardous materials” means any substance which is capable of posing an unreasonable risk to health, safety and property. It shall include any substance which by its nature is explosive, flammable, corrosive, poisonous, radioactive, a biological hazard or a material which may cause spontaneous combustion. It shall include, but not be limited to, substances listed in the table of hazardous materials contained in the code of federal regulations title 49 and national fire protection association’s fire protection guide on hazardous materials.

(d) The provisions of this subsection shall not apply to ammunition and components thereof.

(3) When property seized is no longer required as evidence, it shall be disposed of as follows:

(a) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;

(b) money shall be restored to the owner unless it was contained in a slot machine or otherwise used in unlawful gambling or lotteries, in which case it shall be forfeited, and shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto;

(c) property which is unclaimed or the ownership of which is unknown shall be sold at public auction to be held by the sheriff and the proceeds, less the cost of sale and any storage charges incurred in preserving it, shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto;

(d) articles of contraband shall be destroyed, except that any such articles the disposition of which is otherwise provided by law shall be dealt with as so provided and any such articles the disposition of which is not otherwise provided by law and which may be capable of innocent use may in the discretion of the court be sold and the proceeds disposed of as provided in subsection (2)(b);

(e) firearms, ammunition, explosives, bombs and like devices, which have been used in the commission of crime, may be returned to the rightful owner, or in the discretion of the court having jurisdiction of the property, destroyed or forfeited to the Kansas bureau of investigation as provided in ~~K.S.A. 21-4206~~ *section 192 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(f) controlled substances forfeited for violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, shall be dealt with as provided under K.S.A. 60-4101 through 60-4126, and amendments thereto;

(g) unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

Sec. 117. K.S.A. 22-2615 is hereby amended to read as follows: 22-2615. A person who has been released from custody upon an appearance bond given in one county for appearance in another county, and who fails to appear, as provided in ~~K.S.A. 21-3813 and 21-3814~~ *section 140 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, may be prosecuted for such failure to appear either in the county where the appearance bond was given or the county where the defendant was bound to appear.

Sec. 118. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure

appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond pursuant to paragraph (3). Except as provided in paragraph (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to paragraph (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

- (A) Is a resident of the state of Kansas;
  - (B) has a criminal history score category of G, H or I;
  - (C) has no prior history of failure to appear for any court appearances;
  - (D) has no detainer or hold from any other jurisdiction;
  - (E) has not been extradited from, and is not awaiting extradition to, another state; and
  - (F) has not been detained for an alleged violation of probation.
- (6) In the discretion of the court, a person charged with a crime may

be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

(7) The court shall not impose any administrative fee.

(8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(9) The appearance bond shall set forth all of the conditions of release.

(10) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(11) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (10) shall apply.

(12) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(13) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(14) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the

judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

(15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$15 per week of such supervision.

Sec. 119. K.S.A. 2010 Supp. 22-2901 is hereby amended to read as follows: 22-2901. (1) Except as provided in subsection (7), when an arrest is made in the county where the crime charged is alleged to have been committed, the person arrested shall be taken without unnecessary delay before a magistrate of the court from which the warrant was issued. If the arrest has been made on probable cause, without a warrant, he shall be taken without unnecessary delay before the nearest available magistrate and a complaint shall be filed forthwith.

(2) Except as provided in subsection (7), when an arrest is made in a county other than where the crime charged is alleged to have been committed, the person arrested may be taken directly to the county wherein the crime is alleged to have been committed without unnecessary delay or at the request of the defendant he shall be taken without unnecessary delay before the nearest available magistrate. Such magistrate shall ascertain the nature of the crime charged in the warrant and the amount of the bond, if any, endorsed on the warrant. If no warrant for the arrest of the person is before the magistrate he shall make use of telephonic, telegraphic or radio communication to ascertain the nature of the charge and the substance of any warrant that has been issued. If no warrant has been issued, a complaint shall be filed and a warrant issued in the county where the crime is alleged to have been committed, and the nature of the charge, the substance of the warrant, and the amount of the bond shall be communicated to the magistrate before whom the defendant is in custody. Upon receipt of such information, the magistrate shall proceed as hereinafter provided.

(3) The magistrate shall fix the terms and conditions of the appearance bond upon which the defendant may be released. If the first appearance is before a magistrate in a county other than where the crime is alleged to have been committed, the magistrate may release the defendant on an appearance bond in an amount not less than that endorsed on the warrant. The defendant shall be required to appear before the magistrate who issued the warrant or a magistrate of a court having jurisdiction on a day certain, not more than 14 days thereafter.

(4) If the defendant is released on an appearance bond to appear before the magistrate in another county, the magistrate who accepts the appearance

bond shall forthwith transmit such appearance bond and all other papers relating to the case to the magistrate before whom the defendant is to appear.

(5) If the person arrested cannot provide an appearance bond, or if the crime is not bailable, the magistrate shall commit him to jail pending further proceedings or shall order him delivered to a law enforcement officer of the county where the crime is alleged to have been committed.

(6) The provisions of this section shall not apply to a person who is arrested on a bench warrant. Such persons shall without unnecessary delay be taken before the magistrate who issued the bench warrant.

(7) If a person is arrested on a warrant or arrested on probable cause without a warrant, pursuant to a violation of subsection (a)(1)(C) of ~~K.S.A. 21-3721~~ *section 94 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, such person shall not be allowed to post bond pending such person's first appearance in court provided that a first appearance occurs within 48 hours after arrest. The magistrate may fix as a condition of release on the appearance bond that such person report to a court services officer. Nothing in this section shall be construed to be an unnecessary delay as such term is used in this section.

Sec. 120. K.S.A. 22-2307, as amended by section 8 of chapter 101 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: 22-2307. (a) All law enforcement agencies in this state shall adopt written policies regarding domestic violence calls as provided in subsection (b). These policies shall be made available to all officers of such agency.

(b) Such written policies shall include, but not be limited to, the following:

(1) A statement directing that when a law enforcement officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, has been committed, the officer shall, without undue delay, arrest the person for which the officer has probable cause to believe committed the crime or offense if such person's actions were not an act of defense of a person or property as provided in ~~K.S.A. 21-3211, 21-3212, 21-3213, 21-3218 or 21-3219~~ *section 21, section 22, section 23, section 28 or section 29 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(2) a statement that nothing shall be construed to require a law enforcement officer to:

(A) Arrest either party involved in an alleged act of domestic violence when the law enforcement officer determines there is no probable cause to believe that a crime or offense has been committed; or

(B) arrest both parties involved in an alleged act of domestic violence when both claim to have been victims of such domestic violence;

(3) a statement directing that if a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer

shall evaluate each complaint separately to determine if there is probable cause that each accused person committed a crime or offense and their actions were not an act of defense of a person or property as provided in ~~K.S.A. 21-3211, 21-3212, 21-3213, 21-3218 or 21-3219~~ *section 21, section 22, section 23, section 28 or section 29 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(4) a statement defining domestic violence in accordance with ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(5) a statement describing the dispatchers' responsibilities;

(6) a statement describing the responding officers' responsibilities and procedures to follow when responding to a domestic violence call and the suspect is at the scene;

(7) a statement regarding procedures when the suspect has left the scene of the crime;

(8) procedures for both misdemeanor and felony cases;

(9) procedures for law enforcement officers to follow when handling domestic violence calls involving court orders, including protection from abuse orders, restraining orders and a protective order issued by a court of any state or Indian tribe;

(10) a statement that the law enforcement agency shall provide the following information to victims, in writing:

(A) Availability of emergency and medical telephone numbers, if needed;

(B) the law enforcement agency's report number;

(C) the address and telephone number of the prosecutor's office the victim should contact to obtain information about victims' rights pursuant to K.S.A. 74-7333 and 74-7335 and amendments thereto;

(D) the name and address of the crime victims' compensation board and information about possible compensation benefits;

(E) advise the victim that the details of the crime may be made public;

(F) advise the victim of such victims' rights under K.S.A. 74-7333 and 74-7335 and amendments thereto; and

(G) advise the victim of known available resources which may assist the victim; and

(11) whether an arrest is made or not, a standard offense report shall be completed on all such incidents and sent to the Kansas bureau of investigation.

Sec. 121. K.S.A. 22-2908, as amended by section 9 of chapter 101 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: 22-2908. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

(1) The nature of the crime charged and the circumstances surrounding it;

(2) any special characteristics or circumstances of the defendant;

(3) whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;

(4) whether there is a probability that the defendant will cooperate with and benefit from diversion;

(5) whether the available diversion program is appropriate to the needs of the defendant;

(6) the impact of the diversion of the defendant upon the community;

(7) recommendations, if any, of the involved law enforcement agency;

(8) recommendations, if any, of the victim;

(9) provisions for restitution; and

(10) any mitigating circumstances.

(b) A county or district attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint if:

(1) The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded nolo contendere to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death;

(2) the complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes; or

(3) the complaint alleges a domestic violence offense, as defined in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and the defendant has participated in two or more diversions in the previous five year period upon complaints alleging a domestic violence offense.

(c) A county or district attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations.

Sec. 122. K.S.A. 2009 Supp. 22-2909, as amended by section 10 of chapter 101 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: 22-2909. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the attorney general or county or district attorney, such attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. If a county creates a local fund under the property crime restitution and compensation act, a county or district attorney may require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed \$100. Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the local board under the property crime restitution and victims compensation act.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567, and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety ac-

tion program or a treatment program, or both, as provided in K.S.A. 8-1008, and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008, and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a domestic violence offense, as defined in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, the diversion agreement shall include a requirement that the defendant undergo a domestic violence offender assessment and follow all recommendations unless otherwise agreed to with the prosecutor in the diversion agreement. The defendant shall be required to pay for such assessment and, unless otherwise agreed to with the prosecutor in the diversion agreement, for completion of all recommendations.

(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation other than K.S.A. 8-1567 and amendments thereto, the diversion agreement may include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.

(f) If the person entering into a diversion agreement is a nonresident, the attorney general or county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

(g) If the attorney general or county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

(h) Except as provided in subsection (h), if a diversion agreement is entered into in lieu of further criminal proceedings alleging commission of a misdemeanor by the defendant, while under 21 years of age, under K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments thereto, the agreement shall require the defendant to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the attorney general or county or district attorney finds that the defendant is indigent, the fee may be waived.

(i) If the defendant is 18 or more years of age but less than 21 years of age and allegedly committed a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (g) are permissive and not mandatory.

(j) Except diversion agreements reported under subsection (j), the attorney general or county or district attorney shall forward to the Kansas bureau of investigation a copy of the diversion agreement at the time such agreement is filed with the district court. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

(k) At the time of filing the diversion agreement with the district court, the attorney general or county or district attorney shall forward to the division of vehicles of the state department of revenue a copy of any diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

Sec. 123. K.S.A. 22-3008 is hereby amended to read as follows: 22-3008. (1) Whenever required by any grand jury, its presiding juror or the prosecuting attorney, the clerk of the court in which the jury is impaneled shall issue subpoenas and other process to bring witnesses to testify before the grand jury.

(2) If any witness duly summoned to appear and testify before a grand jury fails or refuses to obey, compulsory process shall be issued to enforce the witness' attendance, and the court may punish the delinquent in the same manner and upon the same proceedings as provided by law for disobedience of a subpoena issued out of the court in other cases.

(3) If any witness appearing before a grand jury refuses to testify or to answer any questions asked in the course of the witness' examination, the fact shall be communicated to a district judge of the judicial district in writing, on which the question refused to be answered shall be stated. The judge shall then determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

(4) No witness before a grand jury shall be required to incriminate the witness' self.

(5) (a) The county or district attorney, or the attorney general, at any time, on behalf of the state, and the district judge, upon determination that the interest of justice requires, and after giving notice to the prosecuting attorney and hearing the prosecuting attorney's recommendations on the matter, may grant in writing to any person:

(i) Transactional immunity. Any person granted transactional immunity shall not be prosecuted for any crime which has been committed for which such immunity is granted or for any other transactions arising out of the same incident.

(ii) Use and derivative immunity. Any person granted use and derivative use immunity may be prosecuted for any crime, but the state shall not use any testimony against such person provided under a grant of such immunity or any evidence derived from such testimony. Any defendant may file with the court a motion to suppress in writing to prevent the state from using evidence on the grounds that the evidence was derived from and obtained against the defendant as a result of testimony or statements made under such grant of immunity. The motion shall state facts supporting the allegations. Upon a hearing on such motion, the state shall have the burden to prove by clear and convincing evidence that the evidence was obtained independently and from a collateral source.

(b) Any person granted immunity under either or both of subsections (5)(a)(i) or (ii) may not refuse to testify on grounds that such testimony may self incriminate unless such testimony may form the basis for a violation of federal law for which immunity under federal law has not been conferred. No person shall be compelled to testify in any proceeding where the person is a defendant.

(c) No immunity shall be granted for perjury as provided in ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, which was committed in giving such evidence.

(6) If the judge determines that the witness must answer and if the witness persists in refusing to answer, the witness shall be brought before the judge, who shall proceed in the same manner as if the witness had been interrogated and had refused to answer in open court.

Sec. 124. K.S.A. 22-3102 is hereby amended to read as follows: 22-3102. (a) No person called as a witness at an inquisition shall be required to make any statement which will incriminate such person.

(b) The county or district attorney, or the attorney general, may at any time, on behalf of the state, grant in writing to any person:

(1) Transactional immunity. Any person granted transactional immunity shall not be prosecuted for any crime which has been committed for which such immunity is granted or for any other transactions arising out of the same incident.

(2) Use and derivative immunity. Any person granted use and derivative use immunity may be prosecuted for any crime, but the state shall not use any testimony against such person provided under a grant of such immunity or any evidence derived from such testimony. Any defendant may file with the court a motion to suppress in writing to prevent the state from using evidence on the grounds that the evidence was derived from and obtained against the defendant as a result of testimony or statements made under such grant of immunity. The motion shall state facts supporting the allegations. Upon a hearing on such motion, the state shall have the burden to prove by clear and convincing evidence that the evidence was obtained independently and from a collateral source.

(c) Any person granted immunity under either or both subsections (b)(1) or (2) may not refuse to testify on grounds that such testimony may self incriminate unless such testimony may form the basis for a violation of federal law for which immunity under federal law has not been conferred. No person shall be compelled to testify in any proceeding where the person is a defendant.

(d) No immunity shall be granted for perjury as provided in ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, which was committed in giving such evidence.

Sec. 125. K.S.A. 2010 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), 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 ~~20~~ 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, sections 282 through 305 of chapter 136 of the 2010 Session Laws of Kansas*, 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.

Sec. 126. K.S.A. 2010 Supp. 22-3303 is hereby amended to read as follows: 22-3303. (1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution. At the time of such commitment the institution of commitment shall notify the secretary of corrections for the purpose of providing victim notification. Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and ~~any~~ amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3

felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, *prior to their repeal, or subsection (b) of section 69, subsection (b) of section 70, subsection (b) of section 72, subsection (b) of section 81 or subsection (b) of section 98 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and commitment proceedings have commenced, for such proceeding, “mentally ill person subject to involuntary commitment for care and treatment” means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and ~~any~~ amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, *prior to their repeal, or subsection (b) of section 69, subsection (b) of section 70, subsection (b) of section 72, subsection (b) of section 81 or subsection (b) of section 98 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and commitment proceedings have commenced, for such proceeding, “mentally ill person subject to involuntary commitment for care and treatment” means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(3) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302, and amendments thereto, to determine the person’s present mental condition. Such court shall give reasonable notice of such hearings to the prosecuting attorney, the defendant, the defendant’s attorney of record, if any, and the secretary of corrections for the purpose of providing victim notification. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such public institution.

Sec. 127. K.S.A. 22-3414 is hereby amended to read as follows: 22-3414. (1) The prosecuting attorney shall state the case and offer evidence in support of the prosecution. The defendant may make an opening statement prior to the prosecution's offer of evidence, or may make such statement and offer evidence in support of such statement after the prosecution rests.

(2) The parties may then respectively offer rebutting testimony only, unless the court, for good cause, permits them to offer evidence upon their original case.

(3) At the close of the evidence or at such earlier time during the trial as the judge reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The judge shall instruct the jury at the close of the evidence before argument and the judge, in the judge's discretion, after the opening statements, may instruct the jury on such matters as in the judge's opinion will assist the jury in considering the evidence as it is presented. In cases where there is some evidence which would reasonably justify a conviction of some lesser included crime as provided in subsection ~~(2)~~ of ~~K.S.A. 21-3107~~ *(b) of section 9 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, the judge shall instruct the jury as to the crime charged and any such lesser included crime.

The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed or refuse to do so, or give the requested instruction with modification. All instructions given or requested must be filed as a part of the record of the case.

The court reporter shall record all objections to the instructions given or refused by the court, together with modifications made, and the rulings of the court.

No party may assign as error the giving or failure to give an instruction, including a lesser included crime instruction, unless the party objects thereto before the jury retires to consider its verdict stating distinctly the matter to which the party objects and the grounds of the objection unless the instruction or the failure to give an instruction is clearly erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.

(4) When the jury has been instructed, unless the case is submitted to the jury on either side or on both sides without argument, the prosecuting attorney may commence and may conclude the argument. If there is more than one defendant, the court shall determine their relative order in presentation of evidence and argument. In arguing the case, comment may be made upon the law of the case as given in the instructions, as well as upon the evidence.

Sec. 128. K.S.A. 22-3415 is hereby amended to read as follows: 22-3415. (a) The provisions of law in civil cases relative to compelling the attendance and testimony of witnesses, their examination, the administra-

tion of oaths and affirmations, and proceedings as for contempt, to enforce the remedies and protect the rights of the parties, shall extend to criminal cases so far as they are in their nature applicable, unless other provision is made by statute.

(b) The county or district attorney or the attorney general may at any time, on behalf of the state, grant in writing to any person:

(1) Transactional immunity. Any person granted transactional immunity shall not be prosecuted for any crime which has been committed for which such immunity is granted or for any other transactions arising out of the same incident.

(2) Use and derivative immunity. Any person granted use and derivative use immunity may be prosecuted for any crime, but the state shall not use any testimony against such person provided under a grant of such immunity or any evidence derived from such testimony. Any defendant may file with the court a motion to suppress in writing to prevent the state from using evidence on the grounds that the evidence was derived from and obtained against the defendant as a result of testimony or statements made under such grant of immunity. The motion shall state facts supporting the allegations. Upon a hearing on such motion, the state shall have the burden to prove by clear and convincing evidence that the evidence was obtained independently and from a collateral source.

(c) Any person granted immunity under either or both of subsection (b)(1) or (2) may not refuse to testify on grounds that such testimony may self incriminate unless such testimony may form the basis for a violation of federal law for which immunity under federal law has not been conferred. No person shall be compelled to testify in any proceeding where the person is a defendant.

(d) No immunity shall be granted for perjury as provided in ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, which was committed in giving such evidence.

Sec. 129. K.S.A. 2010 Supp. 22-3426 is hereby amended to read as follows: 22-3426. (a) When judgment is rendered or sentence of imprisonment is imposed, upon a plea or verdict of guilty, a record thereof shall be made upon the journal of the court, reflecting, if applicable, conviction or other judgment, the sentence if imposed, and the commitment, which record among other things shall contain a statement of the crime charged, and under what statute; the plea or verdict and the judgment rendered or sentence imposed, and under what statute, and a statement that the defendant was duly represented by counsel naming such counsel, or a statement that the defendant has stated on the record or in writing that the defendant did not want representation of counsel.

(b) If defendant is sentenced to the custody of the secretary of corrections the journal entry shall record, in a judgment form, if used, all the information required under ~~K.S.A. 21-4620~~ *section 280 of chapter 136 of*

*the 2010 Session Laws of Kansas*, and amendments thereto, unless such section is not applicable.

(c) It shall be the duty of the court personally to examine the journal entry and to sign the same.

(d) For felony convictions for crimes committed on or after July 1, 1993, in addition to the provisions of subsections (a) through (c), the journal entry shall contain the following information:

- (1) Court case number;
- (2) Kansas bureau of investigation number;
- (3) case transaction number;
- (4) court O.R.I. number;
- (5) the type of counsel;
- (6) type of trial, if any;
- (7) pretrial status of the offender;
- (8) the date of the sentencing hearing;
- (9) a listing of offenses for which the defendant is convicted;
- (10) the criminal history classification;
- (11) the sentence imposed for each offense including postrelease or probation supervision durations;
- (12) whether the sentences run concurrently or consecutively;
- (13) amount of credit for time spent incarcerated;
- (14) period ordered in county jail as a condition of probation;
- (15) a listing of offenses in which a departure sentence is imposed;
- (16) type of departure sentence; and
- (17) factors cited as a basis for departure sentence.

The journal entry shall be recorded on a form approved by the Kansas sentencing commission.

Sec. 130. K.S.A. 22-3429 is hereby amended to read as follows: 22-3429. After conviction and prior to sentence and as part of the presentence investigation authorized by ~~K.S.A. 21-4604~~ *section 272 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto or for crimes committed on or after July 1, 1993, a presentence investigation report as provided in ~~K.S.A. 21-4714~~ *section 294 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, the trial judge may order the defendant committed for mental examination, evaluation and report. If the defendant is convicted of a felony, the commitment shall be to the state security hospital or any suitable local mental health facility. If the defendant is convicted of a misdemeanor, the commitment shall be to a state hospital or any suitable local mental health facility. If adequate private facilities are available and if the defendant is willing to assume the expense thereof, commitment may be to a private hospital. A report of the examination and evaluation shall be furnished to the judge and shall be made available to the prosecuting attorney and counsel for the defendant. A defendant may

not be detained for more than 120 days under a commitment made under this section.

Sec. 131. K.S.A. 22-3436 is hereby amended to read as follows: 22-3436. If a defendant is charged with a crime pursuant to ~~article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto;

(a) The prosecuting attorney, as defined in K.S.A. 22-2202, and amendments thereto, shall: (1) inform the victim or the victim's family before any dismissal or declining of prosecuting charges; (2) inform the victim or the victim's family of the nature of any proposed plea agreement; and (3) inform and give notice to the victim or the victim's family of the rights established in subsection (b);

(b) The victim of a crime or the victim's family have the right to be present at any hearing where a plea agreement is reviewed or accepted and the parties may submit written arguments to the court prior to the date of the hearing.

Sec. 132. K.S.A. 22-3439 is hereby amended to read as follows: 22-3439. (a) For all felony convictions for offenses committed on or after July 1, 1993, the court shall forward a signed copy of the journal entry, attached together with the presentence investigation report as provided by ~~K.S.A. 21-4714~~ *section 294 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to the Kansas sentencing commission within 30 days after sentencing.

(b) For probation revocations which result in the defendant's imprisonment in the custody of the department of corrections, the court shall forward a signed copy of the journal entry of revocation to the Kansas sentencing commission within 30 days of final disposition.

(c) The court shall insure that information concerning dispositions for all other felony probation revocations based upon crimes committed on or after July 1, 1993, and for all class A and B misdemeanor crimes and assault as defined in K.S.A. 21-3408, *prior to its repeal, or subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, committed on or after July 1, 1993, is forwarded to the Kansas bureau of investigation central repository. Such information shall be transmitted on a form or in a format approved by the attorney general within 30 days of that final disposition.

Sec. 133. K.S.A. 22-3602 is hereby amended to read as follows: 22-3602. (a) Except as otherwise provided, an appeal to the appellate court having jurisdiction of the appeal may be taken by the defendant as a matter of right from any judgment against the defendant in the district court and upon appeal any decision of the district court or intermediate order made in the progress of the case may be reviewed. No appeal shall be taken by the defendant from a judgment of conviction before a district judge upon a

plea of guilty or nolo contendere, except that jurisdictional or other grounds going to the legality of the proceedings may be raised by the defendant as provided in K.S.A. 60-1507, and amendments thereto.

(b) Appeals to the court of appeals may be taken by the prosecution from cases before a district judge as a matter of right in the following cases, and no others:

- (1) From an order dismissing a complaint, information or indictment;
- (2) from an order arresting judgment;
- (3) upon a question reserved by the prosecution; or
- (4) upon an order granting a new trial in any case involving a class A or B felony or for crimes committed on or after July 1, 1993, in any case involving an off-grid crime.

(c) Procedures for appeals by the prosecution enumerated in subsection (b) shall be as provided in supreme court rules.

(d) Appeals to a district judge may be taken by the prosecution from cases before a district magistrate judge as a matter of right in the cases enumerated in subsection (b) and from orders enumerated in K.S.A. 22-3603, and amendments thereto.

(e) Any criminal case on appeal to the court of appeals may be transferred to the supreme court as provided in K.S.A. 20-3016 and 20-3017, and amendments thereto, and any party to such case may petition the supreme court for review of any decision of the court of appeals as provided in subsection (b) of K.S.A. 20-3018, and amendments thereto, except that any such party may appeal to the supreme court as a matter of right in any case in which a question under the constitution of either the United States or the state of Kansas arises for the first time as a result of the decision of the court of appeals.

(f) For crimes committed on or after July 1, 1993, an appeal by the prosecution or the defendant relating to sentences imposed pursuant to 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, sections 282 through 305 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be as provided in K.S.A. 21-4721, *prior to its repeal, or section 301 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 134. K.S.A. 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 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 sen-

tence 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 sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, 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. 135. K.S.A. 2010 Supp. 22-3716 is hereby amended to read as follows: 22-3716. (a) At any time during probation, assignment to a community correctional services program, suspension of sentence or pursuant to subsection (d) for defendants who committed a crime prior to July 1, 1993, and at any time during which a defendant is serving a nonprison sanction for a crime committed on or after July 1, 1993, or pursuant to subsection (d), the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release or assignment, a notice to appear to answer to a charge of violation or a violation of the defendant's nonprison sanction. The notice shall be personally served upon the defendant. The warrant shall authorize all officers named in the warrant to return the defendant to the custody of the court or to any certified detention facility

designated by the court. Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written or verbal statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction. A written statement delivered to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest, the court services officer or community correctional services officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to defendants arrested under these provisions.

(b) Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction. Thereupon, or upon an arrest by warrant as provided in this section, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. Except as otherwise provided, if the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. Except as otherwise provided, no offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section shall be required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections for such violation, unless such person has already at least one prior assignment to a community correctional services program related to the crime for which the original sentence was imposed, except these provisions shall not apply to offenders who violate a condition of release or assignment or a nonprison sanction by committing a new misdemeanor or felony offense. The provisions of this subsection shall not apply to adult felony offenders as described in subsection (a)(3) of K.S.A. 75-5291, and amendments thereto. The court

may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by such assignment to a community correctional services program. When a new felony is committed while the offender is on probation or assignment to a community correctional services program, the new sentence shall be imposed pursuant to the consecutive sentencing requirements of ~~K.S.A. 21-4608~~ *section 246 of chapter 136 of the 2010 Session Laws of Kansas*, 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.

(c) A defendant who is on probation, assigned to a community correctional services program, under suspension of sentence or serving a nonprison sanction and for whose return a warrant has been issued by the court shall be considered a fugitive from justice if it is found that the warrant cannot be served. If it appears that the defendant has violated the provisions of the defendant's release or assignment or a nonprison sanction, the court shall determine whether the time from the issuing of the warrant to the date of the defendant's arrest, or any part of it, shall be counted as time served on probation, assignment to a community correctional services program, suspended sentence or pursuant to a nonprison sanction.

(d) The court shall have 30 days following the date probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction was to end to issue a warrant for the arrest or notice to appear for the defendant to answer a charge of a violation of the conditions of probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction.

(e) Notwithstanding the provisions of any other law to the contrary, an offender whose nonprison sanction is revoked and a term of imprisonment imposed pursuant to either the sentencing guidelines grid for nondrug or drug crimes shall not serve a period of postrelease supervision upon the completion of the prison portion of that sentence. The provisions of this subsection shall not apply to offenders sentenced to a nonprison sanction pursuant to a dispositional departure, whose offense falls within a border box of either the sentencing guidelines grid for nondrug or drug crimes, offenders sentenced for a "sexually violent crime" or a "sexually motivated crime" as defined by K.S.A. 22-3717, and amendments thereto, offenders sentenced pursuant to ~~K.S.A. 21-4704~~ *section 285 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, wherein the

sentence is presumptive imprisonment but a nonprison sanction may be imposed without a departure or offenders whose nonprison sanction was revoked as a result of a conviction for a new misdemeanor or felony offense. The provisions of this subsection shall not apply to offenders who are serving or are to begin serving a sentence for any other felony offense that is not excluded from postrelease supervision by this subsection on the effective date of this subsection. The provisions of this subsection shall be applied retroactively. The department of corrections shall conduct a review of all persons who are in the custody of the department as a result of only a revocation of a nonprison sanction. On or before September 1, 2000, the department shall have discharged from postrelease supervision those offenders as required by this subsection.

(f) Offenders who have been sentenced pursuant to ~~K.S.A. 21-4729~~ *section 305 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and who subsequently violate a condition of the drug and alcohol abuse treatment program shall be subject to an additional nonprison sanction for any such subsequent violation. Such nonprison sanctions shall include, but not be limited to, up to 60 days in a county jail, fines, community service, intensified treatment, house arrest and electronic monitoring.

Sec. 136. K.S.A. 2010 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*; *sections 257, 260, 263, 264, 265 and 266 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; and K.S.A. 8-1567, and amendments thereto; ~~K.S.A. 21-4642, and amendments thereto; and K.S.A. 21-4624, and amendments thereto~~; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to its repeal*, or *section 276 of chapter 136 of the 2010 Session Laws of Kansas*, 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 *sections 260, 263, 264 and 265 of chapter 136 of the 2010 Session Laws of Kansas*, 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, ~~and~~ K.S.A. 21-4635 through 21-4638, *prior to their repeal*, and *sections 260, 263, 264 and 265 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 276 of chapter 136 of the 2010 Session Laws of Kansas*, 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, and amendments thereto*, 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 section 267 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 246 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 267 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 302 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 302 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, on postrelease 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 section 302 of chapter 136 of the 2010 Session Laws of Kansas*, 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 postrelease 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 section 301 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 294 of chapter 136 of the 2010 Session Laws of Kansas*, 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 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 section 298 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(vi) Upon petition, the parole 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 section 72 of chapter 136 of the 2010 Session Laws of Kansas*, 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 postrelease 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 section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, *prior to its repeal*,

or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, *prior to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, 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 sections 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, 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 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, and amendments thereto*, 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 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 postrelease 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 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 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 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 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) 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 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 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 post-release 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 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 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 board grants the parole of an inmate, the board, within ~~40~~ 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 ter-

mination 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 ~~the effective date of this act~~ *May 25, 2000* who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of post-release 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 section 267 of chapter 136 of the 2010 Session Laws of Kansas*, 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 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 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. 137. K.S.A. 22-3725 is hereby amended to read as follows: 22-3725. (a) Except as otherwise provided for crimes committed by inmates on or after July 1, 1993, for the purpose of determining an inmate's eligibility for parole or conditional release, regardless of when the inmate was sentenced or committed the crime for which sentenced, good time credits shall be allocated as follows:

GOOD TIME TABLE  
(Assumed 360-Day Years, 30-Day Months)

SENTENCE		GOOD TIME EARNED		MUST SERVE	
Minimum (or)	Maximum	Years	Months	Years	Months
1		0	4	0	8
2		1	0	1	0
3		1	6	1	6
4		2	0	2	0
5		2	6	2	6
6		3	0	3	0
7		3	6	3	6
8		4	0	4	0
9		4	6	4	6
10		5	0	5	0
11		5	6	5	6
12		6	0	6	0
13		6	6	6	6
14		7	0	7	0
15		7	6	7	6
16		8	0	8	0
17		8	6	8	6
18		9	0	9	0
19		9	6	9	6
20		10	0	10	0
21		10	6	10	6
22		11	0	11	0
23		11	6	11	6
24		12	0	12	0
25		12	6	12	6
26		13	0	13	0
27		13	6	13	6
28		14	0	14	0
29		14	6	14	6
30		15	0	15	0
31		15	6	15	6
32		16	0	16	0
33		16	6	16	6
34		17	0	17	0
35		17	6	17	6
36		18	0	18	0
37		18	6	18	6
38		19	0	19	0
39		19	6	19	6
40		20	0	20	0

41	20	6	20	6
42	21	0	21	0
43	21	6	21	6
44	22	0	22	0
45	22	6	22	6
46	23	0	23	0
47	23	6	23	6
48	24	0	24	0
49	24	6	24	6
50	25	0	25	0
51	25	6	25	6
52	26	0	26	0
53	26	6	26	6
54	27	0	27	0
55	27	6	27	6
56	28	0	28	0
57	28	6	28	6
58	29	0	29	0
59	29	6	29	6
60	30	0	30	0
61	30	6	30	6
62	31	0	31	0
63	31	6	31	6
64	32	0	32	0
65	32	6	32	6
66	33	0	33	0
67	33	6	33	6
68	34	0	34	0
69	34	6	34	6
70	35	0	35	0
71	35	6	35	6
72	36	0	36	0
73	36	6	36	6
74	37	0	37	0
75	37	6	37	6
76	38	0	38	0
77	38	6	38	6
78	39	0	39	0
79	39	6	39	6
80	40	0	40	0
81	40	6	40	6
82	41	0	41	0
83	41	6	41	6
84	42	0	42	0
85	42	6	42	6

86	43	0	43	0
87	43	6	43	6
88	44	0	44	0
89	44	6	44	6
90	45	0	45	0
91	45	6	45	6
92	46	0	46	0
93	46	6	46	6
94	47	0	47	0
95	47	6	47	6
96	48	0	48	0
97	48	6	48	6
98	49	0	49	0
99	49	6	49	6
100	50	0	50	0

(b) Maximum good time credits for sentences of less than two years shall be computed as follows: One day for every two days served and one month for every year served.

(c) Maximum good time credits for sentences two years or greater shall be computed as follows: One-half of the sentence.

(d) Good time credits shall be awarded on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(e) The provisions of this section shall not apply to crimes committed by inmates on or after July 1, 1993. Good time calculations for such crimes shall be as provided in K.S.A. 21-4722, *prior to its repeal, or section 302 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(f) An inmate shall not be awarded good time credits pursuant to this section for any review period established by the secretary of corrections in which a court finds that the inmate has done any of the following while in the custody of the secretary of corrections:

- (1) Filed a false or malicious action or claim with the court;
- (2) brought an action or claim with the court solely or primarily for delay or harassment;
- (3) testified falsely or otherwise submitted false evidence or information to the court;
- (4) attempted to create or obtain a false affidavit, testimony or evidence; or
- (5) abused the discovery process in any judicial action or proceeding.

Sec. 138. K.S.A. 2010 Supp. 22-3727 is hereby amended to read as follows: 22-3727. (a) Prior to the release of any inmate on parole, conditional release, expiration of sentence or postrelease supervision, if an inmate is released into the community under a program under the supervision of the secretary of corrections, or after the escape of an inmate or death of an

inmate while in the secretary of corrections' custody, the secretary of corrections shall give written notice of such release, escape or death to any victim of the inmate's crime 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. Such notice shall be required to be given to the victim or the victim's family only if the inmate was convicted of any crime in article 33, 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 33 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Failure to notify the victim or the victim's family as provided in this section shall not be a reason for postponement of parole, conditional release or other forms of release.

(b) As used in this section, "victim's family" means a spouse, surviving spouse, children, parents, legal guardian, siblings, stepparent or grandparents.

Sec. 139. K.S.A. 2010 Supp. 22-3727a is hereby amended to read as follows: 22-3727a. (a) The secretary of corrections shall, as soon as practicable, provide notification as provided in K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431 and 22-3727, and amendments thereto, and upon the escape or death of a committed defendant or inmate while in the custody of the secretary of social and rehabilitation services, to any victim of the defendant or inmate's crime whose address is known to the secretary of corrections, and the victim's family, if so requested and the family's addresses are known to the secretary of corrections. Such notice shall be required to be given only if the defendant was charged with, or the inmate was convicted of, any crime in article 33, 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 33 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(b) As used in this section, "victim's family" means a spouse, surviving spouse, children, parents, legal guardian, siblings, stepparent or grandparents.

Sec. 140. K.S.A. 2010 Supp. 22-4614 is hereby amended to read as follows: 22-4614. No law enforcement officer, government official or prosecutor shall request or require any person who is alleged to be a victim of an offense described in ~~article 35 of chapter 21 of the Kansas Statutes Annotated~~ *sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, incest as defined in ~~K.S.A. 21-3602~~ *subsection (a) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or aggravated incest as defined in subsection (a)(2) of ~~K.S.A. 21-3603~~ *subsection (b)(2) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to submit to a polygraph examination or similar truth telling

device as a condition for proceeding with an investigation, or charging or prosecuting such an offense.

Sec. 141. K.S.A. 2010 Supp. 22-4616 is hereby amended to read as follows: 22-4616. (a) On and after July 1, 2011, in all criminal cases, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense.

(1) Except as provided further, if the trier of fact determines that the defendant committed a domestic violence offense, the court shall place a domestic violence designation on the criminal case and the defendant shall be subject to the provisions of subsection (p) of ~~K.S.A. 21-4603d~~ *section 244 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(2) The court shall not place a domestic violence designation on the criminal case and the defendant shall not be subject to the provisions of subsection (p) of ~~K.S.A. 21-4603d~~ *section 244 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, only if the court finds on the record that:

(A) The defendant has not previously committed a domestic violence offense or participated in a diversion upon a complaint alleging a domestic violence offense; and

(B) the domestic violence offense was not used to coerce, control, punish, intimidate or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member.

(b) The term “domestic violence offense” shall have the meaning provided in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas code for criminal procedure.

Sec. 142. K.S.A. 2010 Supp. 22-4617 is hereby amended to read as follows: 22-4617. In all criminal cases, when a complaint is filed charging a defendant with commission of any crime whereby the underlying factual basis includes an act of domestic violence, as defined in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, the court may place a “DV” designation in the unique identifying case number assigned to such case. Nothing in this section shall be construed to limit the courts of this state from adopting a system of case designation deemed by the courts to be beneficial to the efficient administration of justice.

Sec. 143. K.S.A. 22-4807a is hereby amended to read as follows: 22-4807a. (a) The following property is subject to forfeiture pursuant to this act:

(1) Contraband property used or intended to be used in the commission of theft of livestock;

(2) the proceeds gained from the commission of theft of livestock;

(3) personal property acquired with proceeds gained from the commission of theft of livestock;

(4) all conveyances, including aircraft, vehicles, vessels, horses or dogs which are used or intended for the use to transport or in any manner to facilitate the transportation for the purpose of the commission of theft of livestock. No conveyance used by any person as a common carrier in the transportation of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owners thereof to have been committed or omitted without the owners knowledge or consent. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties;

(5) all books, records and research products and materials including microfilm, tapes and data which are used or intended for the use in the theft of livestock;

(6) everything of value furnished, or intended to be furnished or traded or used as payment or invested for anything of value but shall not include real property. It may be presumed that this property was acquired with proceeds gained from the commission of theft of livestock and are subject to forfeiture;

(b) Property which is used in the commission of theft of livestock which has title of ownership with two parties on the title or a cosigner is subject to forfeiture, if one party on the title uses the property in the commission of theft of livestock or receives titled property as the proceeds of such felony even if the second party claims that such second party did not have knowledge or involvement in such felony.

(c) As used in this act: (1) “Contraband property” means property of any nature including personal, tangible or intangible but shall not include real property.

(2) “Livestock” means cattle, swine, sheep, goats, horses, mules, domesticated deer and all creatures of the ratite family that are not indigenous to this state, including but not limited to ostriches, emus and rheas, and any carcass, skin or part of such animal.

(3) “Theft of livestock” means theft which is classified as a felony violation, pursuant to ~~K.S.A. 21-3701~~ *section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, in which the property taken was livestock.

(4) “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. 144. K.S.A. 2010 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in the Kansas offender registration act, unless the context otherwise requires:

- (a) “Offender” means: (1) A sex offender as defined in subsection (b);
- (2) a violent offender as defined in subsection (d);
- (3) a sexually violent predator as defined in subsection (f);
- (4) any person who, on and after May 29, 1997, is convicted of any of the following crimes when the victim is less than 18 years of age:
  - (A) Kidnapping as defined in K.S.A. 21-3420, *prior to its repeal, or subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, except by a parent;
  - (B) aggravated kidnapping as defined in K.S.A. 21-3421, *prior to its repeal, or subsection (b) of section 43 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or
  - (C) criminal restraint as defined in K.S.A. 21-3424, *prior to its repeal, or section 46 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, except by a parent;
  - (5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:
    - (A) Adultery as defined by K.S.A. 21-3507, *prior to its repeal, or section 75 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
    - (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, *prior to its repeal, or subsection (a)(1) or (a)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
    - (C) promoting prostitution as defined by K.S.A. 21-3513, *prior to its repeal, or section 230 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
    - (D) patronizing a prostitute as defined by K.S.A. 21-3515, *prior to its repeal, or section 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or
    - (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, *prior to its repeal, or section 77 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
  - (6) any person who has been required to register under any federal, military or other state’s law or is otherwise required to be registered;
  - (7) any person who, on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;
  - (8) any person who has been convicted of an offense in effect at any time prior to May 29, 1997, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state con-

viction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);

(9) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);

(10) any person who has been convicted of aggravated human trafficking as defined in K.S.A. 21-3447, *prior to its repeal, or subsection (b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or

(11) any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined by K.S.A. 65-4159, prior to its repeal, or K.S.A. 2010 Supp. 21-36a03, and amendments thereto, unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's personal use;

(B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance as defined by subsection (a) of K.S.A. 65-7006, prior to its repeal, or subsection (a) of K.S.A. 2010 Supp. 21-36a09, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or

(C) K.S.A. 65-4161, prior to its repeal, or subsection (a)(1) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto. The provisions of this paragraph shall not apply to violations of subsections (a)(2) through (a)(6) or (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto, which occurred on and after July 1, 2009, through ~~the effective date of this act~~ *April 15, 2010*.

Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

(b) "Sex offender" includes any person who, on or after April 14, 1994, is convicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c).

(c) "Sexually violent crime" means:

(1) Rape as defined in K.S.A. 21-3502, *prior to its repeal, or section*

67 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) ~~and~~ or (a)(3) of K.S.A. 21-3505, *prior to its repeal, or subsection (a)(3) or (a)(4) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(6) indecent solicitation of a child as defined by K.S.A. 21-3510, *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(8) sexual exploitation of a child as defined by K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(9) sexual battery as defined by K.S.A. 21-3517, *prior to its repeal, or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(10) aggravated sexual battery as defined by K.S.A. 21-3518, *prior to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(11) aggravated incest as defined by K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(12) electronic solicitation as defined by K.S.A. 21-3523, *prior to its repeal, and section 73 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, committed on or after April 17, 2008;

(13) unlawful sexual relations as defined by K.S.A. 21-3520, *prior to its repeal, or section 76 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, committed on or after July 1, 2010;

(14) any conviction for an offense in effect at any time prior to April 29, 1993, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;

(15) an attempt, conspiracy or criminal solicitation, as defined in

K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of a sexually violent crime, as defined in this section; or

(16) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, “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.

(d) “Violent offender” includes any person who, on or after May 29, 1997, is convicted of any of the following crimes:

(1) Capital murder as defined by K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(2) murder in the first degree as defined by K.S.A. 21-3401, *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(3) murder in the second degree as defined by K.S.A. 21-3402, *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(4) voluntary manslaughter as defined by K.S.A. 21-3403, *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(5) involuntary manslaughter as defined by K.S.A. 21-3404, *prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(6) any conviction for an offense in effect at any time prior to May 29, 1997, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of an offense defined in this subsection.

(e) “Law enforcement agency having jurisdiction” means the sheriff of the county in which the offender expects to reside upon the offender’s discharge, parole or release.

(f) “Sexually violent predator” means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.

(g) “Nonresident student or worker” includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.

(h) “Aggravated offenses” means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat

of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) Rape as defined in subsection (a)(1)(A) ~~and subsection (a)(2)~~ of K.S.A. 21-3502, *prior to its repeal, or subsection (a)(1)(A) or (a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(2) aggravated criminal sodomy as defined in subsection (a)(1) ~~and subsection (a)(3)(A)~~ of K.S.A. 21-3506, *prior to its repeal, or subsection (b)(1) or (b)(3)(A) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; and

(3) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of an offense defined in this subsection.

(i) “Institution of higher education” means any postsecondary school under the supervision of the Kansas board of regents.

Sec. 145. K.S.A. 2010 Supp. 22-4906 is hereby amended to read as follows: 22-4906. (a) Except as provided in subsection (d), any person required to register as provided in this act shall be required to register: (1) Upon the first conviction of a sexually violent crime as defined in subsection (c) of K.S.A. 22-4902, and amendments thereto, any offense as defined in subsection (a) of K.S.A. 22-4902, and amendments thereto, or any offense as defined in subsection (d) of K.S.A. 22-4902, and amendments thereto, if not confined, for a period of 10 years after conviction, or, if confined, for a period of 10 years after paroled, discharged or released, whichever date is most recent. The ten-year period shall not apply to any person while the person is incarcerated in any jail or correctional facility. The ten-year registration requirement does not include any time period when any person who is required to register under this act knowingly or willfully fails to comply with the registration requirement; or (2) upon a second or subsequent conviction for such person’s lifetime.

(b) Upon the first conviction, liability for registration terminates, if not confined, at the expiration of 10 years from the date of conviction, or, if confined, at the expiration of 10 years from the date of parole, discharge or release, whichever date is most recent. The ten-year period shall not apply to any person while the person is incarcerated in any jail or correctional facility. The ten-year registration requirement does not include any time period when any person who is required to register under this act knowingly or willfully fails to comply with the registration requirement. Liability for registration does not terminate if the convicted offender again becomes liable to register as provided by this act during that period.

(c) Any person who has been convicted of an aggravated offense shall be required to register for such person’s lifetime.

(d) Any person who has been convicted of any of the following offenses shall be required to register for such person's lifetime:

(1) Aggravated human trafficking, as defined in K.S.A. 21-3447, *prior to its repeal, or section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the victim is less than 14 years of age;

(2) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, *prior to its repeal, or subsection (a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, *prior to its repeal, or subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(4) aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, *prior to its repeal, or subsection (b)(1) or (b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(5) promoting prostitution, as defined in K.S.A. 21-3513, *prior to its repeal, or section 230 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the prostitute is less than 14 years of age;

(6) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, *prior to its repeal, or subsection (a)(1) or (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the child is less than 14 years of age and amendments thereto*; or

(7) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of an offense defined in this subsection.

(e) Any person who has been declared a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall register for such person's lifetime.

(f) Any nonresident worker shall register for the duration of such person's employment. The provisions of this subsection are in addition to subsections (a) and (b).

(g) Any nonresident student shall register for the duration of such person's attendance at a school or educational institution as provided in this act. The provisions of this subsection are in addition to subsections (a) and (b).

(h) (1) Notwithstanding any other provisions of this section, a person who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto, and such crime is an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, *prior to its repeal, or section 285 of chapter 136 of the 2010 Session Laws of Kansas*, and amend-

ments thereto, shall be required to register until such person reaches 18 years of age, at the expiration of five years from the date of adjudication or, if confined, from release from confinement, whichever date occurs later. The five-year period shall not apply to any person while that person is incarcerated in any jail, juvenile facility or correctional facility. The five-year registration requirement does not include any time period when any person who is required to register under this act knowingly or willfully fails to comply with the registration requirement.

(2) (A) A person who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto, and such crime is not an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, *prior to its repeal, or section 285 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, may, by the court:

- (i) Be required to register pursuant to the provisions of paragraph (1);
- (ii) not be required to register if the judge, on the record, finds substantial and compelling reasons therefor; or
- (iii) be required to register with the sheriff pursuant to K.S.A. 22-4904, and amendments thereto, but such registration information shall not be open to inspection by the public or posted on any internet website, as provided in K.S.A. 22-4909, and amendments thereto. If the court requires the juvenile to register but such registration is not open to the public, the juvenile shall provide a copy of such court order to the sheriff at the time of registration. The sheriff shall forward a copy of such court order to the Kansas bureau of investigation.

(B) If such juvenile offender violates a condition of release during the term of the conditional release, the judge may require the juvenile offender to register pursuant to paragraph (1).

(3) Liability for registration does not terminate if the adjudicated offender again becomes liable to register as provided by this act during the required period.

(4) The provisions of paragraph (2)(A)(ii) shall apply to adjudications on and after July 1, 2007, and retroactively to adjudications prior to July 1, 2007.

(i) Any person moving to the state of Kansas who has been convicted in another state, and who was required to register under that state's laws, shall register for the same length of time required by that state or Kansas, whichever length of time is longer. The provisions of this subsection shall apply to convictions prior to June 1, 2006, and to persons who moved to Kansas prior to June 1, 2006.

Sec. 146. K.S.A. 2010 Supp. 28-177 is hereby amended to read as follows: 28-177. (a) Except as provided further, 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, 2011, the supreme court may impose an additional charge, not to exceed \$21 per fee or the amount established by the applicable statute, whichever amount is less, to fund the costs of non-judicial personnel.

(b) Any additional charge imposed by the court pursuant to K.S.A. 8-2107, 8-2110, ~~21-4619~~, 22-2410, 23-108a, 28-170, 28-172a, 59-104, 60-1621, 60-2001, 60-2203a, 61-2704 and 61-4001 ~~and~~, K.S.A. 2010 Supp. 28-178, 38-2215, 38-2312 and 38-2314, *and section 254 of chapter 136 of the 2010 Session Laws of Kansas*, 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. 147. K.S.A. 2010 Supp. 32-1013 is hereby amended to read as follows: 32-1013. (a) Any landowner or person in lawful possession of any land may post such land with signs stating that hunting, trapping or fishing on such land shall be by written permission only. It is unlawful for any person to take wildlife on land which is posted as provided in this subsection, without having in the person's possession the written permission of the owner or person in lawful possession thereof.

(b) Instead of posting land as provided in subsection (a), any landowner or person in lawful possession of any land may post such land by placing identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length and the bottom of the mark shall be no less than three feet nor more than five feet high. Such paint marks shall be readily visible to any person approaching the land. Land posted as provided in this subsection shall be considered to be posted by written permission only as provided in subsection (a).

(c) A person licensed to hunt or furharvest who is following or pursuing a wounded animal on land as provided in this section posted without written

permission of the landowner or person in lawful possession thereof shall not be in violation of this section while in such pursuit, except that the provisions of this subsection shall not authorize a person to remain on such land if instructed to leave by the owner or person in lawful possession of the land. Any person who fails to leave such land when instructed is subject to the provisions of subsection (b) of ~~K.S.A. 21-3728~~ *section 96 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(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. 148. K.S.A. 2010 Supp. 32-1047 is hereby amended to read as follows: 32-1047. The department is hereby empowered and directed to seize and possess any wildlife which is taken, possessed, sold or transported unlawfully, and any steel trap, snare or other device or equipment used in taking or transporting wildlife unlawfully or during closed season. The department is hereby authorized and directed to:

(a) Sell the seized item, including wildlife parts with a dollar value, and remit the proceeds to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. If the seized item is a firearm that has been forfeited pursuant to ~~K.S.A. 21-4206~~ *section 192 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, then it may be sold unless: (1) The firearm is significantly altered in any manner; or (2) the sale and public possession of such firearm is otherwise prohibited 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 wildlife fee fund; or

(b) retain the seized item for educational, scientific or department operational purposes.

Sec. 149. K.S.A. 2010 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

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. 21-4502 and 21-4603d~~ *sections 242 and 244 of chapter 136 of the 2010 Session Laws of Kansas*, 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 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. 21-4502 and 21-4603d~~ *sections 242 and 244 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 150. K.S.A. 34-228 is hereby amended to read as follows: 34-228.

(a) Any person desiring to engage in business as a public warehouseman in this state shall, before the transaction of any such business, make written application to the secretary for a license for each separate warehouse or, if the applicant owns more than one warehouse at one point, all of such warehouses may be incorporated in one application, at which the person desires to engage in such business. The application for a license shall be on a form designated by the secretary and shall contain the individual name and address of each person interested as principal in the business and, if the business is operated or to be operated by a corporation, setting forth the names of the president and secretary, and such further information as the secretary may require.

(b) (1) Every application for a public warehouse license shall be accompanied by a current financial statement. The statement shall include such information as required by the secretary to administer and enforce the public warehouse laws of this state, including, but not limited to a current balance sheet, statement of income, including profit and loss, statement of retained earnings and statement of changes in financial position. The applicant shall certify under oath that the statement as prepared accurately reflects the financial condition of the applicant as of the date specified and presents fairly the results of operations of the applicant's public warehouse business for the period specified. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall be accom-

panied by: (A) A report of audit or review conducted by an independent certified public accountant or an independent public accountant in accordance with standards established by the American institute of certified public accountants and the accountant's certifications, assurances, opinions, comments and notes with respect to the statement; or (B) a compilation report of the financial statement, prepared by a grain commission firm or management firm which is authorized pursuant to rules and regulations of the federal commodity credit corporation to provide compilation reports of financial statements of warehousemen.

(2) Except as otherwise provided, the secretary, upon request of an applicant, may grant a waiver of the requirements of this subsection for a period of not more than 30 days if the applicant furnishes evidence of good and substantial reasons for the waiver. The secretary may extend such waiver beyond 30 days for grain stored in an alternative location other than a location identified in the public warehouse license, if the secretary determines that the owner of the grain would suffer substantial hardship to require the grain to be stored at a location identified in the license. The secretary may determine what constitutes substantial hardship and what length of time the grain may be stored at such alternative location.

(c) (1) Every applicant for a license to operate one or more public warehouses and every person licensed to operate one or more warehouses shall at all times maintain total net worth liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses equal to at least \$.25 per bushel of the storage capacity of the warehouse or warehouses except: (A) No person shall be granted a license or shall continue to be licensed unless the person has a net worth of at least \$25,000; and (B) any deficiency in net worth required above the \$25,000 minimum may be supplied by an increase in the amount of the applicant's or licensee's bond or letter of credit as provided by K.S.A. 34-229 and amendments thereto.

(2) In determining total net worth: (A) Credit may be given for insurable property such as buildings, machinery, equipment and merchandise inventory only to the extent that the property is protected by insurance against loss or damage by fire; and (B) capital stock, as such, shall not be considered a liability.

(d) No license shall be issued to a person or entity not previously licensed in this state and making application for an original license who, in this state or any other jurisdiction, within the 10 years immediately prior to the date of the application of the person or entity for a license, has been convicted of or has pleaded guilty or nolo contendere to any crime which would constitute:

(1) Embezzlement;

(2) any felony defined in any statute contained in article 37 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 87*

through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(3) unauthorized delivery of stored goods;

(4) any felony defined in any statute contained in chapter 34 of the Kansas Statutes Annotated, and amendments thereto; or

(5) a violation of the United States warehouse act (7 U.S.C. § 241 et seq.).

(e) The secretary may investigate any applicant making application for an original license for the purpose of determining if such person would be qualified to receive such license under the provisions of this section.

(f) (1) Every application for a public warehouse license shall be accompanied by a license fee which shall be determined and fixed by the secretary by rules and regulations. The license fee shall not be more than the applicable amount shown in the following fee schedule plus not more than \$500 for each functional unit:

Capacity in Bushels	ANNUAL FEE
	Not more than
1 to 100,000 .....	\$500.00
100,001 to 150,000 .....	525
150,001 to 250,000 .....	550
250,001 to 300,000 .....	600
300,001 to 350,000 .....	625
350,001 to 400,000 .....	650
400,001 to 450,000 .....	700
450,001 to 500,000 .....	725
500,001 to 600,000 .....	775
600,001 to 700,000 .....	800
700,001 to 800,000 .....	850
800,001 to 900,000 .....	875
900,001 to 1,000,000 .....	900
1,000,001 to 1,750,000 .....	1225
1,750,001 to 2,500,000 .....	1400
2,500,001 to 5,000,000 .....	1750
5,000,001 to 7,500,000 .....	2100
7,500,001 to 10,000,000 .....	2375
10,000,001 to 12,500,000 .....	2600
12,500,001 to 15,000,000 .....	2800
15,000,001 to 17,500,000 .....	3000
17,500,001 to 20,000,000 .....	3225
For each 2,500,000 bushels or fraction over 20,000,000 bushels .....	350

(2) Whenever a licensed warehouseman purchases or acquires additional facilities, the warehouseman, if otherwise qualified, may acquire a license for the remainder of an unexpired license period by paying to the secretary a license fee computed as follows: If the unexpired license period is nine months or more, the annual fee; if the unexpired license period is more than six months and less than nine months, 75% of the annual fee; if the unexpired license period is more than three months and not more than

six months, 50% of the annual fee; and if the unexpired license period is three months or less than three months, 25% of the annual fee.

(3) In addition to any other applicable fee, the secretary shall charge and collect a fee each time a public warehouse license is amended in an amount of not more than \$300 which shall be determined and fixed by the secretary by rules and regulations.

(4) Nothing in this subsection shall be construed to authorize a refund for any unused portion of an issued license.

(g) The secretary shall examine each warehouse operated by a licensed public warehouseman at least once in each 12-month period. The licensed public warehouseman may request additional examinations of any warehouse operated by the warehouseman. The cost of additional examinations when requested by the warehouseman shall be charged to the warehouseman requesting the examination. The cost of each additional examination requested by a warehouseman shall be an amount determined therefor in accordance with an hourly rate fixed by the secretary of not more than \$50 per hour, subject to a minimum charge of four hours for the examination, plus amounts for subsistence expense at the rate fixed under K.S.A. 75-3207a, and amendments thereto and for mileage expense in accordance with the schedule of charges established under K.S.A. 75-4607, and amendments thereto. The secretary, at the secretary's discretion, may make additional examinations of a warehouse and if a discrepancy is found on that examination, or if one was found on the last previous examination, the cost of the examination shall be paid by the warehouseman.

(h) When the secretary authorizes a grain handling facility to be physically monitored, pursuant to subsection (a)(3) of K.S.A. 34-102, and amendments thereto, the cost and expenses of the monitoring shall be paid by the owner of the facility at the same rates fixed in subsection (g).

(i) As used in this section, "functional unit" means a public warehouse which has the capacity to store, weigh in and weigh out grain. Any outlying storage facility which is not a functional unit shall have its storage capacity included as part of the combined capacity of the warehouseman's nearest functional unit.

Sec. 151. K.S.A. 34-249a is hereby amended to read as follows: 34-249a. (a) Every public warehouseman conducting a public warehouse, upon demand of the secretary, shall furnish such secretary, in such form as may be required, information regarding receipts issued or canceled, amounts of grain liabilities, amounts of unencumbered grain and total amounts of grain in the public warehouse.

(b) The secretary shall require from each public warehouseman a monthly statement of stocks of grain as of the last day of the preceding month for each licensed warehouse location. The statement shall contain such information and be in such form as may be prescribed by the secretary ~~and shall include a statement setting forth the penalty for making false~~

~~public warehouse reports as provided in K.S.A. 21-3754 and amendments thereto.~~ Each such statement shall be signed by the licensed public warehouseman.

Sec. 152. K.S.A. 36-602 is hereby amended to read as follows: 36-602. An innkeeper shall have the right to refuse or deny any accommodations, facilities or privileges of a hotel to:

(a) Any person who is unwilling or unable to pay for accommodations and services of the hotel. The innkeeper shall have the right to require the prospective guest to demonstrate such prospective guest's ability to pay by cash, valid credit card or a validated check;

(b) any minor. The innkeeper may require a parent or legal guardian of a minor or a representative of the entity responsible for payment of the accommodation to: (1) Accept in writing liability of the guest room costs, taxes, all charges by the minor and any damages to the guest room, hotel and its furnishings caused by the minor while a guest at the hotel; and (2) provide the innkeeper with a valid credit card number to cover the guest room costs, taxes, charges by the minor and any damages to the guest room or its furnishings caused by the minor; or (3) if the credit card is not an option, give the innkeeper an advance cash payment to cover the guest room costs and taxes for all room nights reserved for the minor, plus reasonable cash deposit not to exceed \$250 towards the payment of any charges by the minor for any damages to the guest room, hotel and its furnishings. The innkeeper shall refund such cash deposit to the extent not used to cover any such charges or any damages as determined by the innkeeper following room inspection at check-out;

(c) any person who is engaged in disorderly conduct as defined in ~~K.S.A. 21-4101~~ *section 181 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; and

(d) any person who is on record by the hotel as having violated the provisions contained in K.S.A. 36-604, *and amendments thereto*, in the past.

Any innkeeper who refuses or denies such accommodations, facilities or privileges of a hotel for any of the reasons specified in subsections (a) through (d) shall not be liable in any civil or criminal action or for any fine or penalty based upon such refusal or denial, except that such accommodation, facilities or privilege of a hotel shall not be refused or denied based upon the person's race, religion, color, sex, disability, origin or ancestry.

Sec. 153. K.S.A. 2010 Supp. 36-604 is hereby amended to read as follows: 36-604. An innkeeper may eject a person from the hotel premises, without return of such person's room rental payment, for any of the following reasons:

(a) Nonpayment of the hotel's charges for accommodations or services;

(b) the person is engaged in disorderly conduct as defined in ~~K.S.A. 21-4101~~ *section 181 of chapter 136 of the 2010 Session Laws of Kansas*,

and amendments thereto, or has been the subject of complaints from other guests of the hotel;

(c) the person is using the premises for an unlawful act, including but not limited to the unlawful use or possession of controlled substances by such person in violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or the use of the premises for the consumption of alcoholic liquor or cereal malt beverage by any person under the age of 21 years in violation of K.S.A. 41-727, and amendments thereto;

(d) the person has brought property onto the hotel premises which may be dangerous to other persons ~~as defined in K.S.A. 21-4201 et seq.~~ *pursuant to sections 186 through 197 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(e) the person is not a registered guest of the hotel;

(f) the person has exceeded the limitations for guest room occupancy established by the hotel;

(g) the person has obtained the accommodation under false pretenses;

(h) the person is a minor and is not under the supervision of the adult who has obtained the accommodation;

(i) the person has violated any federal, state or local laws or regulations relating to the hotel; or

(j) the person has violated any rule of the hotel which is posted in a conspicuous place and manner in the hotel as provided in K.S.A. 36-605, *and amendments thereto*, except that no such rule may authorize the inn-keeper to eject or to refuse or deny service or accommodations to a person because of race, religion, color, sex, disability, national origin or ancestry.

Sec. 154. K.S.A. 38-1132 is hereby amended to read as follows: 38-1132. (a) Except as provided in subsection (d), a parent granted rights pursuant to subsection (d) of K.S.A. 38-1121, and amendments thereto, shall give written notice to the other parent who has been granted rights pursuant to subsection (d) of K.S.A. 38-1121, and amendments thereto, not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child from this state as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of child support, custody or parenting time. In determining any such motion, the court shall

consider all factors the court deems appropriate including, but not limited to:

- (1) The effect of the move on the best interests of the child;
- (2) the effect of the move on any party having rights granted pursuant to subsection (d) of K.S.A. 38-1121, and amendments thereto; and
- (3) the increased cost the move will impose on any party seeking to exercise rights granted under subsection (d) of K.S.A. 38-1121, and amendments thereto.

(d) A parent who has been granted rights pursuant to subsection (d) of K.S.A. 38-1121, and amendments thereto, shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, in which the child is the victim of such crime.

(e) This section shall be part of and supplemental to the Kansas parentage act.

Sec. 155. K.S.A. 2010 Supp. 38-2202 is hereby amended to read as follows: 38-2202. As used in the revised Kansas code for care of children, unless the context otherwise indicates:

(a) “Abandon” or “abandonment” means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.

(b) “Adult correction facility” means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(c) “Aggravated circumstances” means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(d) “Child in need of care” means a person less than 18 years of age at the time of filing of the petition or issuance of an ex parte protective custody order pursuant to K.S.A. 2010 Supp. 38-2242, and amendments thereto, who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child’s parents or other custodian;

(2) is without the care or control necessary for the child’s physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of ~~K.S.A. 21-4204a~~, 41-727, subsection (j) of K.S.A. 74-8810, ~~or subsection (m) or (n) of K.S.A. 79-3321, or subsection (a)(14) of section 186 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by ~~K.S.A. 21-3105~~ section 2 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

(12) while less than 10 years of age commits the offense defined in ~~K.S.A. 21-4204a~~ or subsection (a)(14) of section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or

(13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve.

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2010 Supp. 38-2207 and 38-2208, and amendments thereto.

(f) "Civil custody case" includes any case filed under article 11, of chapter 38 of the Kansas Statutes Annotated, and amendments thereto (determination of parentage), article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians and conservators), or article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce).

(g) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2010 Supp. 38-2206, and amendments thereto, in a proceeding pursuant to this code.

(h) "Custody" whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(i) “Extended out of home placement” means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

(j) “Educational institution” means all schools at the elementary and secondary levels.

(k) “Educator” means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and amendments thereto.

(l) “Harm” means physical or psychological injury or damage.

(m) “Interested party” means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to K.S.A. 2010 Supp. 38-2241, and amendments thereto or Indian tribe seeking to intervene that is not a party.

(n) “Jail” means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(o) “Juvenile detention facility” means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(p) “Juvenile intake and assessment worker” means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(q) “Kinship care” means the placement of a child in the home of the child’s relative or in the home of another adult with whom the child or the child’s parent already has a close emotional attachment.

(r) “Law enforcement officer” means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(s) “Multidisciplinary team” means a group of persons, appointed by the court under K.S.A. 2010 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(t) “Neglect” means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child’s parents or other custodian. Neglect may include, but shall not be limited to:

(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child’s level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 2010 Supp. 38-2217, and amendments thereto.

(u) “Parent” when used in relation to a child or children, includes a guardian and every person who is by law liable to maintain, care for or support the child.

(v) “Party” means the state, the petitioner, the child, any parent of the child and an Indian child’s tribe intervening pursuant to the Indian child welfare act.

(w) “Permanency goal” means the outcome of the permanency planning process which may be reintegration, adoption, appointment of a permanent custodian or another planned permanent living arrangement.

(x) “Permanent custodian” means a judicially approved permanent guardian of a child pursuant to K.S.A. 2010 Supp. 38-2272, and amendments thereto.

(y) “Physical, mental or emotional abuse” means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child’s health or emotional well-being is endangered.

(z) “Placement” means the designation by the individual or agency having custody of where and with whom the child will live.

(aa) “Relative” means a person related by blood, marriage or adoption but, when referring to a relative of a child’s parent, does not include the child’s other parent.

(bb) “Secretary” means the secretary of social and rehabilitation services or the secretary’s designee.

(cc) “Secure facility” means a facility which is operated or structured

so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(dd) “Sexual abuse” means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include allowing, permitting or encouraging a child to engage in prostitution or to be photographed, filmed or depicted in pornographic material.

(ee) “Shelter facility” means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(ff) “Transition plan” means, when used in relation to a youth in the custody of the secretary, an individualized strategy for the provision of medical, mental health, education, employment and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently and specifically provides for the supports and any services for which an adult with a disability is eligible including, but not limited to, funding for home and community based services waivers.

(gg) “Youth residential facility” means any home, foster home or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 156. K.S.A. 2010 Supp. 38-2255 is hereby amended to read as follows: 38-2255. (a) Considerations. Prior to entering an order of disposition, the court shall give consideration to:

- (1) The child’s physical, mental and emotional condition;
  - (2) the child’s need for assistance;
  - (3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;
  - (4) any relevant information from the intake and assessment process;
- and
- (5) the evidence received at the dispositional hearing.

(b) Custody with a parent. The court may place the child in the custody of either of the child’s parents subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including, but not limited to:

- (1) Supervision of the child and the parent by a court services officer;
- (2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and

(3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

(c) Removal of a child from custody of a parent. The court shall not enter the initial order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

(d) Custody of a child removed from the custody of a parent. If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to a relative of the child or to a person with whom the child has close emotional ties who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, to any other suitable person, to a shelter facility, to a youth residential facility or, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse, to the secretary. Custody awarded under this subsection shall continue until further order of the court.

(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and notify the court of the placement or proposed placement of the child within ~~10~~ 14 days of the order awarding custody. After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

(2) The custodian designated under this subsection shall notify the court in writing at least ~~10~~ 14 days prior to any planned placement with a parent. The written notice shall state the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare or best interest of the child. Upon reviewing the notice, the court may allow the custodian to proceed with the planned placement or may set the date for a hearing to determine if the child shall be allowed to return home. If the court sets a hearing on the matter, the custodian shall not return the child home without written consent of the court.

(3) The court may grant any person reasonable rights to visit the child upon motion of the person and a finding that the visitation rights would be in the best interests of the child.

(4) The court may enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsection (a) of K.S.A. 2010 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(5) The court shall provide a copy of any orders entered within ~~40~~ 14 days of entering the order to the custodian designated under this subsection.

(e) Further determinations regarding a child removed from the home. If custody has been awarded under subsection (d) to a person other than a parent, a permanency plan shall be provided or prepared pursuant to K.S.A. 2010 Supp. 38-2264, and amendments thereto. If a permanency plan is provided at the dispositional hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is not a viable alternative, whether the child should be placed for adoption or a permanent custodian appointed. In determining whether reintegration is a viable alternative, the court shall consider:

(1) Whether a parent has been found by a court to have committed one of the following crimes or to have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted, conspired or solicited the commission of one of these crimes: Murder in the first degree, K.S.A. 21-3401, *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, murder in the second degree, K.S.A. 21-3402, *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, capital murder, K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or a felony battery that resulted in bodily injury;

(2) whether a parent has subjected the child or another child to aggravated circumstances;

(3) whether a parent has previously been found to be an unfit parent in proceedings under this code or in comparable proceedings under the laws of another state or the federal government;

(4) whether the child has been in extended out of home placement;

(5) whether the parents have failed to work diligently toward reintegration;

(6) whether the secretary has provided the family with services necessary for the safe return of the child to the home; and

(7) whether it is reasonable to expect reintegration to occur within a time frame consistent with the child's developmental needs.

(f) Proceedings if reintegration is not a viable alternative. If the court determines that reintegration is not a viable alternative, proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian shall be initiated unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child. If compelling reasons have not been documented, the county or district attorney shall file a motion within 30 days to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

(g) Additional Orders. In addition to or in lieu of any other order authorized by this section:

(1) The court may order the child and the parents of any child who has been adjudicated a child in need of care to attend counseling sessions as the court directs. The expense of the counseling may be assessed as an expense in the case. No mental health provider shall charge a greater fee for court-ordered counseling than the provider would have charged to the person receiving counseling if the person had requested counseling on the person's own initiative.

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, by the child, a parent of the child, or another person responsible for the care of the child, the court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations. If the evaluation is performed by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for the care of the child shall pay a fee not to exceed the fee established by that statute. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary.

(3) If child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is subject to the jurisdiction of the court and the court has personal jurisdiction over the parent, the court shall order the

parent to pay child support in an amount determined under K.S.A. 2010 Supp. 38-2277, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2010 Supp. 38-2279, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Sec. 157. K.S.A. 2010 Supp. 38-2271 is hereby amended to read as follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-414, and amendments thereto, that a parent is unfit by reason of conduct or condition which renders the parent unable to fully care for a child, if the state establishes, by clear and convincing evidence, that:

(1) A parent has previously been found to be an unfit parent in proceedings under K.S.A. 2010 Supp. 38-2266 et seq., and amendments thereto, or comparable proceedings under the laws of another jurisdiction;

(2) a parent has twice before been convicted of a crime specified in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or comparable offenses under the laws of another jurisdiction, or an attempt or attempts to commit such crimes and the victim was under the age of 18 years;

(3) on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care as defined by subsection (d)(1),(d)(3), (d)(5) or (d)(11) of K.S.A. 2010 Supp. 38-2202, and amendments thereto, or comparable proceedings under the laws of another jurisdiction.

(4) the parent has been convicted of causing the death of another child or stepchild of the parent;

(5) the child has been in an out-of-home placement, under court order for a cumulative total period of one year or longer and the parent has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home;

(6) (A) the child has been in an out-of-home placement, under court order for a cumulative total period of two years or longer; (B) the parent has failed to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home; and (C) there is a sub-

stantial probability that the parent will not carry out such plan in the near future;

(7) a parent has been convicted of capital murder, K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, murder in the first degree, K.S.A. 21-3401, *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, murder in the second degree, K.S.A. 21-3402, *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or voluntary manslaughter, K.S.A. 21-3403, *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or comparable proceedings under the laws of another jurisdiction or, has been adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in this subsection, and the victim of such murder was the other parent of the child;

(8) a parent abandoned or neglected the child after having knowledge of the child's birth or either parent has been granted immunity from prosecution for abandonment of the child under subsection (b) of K.S.A. 21-3604, *prior to its repeal, or subsection (d) of section 82 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or

(9) a parent has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

(10) a father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;

(11) a father abandoned the mother after having knowledge of the pregnancy;

(12) a parent has been convicted of rape, K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child; or

(13) a parent has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition. In making this determination the court may disregard incidental visitations, contacts, communications or contributions.

(b) The burden of proof is on the parent to rebut the presumption of unfitness by a preponderance of the evidence. In the absence of proof that the parent is presently fit and able to care for the child or that the parent will be fit and able to care for the child in the foreseeable future, the court shall terminate parental rights in proceedings pursuant to K.S.A. 2010 Supp. 38-2266 et seq., and amendments thereto.

Sec. 158. K.S.A. 2010 Supp. 38-2302 is hereby amended to read as follows: 38-2302. As used in this code, unless the context otherwise requires:

(a) “Commissioner” means the commissioner of juvenile justice or the commissioner’s designee.

(b) “Conditional release” means release from a term of commitment in a juvenile correctional facility for an aftercare term pursuant to K.S.A. 2010 Supp. 38-2369, and amendments thereto, under conditions established by the commissioner.

(c) “Court-appointed special advocate” means a responsible adult, other than an attorney appointed pursuant to K.S.A. 2010 Supp. 38-2306, and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2010 Supp. 38-2307, and amendments thereto, in a proceeding pursuant to this code.

(d) “Educational institution” means all schools at the elementary and secondary levels.

(e) “Educator” means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsections (a)(1) through (5) of K.S.A. 72-89b03, and amendments thereto.

(f) “Institution” means the following institutions: The Atchison juvenile correctional facility, the Larned juvenile correctional facility and the Kansas juvenile correctional complex.

(g) “Investigator” means an employee of the juvenile justice authority assigned by the commissioner with the responsibility for investigations concerning employees at the juvenile correctional facilities and juveniles in the custody of the commissioner at a juvenile correctional facility.

(h) “Jail” means: (1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(i) “Juvenile” means a person to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

(j) “Juvenile correctional facility” means a facility operated by the commissioner for the commitment of juvenile offenders.

(k) “Juvenile corrections officer” means a certified employee of the juvenile justice authority working at a juvenile correctional facility assigned by the commissioner with responsibility for maintaining custody, security

and control of juveniles in the custody of the commissioner at a juvenile correctional facility.

(l) “Juvenile detention facility” means a public or private facility licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, which is used for the lawful custody of alleged or adjudicated juvenile offenders.

(m) “Juvenile intake and assessment worker” means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(n) “Juvenile offender” means a person who commits an offense while 10 or more years of age but less than 18 years of age which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by ~~K.S.A. 21-3105~~ *section 2 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or who violates the provisions of ~~K.S.A. 21-4204a or 41-727~~ *or, subsection (j) of K.S.A. 74-8810 or subsection (a)(14) of section 186 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, but does not include: (1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(3) a person under 18 years of age who previously has been:

(A) Convicted as an adult under the Kansas criminal code;

(B) sentenced as an adult under the Kansas criminal code following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 2010 Supp. 38-2364, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 2010 Supp. 38-2347, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

(o) “Law enforcement officer” means any person who by virtue of that person’s office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(p) “Parent” when used in relation to a juvenile, includes a guardian and every person who is, by law, liable to maintain, care for or support the juvenile.

(q) “Risk assessment tool” means an instrument administered to juveniles which delivers a score, or group of scores, describing, but not limited to describing, the juvenile’s potential risk to the community.

(r) “Sanctions house” means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or

which relies on locked rooms and buildings, fences or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house.

(s) “Warrant” means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(t) “Youth residential facility” means any home, foster home or structure which provides 24-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 or article 70 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 159. K.S.A. 2010 Supp. 38-2303 is hereby amended to read as follows: 38-2303. (a) Proceedings under this code involving acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401 or 21-3402, *prior to their repeal, or section 37 or 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, may be commenced at any time.

(b) Except as provided by subsections (d) and (f), a proceeding under this code for any act committed by a juvenile which, if committed by an adult, would constitute a violation of any of the following statutes shall be commenced within five years after its commission if the victim is less than 16 years of age: (1) Indecent liberties with a child as defined in K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (3) lewd and lascivious behavior as defined in K.S.A. 21-3508, *prior to its repeal, or section 77 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (4) indecent solicitation of a child as defined in K.S.A. 21-3510, *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (5) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (6) sexual exploitation of a child as defined in K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (7) unlawful voluntary sexual relations as defined in K.S.A. 21-3522, *prior to its repeal, or section 71 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or (8) aggravated incest as defined in K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(c) Except as provided by subsections (d) and (f), a prosecution for rape, as defined in K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,

or aggravated criminal sodomy, as defined in K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be commenced within five years after its commission.

(d) (1) Except as provided in subsection (f), a prosecution for any offense provided in subsection (b) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, shall be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(2) For the purposes of this subsection, “DNA” means deoxyribonucleic acid.

(e) Except as provided by subsection (f), proceedings under this code not governed by subsections (a), (b), (c) or (d) shall be commenced within two years after the act giving rise to the proceedings is committed.

(f) The period within which the proceedings must be commenced shall not include any period in which:

(1) The accused is absent from the state;

(2) the accused is so concealed within the state that process cannot be served upon the accused;

(3) the fact of the offense is concealed; or

(4) whether or not the fact of the offense is concealed by the active act or conduct of the accused, there is substantial competent evidence to believe two or more of the following factors are present: (A) The victim was a child under 15 years of age at the time of the offense; (B) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted an offense; (C) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the offense whether or not the parent or other legal authority is the accused; and (D) there is substantial competent expert testimony indicating the victim psychologically repressed such victim’s memory of the fact of the offense, and in the expert’s professional opinion the recall of such memory is accurate, free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information; but in no event may a proceeding be commenced as provided in subsection (f)(4) later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the alleged juvenile offender committed similar acts against other persons or evidence of contemporaneous physical manifestations of the offense. Parent or other legal authority shall include, but not be limited to, natural and stepparents, grandparents, aunts, uncles or siblings.

Sec. 160. K.S.A. 2010 Supp. 38-2309 is hereby amended to read as follows: 38-2309. (a) Official file. The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process,

orders, writs and journal entries reflecting hearings held, judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(b) The official file shall be open for public inspection, unless the judge determines that opening the official file for public inspection is not in the best interests of a juvenile who is less than 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing such victim's identity. An official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense shall be disclosed only to the following:

(1) A judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) any individual or any public or private agency or institution: (A) Having custody of the juvenile under court order; or (B) providing educational, medical or mental health services to the juvenile;

(4) the juvenile's court appointed special advocate;

(5) any placement provider or potential placement provider as determined by the commissioner or court services officer;

(6) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(7) the Kansas racing commission, upon written request of the commission chairperson, for the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information identifying the victim or alleged victim of any sex offense shall not be disclosed pursuant to this subsection;

(8) juvenile intake and assessment workers;

(9) the commissioner;

(10) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(11) 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.

(c) Social file. Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment workers, court appointed special advocates, juvenile community corrections officers, the juvenile's guardian ad litem, if any, or upon order of a judge of the district court or appellate court. The reports shall not be further disclosed without approval of the court or by being presented as admissible evidence.

(d) Preservation of records. The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or more years of age at the time an offense is alleged to have been committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b) and (c). A judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(e) Relevant information, reports and records, shall be made available to the department of corrections upon request, and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

Sec. 161. K.S.A. 2010 Supp. 38-2310 is hereby amended to read as follows: 38-2310. (a) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) the department of social and rehabilitation services;

(4) the juvenile's court appointed special advocate, any officer of a public or private agency or institution or any individual having custody of a juvenile under court order or providing educational, medical or mental health services to a juvenile;

(5) any educational institution, to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator, to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701, and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 2010 Supp. 38-2326, and amendments thereto;

- (9) juvenile intake and assessment workers;
- (10) the juvenile justice authority;
- (11) juvenile community corrections officers;
- (12) any other person when authorized by a court order, subject to any conditions imposed by the order; and
- (13) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated, and amendments thereto; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records, shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juveniles shall be confidential, and shall not be disclosed except as provided by statutory law and rules and regulations promulgated by the commissioner thereunder.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified by the commissioner of juvenile justice, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a juvenile whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a juvenile or an agency hav-

ing the legal responsibility or authorization to care for, treat or supervise a juvenile;

(C) a parent or other person responsible for the welfare of a juvenile, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the juvenile, the attorney and a guardian ad litem, if any, for such juvenile;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the Kansas code for care of children or the revised Kansas juvenile justice code, whichever is applicable;

(G) members of a multidisciplinary team under this code;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a juvenile who is the subject of a report or record of child abuse or neglect, specifically including the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physicians' assistants, community mental health workers, alcohol and drug abuse counselors and licensed or registered child care providers;

(J) a citizen review board pursuant to K.S.A. 2010 Supp. 38-2207, and amendments thereto;

(K) an educational institution to the extent necessary to enable such institution to provide the safest possible environment for pupils and employees of the institution;

(L) any educator to the extent necessary for the protection of the educator and pupils; and

(M) any juvenile intake and assessment worker of another certified juvenile intake and assessment program.

Sec. 162. K.S.A. 2010 Supp. 38-2312 is hereby amended to read as follows: 38-2312. (a) Except as provided in subsection (b), 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 section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, murder

in the first degree, K.S.A. 21-3402, *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, murder in the second degree, K.S.A. 21-3403, *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, voluntary manslaughter, K.S.A. 21-3404, *prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, involuntary manslaughter, K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, capital murder, K.S.A. 21-3442, *prior to its repeal, and amendments thereto*, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, rape, K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, indecent liberties with a child, K.S.A. 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated indecent liberties with a child, K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated criminal sodomy, K.S.A. 21-3510, *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, indecent solicitation of a child, K.S.A. 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated indecent solicitation of a child, K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, sexual exploitation, K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated incest, K.S.A. 21-3608, *prior to its repeal, or subsection (a) of section 78 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, endangering a child, K.S.A. 21-3608a, *prior to its repeal, or subsection (b) of section 78 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated endangering a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, 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) 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, 2011, the supreme court may impose a charge, not to exceed \$15 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) (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) 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) Copies of any order made pursuant to subsection (a) or (c) shall be sent to each public officer and agency in the county having possession of any 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 agency may be adjudged in contempt of court and punished accordingly.

(g) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(h) 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) 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) 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.

Sec. 163. K.S.A. 2010 Supp. 38-2313 is hereby amended to read as follows: 38-2313. (a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

- (1) Fingerprints or photographs of a juvenile may be taken if authorized by a judge of the district court having jurisdiction;
- (2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by an adult, would constitute the commission of a felony, a class A or B misdemeanor or assault, as defined by ~~K.S.A. 21-3408~~ *in subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;
- (3) fingerprints or photographs of a juvenile may be taken under K.S.A.

21-2501, and amendments thereto, if the juvenile has been: (A) Prosecuted as an adult pursuant to K.S.A. 2010 Supp. 38-2347, and amendments thereto; or (B) taken into custody for an offense described in subsection (n)(1) or (n)(2) of K.S.A. 2010 Supp. 38-2302, and amendments thereto;

(4) fingerprints or photographs shall be taken of any juvenile admitted to a juvenile correctional facility; and

(5) photographs may be taken of any juvenile placed in a juvenile detention facility. Photographs taken under this paragraph shall be used solely by the juvenile detention facility for the purposes of identification, security and protection and shall not be disseminated to any other person or agency except after an escape and necessary to assist in apprehension.

(b) Fingerprints and photographs taken under subsection (a)(1) or (a)(2) shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsections (a)(3) and (a)(4) may be kept in the same manner as those of persons of the age of majority.

(c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal repository, except that:

(1) Fingerprints and photographs may be sent to the state and federal repository if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to the state and federal repository if taken under subsection (a)(2) or (a)(4); and

(3) fingerprints or photographs taken under subsection (a)(3) shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 2010 Supp. 38-2325, and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of an alleged juvenile offender taken under the provisions of subsection (a)(2) of K.S.A. 38-1611, prior to its repeal, may be sent to a state or federal repository on or before December 31, 2006.

(f) Any law enforcement agency that willfully fails to submit any fingerprints or photographs required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding \$500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile

from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

Sec. 164. K.S.A. 2010 Supp. 38-2326 is hereby amended to read as follows: 38-2326. (a) In order to properly advise the three branches of government on the operation of the juvenile justice system, there is hereby established within and as a part of the central repository, a juvenile offender information system. The system shall serve as a repository of juvenile offender information which is collected by juvenile justice agencies and reported to the system.

(b) Except as otherwise provided by this subsection, every juvenile justice agency shall report juvenile offender information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this section. A juvenile justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.

(c) Reporting methods may include:

(1) Submission of juvenile offender information by a juvenile justice agency directly to the central repository;

(2) if the information can readily be collected and reported through the court system, submission to the central repository by the office of judicial administrator; or

(3) if the information can readily be collected and reported through juvenile justice agencies that are part of a geographically based information system, submission to the central repository by the agencies.

(d) The director may determine, by rules and regulations, the statutorily required reportable events to be reported by each juvenile justice agency, in order to avoid duplication in reporting.

(e) Juvenile offender information maintained in the juvenile offender information system is confidential and shall not be disseminated or publicly disclosed in a manner which enables identification of any individual who is a subject of the information, except that the information shall be open to inspection by law enforcement agencies of this state, by the department of social and rehabilitation services if related to an individual in the secretary's custody or control, by the juvenile justice authority if related to an individual in the commissioner's custody or control, by the department of corrections if related to an individual in the custody and control of the secretary of corrections, by educational institutions to the extent necessary to provide the safest possible environment for pupils and employees, by any educator to the extent necessary for the protection of the educator and pupils, by the officers of any public institution to which the individual is committed, by county and district attorneys, by attorneys for the parties to a proceeding under this code, by an intake and assessment worker or upon order of a judge of the district court or an appellate court. Such information shall

reflect the offense level and whether such offense is a person or nonperson offense.

(f) Any journal entry of a trial of adjudication shall state the number of the statute under which the juvenile is adjudicated to be a juvenile offender and specify whether each offense, if done by an adult, would constitute a felony or misdemeanor, as defined by ~~K.S.A. 21-3105~~ in section 2 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(g) Any law enforcement agency that willfully fails to make any report required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding \$500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(h) The director shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section.

(i) The director shall develop incentives to encourage the timely entry of juvenile offender information into the central repository.

Sec. 165. K.S.A. 2010 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. 2010 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. 2010 Supp. 38-2330 or subsection (e) of K.S.A. 2010 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 committed an offense which if committed by an adult would constitute a felony or any crime described in ~~article 35 of chapter 21 of the Kansas Statutes Annotated~~ sections 65

*through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, 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. 2010 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. 166. K.S.A. 2010 Supp. 38-2355 is hereby amended to read as follows: 38-2355. In all proceedings on complaints pursuant to the code the state must prove beyond a reasonable doubt that the juvenile committed the act or acts charged in the complaint or a lesser included offense as defined in subsection ~~(2) of K.S.A. 21-3107~~ *(b) of section 9 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

Sec. 167. K.S.A. 2010 Supp. 38-2356 is hereby amended to read as follows: 38-2356. (a) If the court finds that the evidence fails to prove an offense charged or a lesser included offense as defined in subsection ~~(2) of K.S.A. 21-3107~~ *(b) of section 9 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the court shall enter an order dismissing the charge.*

(b) If the court finds that the juvenile committed the offense charged or a lesser included offense as defined in subsection ~~(2) of K.S.A. 21-3107~~ *(b) of section 9 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the court shall adjudicate the juvenile to be a juvenile offender and may issue a sentence as authorized by this code.*

(c) If the court finds that the juvenile committed the acts constituting the offense charged or a lesser included offense as defined in subsection ~~(2) of K.S.A. 21-3107~~ *(b) of section 9 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, but is not responsible because of mental disease or defect, the juvenile shall not be adjudicated as a juvenile offender and shall be committed to the custody of the secretary of*

social and rehabilitation services and placed in a state hospital. The juvenile's continued commitment shall be subject to annual review in the manner provided by K.S.A. 22-3428a, and amendments thereto, for review of commitment of a defendant suffering from mental disease or defect, and the juvenile may be discharged or conditionally released pursuant to that section. The juvenile also may be discharged or conditionally released in the same manner and subject to the same procedures as provided by K.S.A. 22-3428, and amendments thereto, for discharge of or granting conditional release to a defendant found suffering from mental disease or defect. If the juvenile violates any conditions of an order of conditional release, the juvenile shall be subject to contempt proceedings and returned to custody as provided by K.S.A. 22-3428b, and amendments thereto.

(d) A copy of the court's order shall be sent to the school district in which the juvenile offender is enrolled or will be enrolled.

Sec. 168. K.S.A. 2010 Supp. 38-2361 is hereby amended to read as follows: 38-2361. (a) Upon adjudication as a juvenile offender pursuant to K.S.A. 2010 Supp. 38-2356, and amendments thereto, modification of sentence pursuant to K.S.A. 2010 Supp. 38-2367, and amendments thereto, or violation of a condition of sentence pursuant to K.S.A. 2010 Supp. 38-2368, and amendments thereto, and subject to subsection (a) of K.S.A. 2010 Supp. 38-2365, and amendments thereto, the court may impose one or more of the following sentencing alternatives. In the event that any sentencing alternative chosen constitutes an order authorizing or requiring removal of the juvenile from the juvenile's home and such findings either have not previously been made or the findings are not or may no longer be current, the court shall make determinations as required by K.S.A. 2010 Supp. 38-2334 and 38-2335, and amendments thereto.

(1) Place the juvenile on probation through court services or community corrections for a fixed period, subject to terms and conditions the court deems appropriate consistent with juvenile justice programs in the community.

(2) Order the juvenile to participate in a community based program available in such judicial district subject to the terms and conditions the court deems appropriate. This alternative shall not be ordered with the alternative in paragraph (12) and when ordered with the alternative in paragraph (10) shall constitute a recommendation. Requirements pertaining to child support may apply if custody is vested with other than a parent.

(3) Place the juvenile in the custody of a parent or other suitable person, subject to terms and conditions consistent with juvenile justice programs in the community. This alternative shall not be ordered with the alternative in paragraph (10) or (12). Requirements pertaining to child support may apply if custody is vested with other than a parent.

(4) Order the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug evaluation pursuant to subsection (b).

(5) Suspend or restrict the juvenile's driver's license or privilege to operate a motor vehicle on the streets and highways of this state pursuant to subsection (c).

(6) Order the juvenile to perform charitable or community service work.

(7) Order the juvenile to make appropriate reparation or restitution pursuant to subsection (d).

(8) Order the juvenile to pay a fine not exceeding \$1,000 pursuant to subsection (e).

(9) Place the juvenile under a house arrest program administered by the court pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(10) Place the juvenile in the custody of the commissioner as provided in K.S.A. 2010 Supp. 38-2365, and amendments thereto. This alternative shall not be ordered with the alternative in paragraph (3) or (12). Except for a mandatory drug and alcohol evaluation, when this alternative is ordered with alternatives in paragraphs (2), (4) and (9), such orders shall constitute a recommendation by the court. Requirements pertaining to child support shall apply under this alternative.

(11) Commit the juvenile to a sanctions house for a period no longer than 28 days subject to the provisions of subsection (f).

(12) Commit the juvenile directly to the custody of the commissioner for a period of confinement in a juvenile correctional facility and a period of aftercare pursuant to K.S.A. 2010 Supp. 38-2369, and amendments thereto. The provisions of K.S.A. 2010 Supp. 38-2365, and amendments thereto, shall not apply to juveniles committed pursuant to this provision, provided however, that 21 days prior to the juvenile's release from a juvenile correctional facility, the commissioner or designee shall notify the court of the juvenile's anticipated release date. The court shall set and hold a permanency hearing pursuant to K.S.A. 2010 Supp. 38-2365, and amendments thereto, within seven days after the juvenile's release. This alternative may be ordered with the alternative in paragraph (7). Requirements pertaining to child support shall apply under this alternative.

(b) If the court orders the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug and alcohol evaluation pursuant to subsection (a)(4), the following provisions apply:

(1) The court may order the juvenile offender to participate in counseling or mediation sessions or a program of education, including placement in an alternative educational program approved by a local school board. The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than what the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than what the mediator would have charged the person participating

in the mediation if the person had requested mediation on the person's own initiative. Mediation may include the victim but shall not be mandatory for the victim; and

(2) if the juvenile has been adjudicated to be a juvenile by reason of a violation of a statute that makes such a requirement, the court shall order and, if adjudicated for any other offense, the court may order the juvenile to submit to and complete a drug and alcohol evaluation by a community-based drug and alcohol safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. The court may waive the mandatory evaluation if the court finds that the juvenile completed a drug and alcohol evaluation, approved by the community-based alcohol and drug safety action program, within 12 months before sentencing. If the evaluation occurred more than 12 months before sentencing, the court shall order the juvenile to resubmit to and complete the evaluation and program as provided herein. If the court finds that the juvenile and those legally liable for the juvenile's support are indigent, the court may waive the fee. In no event shall the fee be assessed against the commissioner or the juvenile justice authority nor shall the fee be assessed against the secretary of social and rehabilitation services or the department of social and rehabilitation services if the juvenile is in the secretary's care, custody and control.

(c) If the court orders suspension or restriction of a juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state pursuant to subsection (a)(5), the following provisions apply:

(1) The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court. The court 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 juvenile offender 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 juvenile offender's privilege to operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any juvenile offender who does not have a driver's license may have driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court; and

(2) in lieu of suspending a juvenile offender's driver's license or privilege to operate a motor vehicle on the highways of this state, the court may enter an order which places conditions on the juvenile offender's privilege

of operating a motor vehicle on the streets and highways of this state, a certified copy of which the juvenile offender shall be required to carry any time the juvenile offender is operating a motor vehicle on the streets and highways of this state. The order shall prescribe a definite time period for the conditions imposed. Upon entering an order restricting a juvenile offender's license, the court shall require the juvenile offender to surrender such juvenile offender's license to the court. The court shall transmit the license 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 the juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing the conditions is required to be carried by the juvenile offender when operating a motor vehicle on the streets and highways of this state. If the juvenile offender is a nonresident, the court 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 the juvenile offender's state of issuance. The court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until the division issues the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the juvenile offender may apply to the division for the return of the license previously surrendered by the juvenile offender. In the event the license has expired, the juvenile offender 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 juvenile offender's privilege to operate a motor vehicle on the streets and highways of this state has been suspended or revoked prior thereto. If any juvenile offender violates any of the conditions imposed under this subsection, the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be revoked for a period as determined by the court in which the juvenile offender is convicted of violating such conditions.

(d) The following provisions apply to the court's determination of whether to order reparation or restitution pursuant to subsection (a)(7):

(1) The court shall order the juvenile to make reparation or restitution to the aggrieved party for the damage or loss caused by the juvenile offender's offense unless it finds compelling circumstances that would render a plan of reparation or restitution unworkable. If the court finds compelling circumstances that would render a plan of reparation or restitution unworkable, the court shall enter such findings with particularity on the record. In lieu of reparation or restitution, the court may order the juvenile to perform charitable or social service for organizations performing services for the community; and

(2) restitution may include, but shall not be limited to, the amount of damage or loss caused by the juvenile's offense. Restitution may be made by payment of an amount fixed by the court or by working for the parties sustaining loss in the manner ordered by the court. An order of monetary restitution shall be a judgment against the juvenile that may be collected by the court by garnishment or other execution as on judgments in civil cases. Such judgment shall not be affected by the termination of the court's jurisdiction over the juvenile offender.

(e) If the court imposes a fine pursuant to subsection (a)(8), the following provisions apply:

(1) The amount of the fine may not exceed \$1,000 for each offense. The amount of the fine should be related to the seriousness of the offense and the juvenile's ability to pay. Payment of a fine may be required in a lump sum or installments;

(2) in determining whether to impose a fine and the amount to be imposed, the court shall consider that imposition of a fine is most appropriate in cases where the juvenile has derived pecuniary gain from the offense and that imposition of a restitution order is preferable to imposition of a fine; and

(3) any fine imposed by court shall be a judgment against the juvenile that may be collected by the court by garnishment or other execution as on judgments in civil cases. Such judgment shall not be affected by the termination of the court's jurisdiction over the juvenile.

(f) If the court commits the juvenile to a sanctions house pursuant to subsection (a)(11), the following provisions shall apply:

(1) The court may order commitment for up to 28 days for the same offense or violation of sentencing condition. The court shall review the commitment every seven days and, may shorten the initial commitment or, if the initial term is less than 28 days, may extend the commitment;

(2) if, in the sentencing order, the court orders a sanctions house placement for a verifiable probation violation and such probation violation occurs, the juvenile may immediately be taken to a sanctions house and detained for no more than 48 hours, excluding Saturdays, Sundays, holidays, and days on which the office of the clerk of the court is not accessible, prior to court review of the placement. The court and all parties shall be notified of the sanctions house placement; and

(3) a juvenile over 18 years of age and less than 23 years of age at sentencing shall be committed to a county jail, in lieu of a sanctions house, under the same time restrictions imposed by paragraph (1), but shall not be committed to or confined in a juvenile detention facility.

(g) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the court's minutes.

(h) In addition to the requirements of K.S.A. 2010 Supp. 38-2373, and amendments thereto, if a person is under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an offense if committed

by an adult would constitute the commission of a felony, the court shall forward a signed copy of the journal entry to the commissioner within 30 days of final disposition.

(i) Except as further provided, if a juvenile has been adjudged to be a juvenile offender for an offense that if committed by an adult would constitute the commission of: (1) Aggravated human trafficking, as defined in ~~K.S.A. 2010 Supp. 21-3447~~ *section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the victim is less than 14 years of age; (2) rape, as defined in subsection ~~(a)(2) of K.S.A. 21-3502~~ *(a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (3) aggravated indecent liberties with a child, as defined in subsection ~~(a)(3) of K.S.A. 21-3504~~ *(b)(3) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (4) aggravated criminal sodomy, as defined in subsection ~~(a)(1) or (a)(2) of K.S.A. 21-3506~~ *(b)(1) or (b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (5) promoting prostitution, as defined in ~~K.S.A. 21-3513~~ *section 230 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the prostitute is less than 14 years of age; (6) sexual exploitation of a child, as defined in subsection ~~(a)(5) or (a)(6) of K.S.A. 21-3516~~ *(a)(1) or (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the victim is less than 14 years of age; or (7) an attempt, conspiracy or criminal solicitation, as defined in ~~K.S.A. 21-3301, 21-3302 or 21-3303~~ *section 33, section 34 or section 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of an offense defined in parts (1) through (6); the court shall issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends. If only one attendance center exists, for which the victim and juvenile are eligible to attend, in the school district where the victim and the juvenile reside, the court shall hear testimony and take evidence from the victim, the juvenile, their families and a representative of the school district as to why the juvenile should or should not be allowed to remain at the attendance center attended by the victim. After such hearing, the court may issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends.

(j) The sentencing hearing shall be open to the public as provided in K.S.A. 2010 Supp. 38-2353, and amendments thereto.

Sec. 169. K.S.A. 2010 Supp. 38-2364 is hereby amended to read as follows: 38-2364. (a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:

(1) Impose one or more juvenile sentences under K.S.A. 2010 Supp. 38-2361, and amendments thereto; and

(2) impose an adult criminal sentence, the execution of which shall be

stayed on the condition that the juvenile offender not violate the provisions of the juvenile sentence and not commit a new offense.

(b) When it appears that a person sentenced as an extended jurisdiction juvenile has violated one or more conditions of the juvenile sentence or is alleged to have committed a new offense, the court, without notice, may revoke the stay and juvenile sentence and direct that the juvenile offender be immediately taken into custody and delivered to the secretary of corrections pursuant to ~~K.S.A. 21-4621~~ *section 281 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. The court shall notify the juvenile offender and such juvenile offender's attorney of record, in writing by personal service, as provided in K.S.A. 60-303, and amendments thereto, or certified mail, return receipt requested, of the reasons alleged to exist for revocation of the stay of execution of the adult sentence. If the juvenile offender challenges the reasons, the court shall hold a hearing on the issue at which the juvenile offender is entitled to be heard and represented by counsel. After the hearing, if the court finds by a preponderance of the evidence that the juvenile committed a new offense or violated one or more conditions of the juvenile's sentence, the court shall revoke the juvenile sentence and order the imposition of the adult sentence previously ordered pursuant to subsection (a)(2) or, upon agreement of the county or district attorney and the juvenile offender's attorney of record, the court may modify the adult sentence previously ordered pursuant to subsection (a)(2). Upon such finding, the juvenile's extended jurisdiction status is terminated, and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than the commitment to the department of corrections, is with the adult court. The juvenile offender shall be credited for time served in a juvenile correctional or detention facility on the juvenile sentence as service on any authorized adult sanction.

(c) Upon becoming 18 years of age, any juvenile who has been sentenced pursuant to subsection (a) and is serving the juvenile sentence, may move for a court hearing to review the sentence. If the sentence is continued, the court shall set a date of further review in no later than 36 months.

Sec. 170. K.S.A. 2010 Supp. 38-2365 is hereby amended to read as follows: 38-2365. (a) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall have a reasonable time to make a placement. If the juvenile offender has not been placed, any party who believes that the amount of time elapsed without placement has exceeded a reasonable time may file a motion for review with the court. In determining what is a reasonable amount of time, matters considered by the court shall include, but not be limited to, the nature of the underlying offense, efforts made for placement of the juvenile offender and the availability of a suitable placement. The commissioner shall notify the court, the juvenile's attorney of record and the juvenile's parent, in writing, of the initial placement and any subsequent change of placement as soon as the

placement has been accomplished. The notice to the juvenile offender's parent shall be sent to such parent's last known address or addresses. The court shall have no power to direct a specific placement by the commissioner, but may make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or any other appropriate placement. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare and present a permanency plan at sentencing or within 30 days thereafter. If a permanency plan is already in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family or, if reintegration is not a viable alternative, for other permanent placement of the juvenile. Reintegration may not be a viable alternative when: (1) The parent has been found by a court to have committed murder in the first degree, K.S.A. 21-3401, *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, murder in the second degree, K.S.A. 21-3402, *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, capital murder, K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of a child or violated a law of another state which prohibits such murder or manslaughter of a child;

(2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child;

(3) the parent committed a felony battery that resulted in bodily injury to the juvenile who is the subject of this proceeding or another child;

(4) the parent has subjected the juvenile who is the subject of this proceeding or another child to aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

(5) the parental rights of the parent to another child have been terminated involuntarily; or

(6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 2010 Supp. 38-2202, and amendments thereto.

(c) If the juvenile is placed in the custody of the commissioner, the plan shall be prepared and submitted by the commissioner. If the juvenile is placed in the custody of a facility or person other than the commissioner, the plan shall be prepared and submitted by a court services officer. If the permanency goal is reintegration into the family, the permanency plan shall include measurable objectives and time schedules for reintegration.

(d) During the time a juvenile remains in the custody of the commis-

sioner, the commissioner shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the permanency plan submitted pursuant to subsections (b) and (c) and the specific actions taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court may request the foster parent to submit to the court, at least every six months, a report in regard to the juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court social file. The court shall review the plan submitted by the commissioner and the report, if any, submitted by the foster parent and determine whether reasonable efforts and progress have been made to achieve the goals of the permanency plan. If the court determines that progress is inadequate or that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

(e) When the commissioner has custody of the juvenile, a permanency hearing shall be held no more than 12 months after the juvenile is first placed outside such juvenile's home and at least every 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement shall be provided a permanency hearing within 30 days of a request from the commissioner. The court may appoint a guardian ad litem to represent the juvenile offender at the permanency hearing. At each hearing, the court shall make a written finding whether reasonable efforts have been made to accomplish the permanency goal and whether continued out-of-home placement is necessary for the juvenile's safety.

(f) Whenever a hearing is required under subsection (e), the court shall notify all interested parties of the hearing date, the commissioner, foster parent and preadoptive parent or relatives providing care for the juvenile and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing the persons receiving notice an opportunity to be heard, the court shall determine whether the juvenile's needs are being adequately met; whether services set out in the permanency plan necessary for the safe return of the juvenile have been made available to the parent with whom reintegration is planned; and whether reasonable efforts and progress have been made to achieve the goals of the permanency plan.

(g) If the court finds reintegration continues to be a viable alternative, the court shall determine whether and, if applicable, when the juvenile will be returned to the parent. The court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be accomplished as approved by the court, the court shall be informed and shall schedule a hearing pursuant to subsection (h). No such hearing is required when the parent voluntarily relinquishes parental rights or agrees to appointment of a permanent guardian.

(h) When the court finds any of the following conditions exist, the

county or district attorney or the county or district attorney's designee shall file a petition alleging the juvenile to be a child in need of care and requesting termination of parental rights pursuant to the Kansas code for care of children: (1) The court determines that reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile;

(2) the goal of the permanency plan is reintegration into the family and the court determines after 12 months from the time such plan is first submitted that progress is inadequate; or

(3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last 22 months, excluding trial home visits and juvenile in runaway status.

Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to the expiration of 12 months.

(i) A petition to terminate parental rights is not required to be filed if one of the following exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

(2) services set out in the case plan necessary for the safe return of the juvenile have not been made available to the parent with whom reintegration is planned; or

(3) there are one or more documented reasons why such filing would not be in the best interests of the juvenile. Documented reasons may include, but are not limited to: The juvenile has close emotional bonds with a parent which should not be broken; the juvenile is 14 years of age or older and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination of parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal or compelling foreign policy reasons precluding termination of parental rights.

Sec. 171. K.S.A. 2010 Supp. 38-2371 is hereby amended to read as follows: 38-2371. (a) (1) Whenever a person is adjudicated as a juvenile offender, the court upon motion of the state, shall hold a hearing to consider imposition of a departure sentence. The motion shall state that a departure is sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement, if available. Prior to the hearing, the court shall transmit to the juvenile offender or the juvenile offender's attorney and the prosecuting attorney copies of the predispositional investigation report.

(2) At the conclusion of the hearing or within 21 days thereafter, the

court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If a factual aspect of a crime is a statutory element of the crime, or is used to determine crime severity, that aspect of the current crime of conviction may be used as an aggravating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime. Subject to this provision, the nonexclusive lists of aggravating factors provided in ~~subsection (c)(2) of K.S.A. 21-4716, and amendments thereto, and in subsection (a) of K.S.A. 21-4717~~ *sections 296 and 297 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, may be considered in determining whether substantial and compelling reasons exist.

(b) If the court decides to depart on its own volition, without a motion from the state, the court must notify all parties of its intent and allow reasonable time for either party to respond if they request. The notice shall state that a departure is intended by the court and the reasons and factors relied upon.

(c) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure regardless of whether a hearing is requested.

(d) If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. When a departure sentence is appropriate, the sentencing judge may depart from the matrix as provided in this section. When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term;

(2) the court shall have no authority to reduce the minimum term of confinement as defined within the placement matrix; and

(3) the maximum term for commitment of any juvenile offender to a juvenile correctional facility is age 22 years, 6 months.

(e) A departure sentence may be appealed as provided in K.S.A. 2010 Supp. 38-2380, and amendments thereto.

Sec. 172. K.S.A. 2010 Supp. 38-2377 is hereby amended to read as follows: 38-2377. (a) The commissioner shall notify the county or district attorney, the court, the local law enforcement agency and the school district in which the juvenile offender will be residing of such pending release at least 45 days before release if the juvenile is still required to attend school, if the juvenile offender has committed an act prior to July 1, 1999, which, if committed by a person 18 years of age or over, would have constituted: (1) A class A or B felony, before July 1, 1993, or (2) an off-grid crime, a

nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, if the offense was committed on or after July 1, 1993, and, if such juvenile is to be released. The county or district attorney shall give written notice at least 30 days prior to discharge of the juvenile offender pursuant to K.S.A. 2010 Supp. 38-2379, and amendments thereto. The county attorney, district attorney or the court on its own motion may file a motion with the court for a hearing to determine if the juvenile offender should be retained in the custody of the commissioner, pursuant to K.S.A. 2010 Supp. 38-2376, and amendments thereto. The court shall fix a time and place for hearing and shall notify each party of the time and place.

(b) Following the hearing if the court orders the commissioner to retain custody, the juvenile offender shall not be held in a juvenile correctional facility for longer than the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which the juvenile offender has been adjudicated to have committed.

(c) As used in this section, “maximum term of imprisonment” means the greatest maximum sentence authorized by ~~K.S.A. 21-4501, and amendments thereto, applying any enhanced penalty which would be applicable under K.S.A. 21-4504, and amendments thereto, and~~ computing terms as consecutive when required by ~~K.S.A. 21-4608~~ *section 246 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 173. K.S.A. 39-720 is hereby amended to read as follows: 39-720. Any person who obtains or attempts to obtain, or aids or abets any other person to obtain, by means of a willfully false statement or representation, or by impersonation, collusion, or other fraudulent device, assistance to which the applicant or client is not entitled, shall be guilty of the crime of theft, as defined by ~~K.S.A. 21-3701; and he~~ *in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. Such person shall be required to remit to the secretary the amount of any assistance given him such person under such fraudulent act. In any civil action for the recovery of assistance on the grounds the assistance was fraudulently obtained, proof that the recipient of the assistance possesses or did possess resources which does or would have rendered him such person ineligible to receive such assistance shall be deemed prima facie evidence that such assistance was fraudulently obtained.*

Sec. 174. K.S.A. 39-785 is hereby amended to read as follows: 39-785. As used in *section 83 of chapter 136 of the 2010 Session Laws of Kansas*, ~~K.S.A. 21-3605~~, 39-709 and K.S.A. 39-785 to 39-790, inclusive and amendments thereto:

(a) “Adult care home” means a nursing facility licensed under the adult care home licensure act.

(b) “Excess shelter allowance” means, for the applicant or recipient’s spouse, the amount by which the sum of (1) the spouse’s expense for rent

or mortgage payment, including principal and interest, taxes and insurance and, in the case of a condominium or cooperative, required maintenance charges excluding utilities, for the spouse's principal residence, and (2) the standard utility allowance under section 5(e) of the food stamp act of 1977, exceeds 30% of the maximum amount of income allowed under K.S.A. 39-787, and amendments thereto.

(c) "Home and community based services" means those services provided under the state medical assistance program under waivers as defined in title XIX of the federal social security act in accordance with the plan adopted under subsection (s) of K.S.A. 39-708c, and amendments thereto, to recipients who would require admission to an adult care home if such services were not otherwise provided.

(d) "Income" means earned income and unearned income as defined under the state medical assistance program in accordance with the plan adopted under subsection (s) of K.S.A. 39-708c, and amendments thereto, to determine eligibility of applicants for medical assistance.

(e) "Institution" means an adult care home or a long-term care unit of a medical care facility.

(f) "Medical assistance" has the meaning provided under K.S.A. 39-702, and amendments thereto.

(g) "Qualified applicant" means a person who (1) applies for medical assistance and (2) is receiving long-term care in an institution or would be eligible for home and community based services if receiving medical assistance.

(h) "Qualified recipient" means a person who (1) receives medical assistance and (2) is receiving long-term care in an institution or is receiving home and community based services.

(i) "Resources" means cash or other liquid assets or any real or personal property that an individual or spouse owns and could convert to cash to be used for such individual's support and maintenance. If the individual has the right, authority or power to liquidate the property, or such individual's share of the property, it is a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual or spouse.

(j) "Secretary" means the secretary of social and rehabilitation services.

(k) "Exempt income" means income which is not considered in determining eligibility for medical assistance under the plan adopted under subsection (s) of K.S.A. 39-708c, and amendments thereto.

(l) "Nonexempt income" means income which is considered in determining eligibility for medical assistance under the plan adopted under subsection (s) of K.S.A. 39-708c, and amendments thereto.

(m) "Exempt resources" means resources which are not considered in determining eligibility for medical assistance under the plan adopted under subsection (s) of K.S.A. 39-708c, and amendments thereto.

(n) “Nonexempt resources” means resources which are considered in determining eligibility for medical assistance under the plan adopted under subsection (s) of K.S.A. 39-708c, and amendments thereto.

(o) “Long-term care” means care which exceeds or is projected to exceed three months, including the month care begins.

Sec. 175. K.S.A. 2010 Supp. 39-970 is hereby amended to read as follows: 39-970. (a) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402, *prior to its repeal, or subsection (a) of section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437, *prior to its repeal, or section 52 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, rape, pursuant to K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, *prior to its repeal, or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or aggravated sexual battery, pursuant to

K.S.A. 21-3518, *prior to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, *prior to its repeal, or section 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection (a)(2)(C) shall not apply to any person who is employed by an adult care home on the effective date of this act July 1, 2010 and while continuously employed by the same adult care home.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 86 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605, *prior to its repeal, or section 83 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (C) K.S.A. 21-3701, *prior to its repeal, or section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (F) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, *prior to its repeal, or section 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or (G) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been

found to be in need of a guardian or conservator, or both as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a con-

ditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning any criminal history information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2010 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense de-

scribed in K.S.A. 21-3701, *prior to its repeal, or section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, *prior to its repeal, or section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(i) An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).

(j) No person who has been employed by the same adult care home since July 1, 1992, shall be subject to the provisions of this section while employed by such adult care home.

(k) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(l) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(m) For purposes of this section, the Kansas bureau of investigation shall report any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection*

(a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to the secretary of health and environment when a background check is requested.

(n) This section shall be part of and supplemental to the adult care home licensure act.

Sec. 176. K.S.A. 2010 Supp. 40-252 is hereby amended to read as follows: 40-252. Every insurance company or fraternal benefit society organized under the laws of this state or doing business in this state shall pay to the commissioner of insurance fees and taxes specified in the following schedule:

A  
*Insurance companies organized under  
the laws of this state:*

1. Capital stock insurance companies and mutual legal reserve life insurance companies:	
Filing application for sale of stock or certificates of indebtedness: .....	\$25
Admission fees	
Examination of charter and other documents .....	500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10
2. Mutual life, accident and health associations:	
Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10
3. Mutual fire, hail, casualty and multiple line insurers and reciprocal or interinsurance exchanges:	
Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority provided in this code, all such com-

panies shall pay a fee of \$2 for each agent certified by the company and shall also pay a tax annually upon all premiums received on risk located in this state at the rate of 1% for tax year 1997, and 2% for all tax years thereafter per annum less (1) for tax years prior to 1984, any taxes paid on business in this state pursuant to the provisions of K.S.A. 40-1701 to 40-1707, inclusive, and 75-1508, and amendments thereto and (2) for tax years 1984 and thereafter, any taxes paid on business in this state pursuant to the provisions of K.S.A. 75-1508, and amendments thereto and the amount of the firefighters relief tax credit determined by the commissioner of insurance. The amount of the firefighters relief tax credit for a company for the current tax year shall be determined by the commissioner of insurance by dividing (A) the total amount of credits against the tax imposed by this section for taxes paid by all such companies on business in this state under K.S.A. 40-1701 to 40-1707, inclusive, and amendments thereto for tax year 1983, by (B) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1703 and amendments thereto for the tax year immediately preceding the current tax year, and by multiplying the result so obtained by (C) the amount of taxes paid by the company on business in this state under K.S.A. 40-1703 and amendments thereto for the current tax year.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, all premiums received for reinsurance from any other company authorized to do business in this state, dividends returned to policyholders and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

B

*Fraternal benefit societies organized under the laws of this state:*

Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

C

Mutual nonprofit hospital service corporations, nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations organized under the laws of this state:

1. Mutual nonprofit hospital service corporations:

Admission fees:		
Examination of charter and other documents .....		\$500
Filing annual statement .....		100
Certificate of authority .....		10
Annual fees:		
Filing annual statement .....		100
Continuation of certificate of authority .....		10

2. Nonprofit medical service corporations:

Admission fees:		
Examination of charter and other documents .....		\$500
Filing annual statement .....		100
Certificate of authority .....		10
Annual fees:		
Filing annual statement .....		100
Continuation of certificate of authority .....		10

3. Nonprofit dental service corporations:

Admission fees:		
Examination of charter and other documents .....		\$500
Filing annual statement .....		100
Certificate of authority .....		10
Annual fees:		
Filing annual statement .....		100
Continuation of certificate of authority .....		10

4. Nonprofit optometric service corporations:

Admission fees:		
Examination of charter and other documents .....		\$500
Filing annual statement .....		100
Certificate of authority .....		10
Annual fees:		
Filing annual statement .....		100
Continuation of certificate of authority .....		10

5. Nonprofit pharmacy service corporations:

Admission fees:		
Examination of charter and other documents .....		\$500
Filing annual statement .....		100
Certificate of authority .....		10
Annual fees:		
Filing annual statement .....		100
Continuation of certificate of authority .....		10

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority, provided in this code, every corporation or association shall pay annually to the commissioner of insurance a

tax in an amount equal to 1% for tax year 1997, and 2% for all tax years thereafter per annum of the total of all premiums, subscription charges, or any other term which may be used to describe the charges made by such corporation or association to subscribers for hospital, medical or other health services or indemnity received during the preceding year. In such computations all such corporations or associations shall be entitled to deduct any premiums or subscription charges returned on account of cancellations and dividends returned to members or subscribers.

D

*Insurance companies organized under the laws of any other state, territory or country:*

1. Capital stock insurance companies and mutual legal reserve life insurance companies:

Filing application for sale of stock or certificates of indebtedness .....	\$25
Admission fees:	
Examination of charter and other documents .....	500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees all such companies shall pay \$5 for each agent certified by the company, except as otherwise provided by law.

As a condition precedent to the continuation of the certificate of authority, provided in this code, every company organized under the laws of any other state of the United States or of any foreign country shall pay a tax upon all premiums received during the preceding year at the rate of 2% per annum.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, dividends returned to policyholders and all premiums received for reinsurance from any other company authorized to do business in this state and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

2. Mutual life, accident and health associations:

Admission fees:	
Examination of charter and other documents .....	\$500

Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees, every such company organized under the laws of any other state of the United States shall pay \$5 for each agent certified by the company, and shall pay a tax annually upon all premiums received at the rate of 2% per annum.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, dividends returned to policyholders and all premiums received for reinsurance from any other company authorized to do business in this state and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

3. Mutual fire, casualty and multiple line insurers and reciprocal or interinsurance exchanges:

Admission fees:

Examination of charter and other documents and issuance of certificate of authority .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10

Annual fees:

Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees, every such company or association organized under the laws of any other state of the United States shall pay a fee of \$5 for each agent certified by the company and shall also pay a tax annually upon all premiums received at the rate of 2% per annum.

For tax years 1998 and thereafter, the annual tax shall be reduced by the “applicable percentage” of (1) any taxes paid on business in this state pursuant to the provisions of K.S.A. 75-1508, and amendments thereto, and (2) the amount of the firefighters relief tax credit determined by the commissioner of insurance. The amount of the firefighters relief tax credit for a company taxable under this subsection for the current tax year shall be determined by the commissioner of insurance by dividing (A) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1701 to 40-1707, and amendments thereto, for tax year 1983 as then in effect, by (B) the total amount of taxes paid by all such companies

on business in this state under K.S.A. 40-1703, and amendments thereto, for the tax year immediately preceding the current tax year, and by multiplying the result so obtained by (C) the amount of taxes paid by the company on business in this state under K.S.A. 40-1703, and amendments thereto, for the current tax year. The ‘‘applicable percentage’’ shall be as follows:

Tax Year	Applicable Percentage
1998	10%
1999	20%
2000	40%
2002	50%
2003	60%
2004	70%
2005	80%
2006	90%
2007 and thereafter	100%

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, all premiums received for reinsurance from any other company authorized to do business in this state, and dividends returned to policyholders.

E

Fraternal benefit societies organized under the laws of any other state, territory or country:

Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

F

Mutual nonprofit hospital service corporations, nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations organized under the laws of any other state, territory or country:

1. Mutual nonprofit hospital service corporations:

Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

2. Nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations:

Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority, provided in this code, every corporation or association shall pay annually to the commissioner of insurance a tax in an amount equal to 2% per annum of the total of all premiums, subscription charges, or any other term which may be used to describe the charges made by such corporation or association to subscribers in this state for hospital, medical or other health services or indemnity received during the preceding year. In such computations all such corporations or associations shall be entitled to deduct any premiums or subscription charges returned on account of cancellations and dividends returned to members or subscribers.

G  
Payment of Taxes.

For the purpose of insuring the collection of the tax upon premiums, assessments and charges as set out in subsection A, C, D or F, every insurance company, corporation or association shall at the time it files its annual statement, as required by the provisions of K.S.A. 40-225, and amendments thereto, make a return, generated by or at the direction of its president and secretary or other chief officers, under penalty of ~~K.S.A. 21-3744~~, *section 110 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to the commissioner of insurance, stating the amount of all premiums, assessments and charges received by the companies or corporations in this state, whether in cash or notes, during the year ending on the December 31 next preceding.

Commencing in 1985 and annually thereafter the estimated taxes shall be paid as follows: On or before June 15 and December 15 of such year an amount equal to 50% of the full amount of the prior year's taxes as reported by the company shall be remitted to the commissioner of insurance. As used in this paragraph, "prior year's taxes" includes (1) taxes assessed pursuant to this section for the prior calendar year, (2) fees and taxes assessed pursuant to K.S.A. 40-253, and amendments thereto, for the prior calendar year, and (3) taxes paid for maintenance of the department of the state fire marshal pursuant to K.S.A. 75-1508, and amendments thereto, for the prior calendar year.

Upon the receipt of such returns the commissioner of insurance shall verify the same and assess the taxes upon such companies, corporations or associations on the basis and at the rate provided herein and the balance of such taxes shall thereupon become due and payable giving credit for

amounts paid pursuant to the preceding paragraph, or the commissioner shall make a refund if the taxes paid in the prior June and December are in excess of the taxes assessed.

#### H

The fee prescribed for the examination of charters and other documents shall apply to each company's initial application for admission and shall not be refundable for any reason.

Sec. 177. K.S.A. 2010 Supp. 40-2,118 is hereby amended to read as follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

(b) An insurer that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed shall provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may require.

(c) Any other person that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed may provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may request.

(d) (1) Each insurer shall have antifraud initiatives reasonably calculated to detect fraudulent insurance acts. Antifraud initiatives may include: fraud investigators, who may be insurer employees or independent contractors; or an antifraud plan submitted to the commissioner no later than July 1, 2007. Each insurer that submits an antifraud plan shall notify the commissioner of any material change in the information contained in the antifraud plan within 30 days after such change occurs. Such insurer shall submit to the commissioner in writing the amended antifraud plan.

The requirement for submitting any antifraud plan, or any amendment thereof, to the commissioner shall expire on the date specified in paragraph (2) of this subsection unless the legislature reviews and reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229, and amendments thereto.

(2) Any antifraud plan, or any amendment thereof, submitted to the commissioner for informational purposes only shall be confidential and not

be a public record and shall not be subject to discovery or subpoena in a civil action unless following an in camera review, the court determines that the antifraud plan is relevant and otherwise admissible under the rules of evidence set forth in article 4, chapter 60 of the Kansas Statutes Annotated, and amendments thereto. The provisions of this paragraph shall expire on July 1, 2011, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2011.

(e) Except as otherwise specifically provided in ~~K.S.A. 21-3718~~ *subsection (a) of section 98 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto and K.S.A. 44-5,125, and amendments thereto, a fraudulent insurance act shall constitute a severity level 6, nonperson felony if the amount involved is \$25,000 or more; a severity level 7, nonperson felony if the amount is at least \$5,000 but less than \$25,000; a severity level 8, nonperson felony if the amount is at least \$1,000 but less than \$5,000; and a class C nonperson misdemeanor if the amount is less than \$1,000. Any combination of fraudulent acts as defined in subsection (a) which occur in a period of six consecutive months which involves \$25,000 or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block.

(f) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(g) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.

Sec. 178. K.S.A. 2010 Supp. 40-1702 is hereby amended to read as follows: 40-1702. (a) On or before April 1 of each year, every insurance company doing business in this state shall return to the commissioner of insurance a just and true account, generated by or at the direction of its president and secretary or other chief officers, under penalty of ~~K.S.A. 21-3718~~ *section 110 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, of all premiums received for fire and lightning insurance covering risks located within this state during the year ending December 31, or the fire and lightning portion of any other insurance transacted by the insurance company covering risks within this state. Every insurance company shall include in its return an account of all premiums received for fire and lightning insurance covering risks located within this state.

(b) Each firefighters relief association shall prepare and file with the commissioner a plat drawn to scale showing the area provided fire protection service by the fire department of the firefighters relief association and the location of each fire department house. No such plat shall include any part of any area served by another fire department.

Sec. 179. K.S.A. 2010 Supp. 40-3213 is hereby amended to read as

follows: 40-3213. (a) Every health maintenance organization and medicare provider organization subject to this act shall pay to the commissioner the following fees:

- (1) For filing an application for a certificate of authority, \$150;
- (2) for filing each annual report, \$50;
- (3) for filing an amendment to the certificate of authority, \$10.

(b) Every health maintenance organization subject to this act shall pay annually to the commissioner at the time such organization files its annual report, a privilege fee in an amount equal to 1% per annum of the total of all premiums, subscription charges or any other term which may be used to describe the charges made by such organization to enrollees. In such computations all such organizations shall be entitled to deduct therefrom any premiums or subscription charges returned on account of cancellations and dividends returned to enrollees. If the commissioner shall determine at any time that the application of the privilege fee would cause a denial of, reduction in or elimination of federal financial assistance to the state or to any health maintenance organization subject to this act, the commissioner is hereby authorized to terminate the operation of such privilege fee.

(c) For the purpose of insuring the collection of the privilege fee provided for by subsection (b), every health maintenance organization subject to this act and required by subsection (b) to pay such privilege fee shall at the time it files its annual report, as required by K.S.A. 40-3220, and amendments thereto, make a return, generated by or at the direction of its chief officer or principal managing director, under penalty of ~~K.S.A. 21-3711~~ *section 110 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to the commissioner, stating the amount of all premiums, assessments and charges received by the health maintenance organization, whether in cash or notes, during the year ending on the last day of the preceding calendar year. Upon the receipt of such returns the commissioner of insurance shall verify the same and assess the fees upon such organization on the basis and at the rate provided herein and such fees shall thereupon become due and payable.

(d) Premiums or other charges received by an insurance company from the operation of a health maintenance organization subject to this act shall not be subject to any fee or tax imposed under the provisions of K.S.A. 40-252, and amendments thereto.

(e) Fees charged 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 state general fund.

Sec. 180. K.S.A. 41-206 is hereby amended to read as follows: 41-206. (a) Except as permitted pursuant to subsection (b), neither the director nor any employee in the office of the director shall solicit or accept, directly or

indirectly, any gift, gratuity, emolument or employment from any manufacturer, distributor, wholesaler or retailer of alcoholic liquor or from any person who is an applicant for any license or is a licensee under the provisions of this act, or from any officer, agent or employee thereof; or solicit requests from or recommend, directly or indirectly, to any such person, or to any officer, agent or employee thereof, the appointment of any person to any place or position. Any such person, officer, agent or employee thereof, is hereby forbidden to offer to the director, or any employee in the office of the director, any gift, gratuity, emolument or employment, except as permitted pursuant to subsection (b).

(b) The secretary may adopt rules and regulations allowing the acceptance of official hospitality by the director and employees in the office of the director, subject to such limits as prescribed by the secretary.

(c) If any person who is the director or an employee in the office of the director violates any provision of this section, such person shall be removed from such person's office or employment.

(d) Violation of any provision of this section is a misdemeanor punishable by a fine of not more than \$500 or imprisonment of not less than 60 days nor more than six months, or both such fine and imprisonment.

(e) Nothing contained in this section shall be construed as preventing the prosecution and punishment of any person for bribery as defined in the *Kansas* criminal code ~~of this state~~.

Sec. 181. K.S.A. 2010 Supp. 41-346 is hereby amended to read as follows: 41-346. In any administrative proceeding pursuant to the Kansas liquor control act to suspend or revoke a license, or to impose a civil fine, for a violation of *subsection (a) of section 84 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and K.S.A. 21-3610, 21-3610a or 41-2615, and amendments thereto*, it shall be a defense if evidence is presented which indicates that: (a) The defendant permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (b) to possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

Sec. 182. K.S.A. 2010 Supp. 41-2611 is hereby amended to read as follows: 41-2611. The director may revoke or suspend any license issued pursuant to the club and drinking establishment act for any one or more of the following reasons:

(a) The licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon.

(b) The licensee has violated any of the provisions of this act or any rules or regulations adopted hereunder.

(c) The licensee has become ineligible to obtain a license or permit under this act.

(d) The licensee's manager or employee has been intoxicated while on duty.

(e) The licensee, or its manager or employee, has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee.

(f) There has been a violation of a provision of the laws of this state, or of the United States, pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge, on premises where alcoholic liquor is sold by such licensee.

(g) The licensee, or its managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal wagering occupational stamp issued by the United States treasury department.

(h) The licensee, or its managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin operated gambling device stamp for the premises issued by the United States treasury department.

(i) The licensee holds a license as a class B club, drinking establishment or caterer and has been found guilty of a violation of article 10 of chapter 44 of the Kansas Statutes Annotated, *and amendments thereto*, under a decision or order of the Kansas human rights commission which has become final or such licensee has been found guilty of a violation of K.S.A. 21-4003, *prior to its repeal, or section 172 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(j) There has been a violation of K.S.A. 21-4106 or 21-4107, *prior to their repeal, or section 182 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, on premises where alcoholic liquor is sold by such licensee.

Sec. 183. K.S.A. 2010 Supp. 41-2708 is hereby amended to read as follows: 41-2708. (a) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, may revoke or suspend the license for any one of the following reasons:

(1) The licensee has violated any of the provisions of K.S.A. 41-2701 et seq., and amendments thereto, or any rules or regulations made by the board or the city, as the case may be;

(2) drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee's place of business;

(3) the sale of cereal malt beverages to any person under the legal age for consumption of cereal malt beverage;

(4) permitting any person to mix drinks with materials purchased in or upon the place of business or brought in for that purpose;

(5) the sale or possession of, or permitting any person to use or con-

sume on the licensed premises, any alcoholic liquor as defined by K.S.A. 41-102, and amendments thereto; or

(6) the licensee has been convicted of a violation of the beer and cereal malt beverage keg registration act.

(b) The provisions of subsections (a)(4) and (5) shall not apply if the place of business or premises also are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(c) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application therefor;

(2) the licensee has become ineligible to obtain a license under this act;

(3) the nonpayment of any license fees;

(4) permitting any gambling in or upon the licensee's place of business;

(5) the employment of persons under 18 years of age in dispensing or selling cereal malt beverages;

(6) the employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States; or

(7) there has been a violation of K.S.A. 21-4106 or 21-4107, *prior to their repeal, or section 182 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, in or upon the licensee's place of business.

(d) Within 20 days after the order of the board revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal.

Sec. 184. K.S.A. 2010 Supp. 41-2905 is hereby amended to read as follows: 41-2905. (a) Prior to the sale at retail of any beer in a container having a liquid capacity of four or more gallons, the retailer or the retailer's employee or agent shall affix to the beer container a keg identification number or otherwise uniquely identify the container in accordance with this act and rules and regulations adopted by the secretary. At the time of sale at retail of any such container of beer, the retailer or the retailer's employee or agent shall record the keg number; the date of the sale; the purchaser's name and address; and the number on the purchaser's driver's license, Kansas nondriver's identification card or other official or apparently official document that reasonably appears to contain both the purchaser's picture and the purchaser's signature, which shall be exhibited at the time of sale.

Such record shall be kept by the retailer at the premises where the sale was made. Such record shall be kept by the retailer until the container is returned or until the expiration of six months following the date of the sale.

(b) For the purpose of investigating a violation of laws prohibiting the furnishing to or possession or consumption of beer by persons under the age of 21 and if such violation involves a container required to be registered under the beer and cereal malt beverage keg registration act and if there is reason to believe that a retailer sold such container, such retailer's records relating to the sale of such container which are required to be kept by this section shall be available for inspection by any law enforcement officer during normal business hours of the retailer. Records required to be kept by this section shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or K.S.A. 21-3610 ~~or~~, *prior to its repeal, or subsection (a) of section 84 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or K.S.A. 41-727, and amendments thereto.* Except as specifically provided by this subsection, records required to be kept by this section shall not be sold, distributed or otherwise released to any person other than an agent of the retailer or to a law enforcement agency.

(c) Upon a determination that a retailer or a retailer's employee or agent has violated this section or any rules and regulations adopted pursuant to this section, the director may suspend or revoke the retailer's license in the manner provided by K.S.A. 41-320, and amendments thereto, and may impose a fine as provided by K.S.A. 41-328, and amendments thereto.

(d) It is a class B nonperson misdemeanor for a person who is not a retailer acting in the ordinary course of business to: (1) Remove from a beer container all or part of a keg identification number required pursuant to this section; (2) make unreadable all or any part of a keg identification number required by this section to be affixed to a beer container; or (3) possess a beer container required to be registered under this act that does not have the keg identification number required by this section.

(e) The secretary of revenue shall adopt any rules and regulations necessary to implement the provisions of this section. Such rules and regulations shall include, but shall not be limited to, provisions relating to records and establishing standards for marking and handling containers which are required to be registered by this act.

(f) The secretary of revenue shall provide any keg identification tags or labels required by this section. Such tags or labels shall be designed so that when affixed to a keg, such tags or labels do not mar or otherwise damage the keg. There shall be no charge for such tags or labels.

(g) If a person sold beer in compliance with the provisions of this section and any rules and regulations adopted pursuant thereto, it shall be a

defense to any criminal prosecution or proceeding or civil or administrative action under this section.

(h) The provisions of this section shall not apply to sales of kegs by distributors or retailers to clubs, drinking establishments, hotel drinking establishments and caterers licensed under the club and drinking establishment act.

(i) Words or phrases used in this section shall have the meaning ascribed thereto by K.S.A. 41-102, and amendments thereto.

Sec. 185. K.S.A. 2010 Supp. 41-2906 is hereby amended to read as follows: 41-2906. (a) Prior to the sale by a retailer or a retailer's employee or agent of any cereal malt beverage in a container having a liquid capacity of four or more gallons, the retailer or the retailer's employee or agent shall affix to the cereal malt beverage container a keg identification number or otherwise uniquely identify the container in accordance with rules and regulations adopted by the secretary. At the time of sale of any such container of cereal malt beverage, the retailer, or the retailer's employee or agent, shall record the keg number; the date of the sale; the purchaser's name and address; and the number on the purchaser's driver's license, Kansas non-driver's identification card or other official or apparently official document that reasonably appears to contain both the purchaser's picture and the purchaser's signature, which shall be exhibited at the time of sale. Such record shall be kept by the retailer at the premises where the sale was made. Such record shall be kept by the retailer until the container is returned or until the expiration of six months following the date of the sale.

(b) For the purpose of investigating a violation of laws prohibiting the furnishing to or possession or consumption of cereal malt beverage by persons under the legal age for consumption of cereal malt beverage and if such violation involves a container required to be registered under the beer and cereal malt beverage keg registration act and if there is reason to believe that such retailer sold such container, such retailer's records relating to the sale of such container which are required to be kept by this section shall be available for inspection by any law enforcement officer during normal business hours. Records required to be kept by this section shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or K.S.A. 21-3610 ~~or~~, *prior to its repeal, or subsection (a) of section 84 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or K.S.A. 41-727*, and amendments thereto. Except as specifically provided by this subsection, records required to be kept by this section shall not be sold, distributed or otherwise released to any person other than an agent of the retailer or to a law enforcement agency.

(c) Upon a determination that a retailer or a retailer's employee or agent has violated this section or any rules and regulations adopted pursuant to

this section, the board of county commissioners or the governing body of the city may suspend or revoke the retailer's license in the manner provided by K.S.A. 41-2708, and amendments thereto, and may impose a fine pursuant to K.S.A. 41-2711, and amendments thereto.

(d) It is a class B nonperson misdemeanor for a person who is not a retailer acting in the ordinary course of business to: (1) Remove from a cereal malt beverage container all or part of a keg identification number required pursuant to this section; (2) make unreadable all or any part of a keg identification number required by this section to be affixed to a cereal malt beverage container; or (3) possess a cereal malt beverage container required to be registered under this act that does not have the keg identification number required by this section.

(e) The secretary of revenue shall adopt any rules and regulations necessary to implement the provisions of this section. Such rules and regulations shall include, but shall not be limited to, provisions relating to records and establishing standards for marking and handling containers which are required to be registered by this act.

(f) The secretary of revenue shall provide any keg identification tags or labels required by this act. There shall be no charge for such tags or labels. Such tags or labels shall be designed so that when affixed to a keg, such tags or labels do not mar or otherwise damage the keg.

(g) If a person sold cereal malt beverage in compliance with the provisions of this section and any rules and regulations adopted pursuant thereto, it shall be a defense to any criminal prosecution or proceeding or civil or administrative action under this section.

(h) Words and phrases used in this section shall have the meaning ascribed thereto by K.S.A. 41-2701, and amendments thereto.

Sec. 186. K.S.A. 2010 Supp. 44-5,125 is hereby amended to read as follows: 44-5,125. (a) (1) Any person who obtains or attempts to obtain workers compensation benefits for such person or another, or who denies or attempts to deny the obligation to make any payment of workers compensation benefits by knowingly or intentionally: (A) Making a false or misleading statement, (B) misrepresenting or concealing a material fact, (C) fabricating, altering, concealing or destroying a document; (D) receiving temporary total disability benefits or permanent total disability benefits to which they are not entitled, while employed, or (E) conspiring with another person to commit any act described by paragraph (1) of this subsection (a), shall be guilty of:

(i) A class A nonperson misdemeanor, if the amount received as a benefit or other payment under the workers compensation act as a result of such act or the amount that the person otherwise benefited monetarily as a result of a violation of this subsection (a) is \$1,000 or less;

(ii) a severity level 9, nonperson felony, if such amount is more than \$1,000 but less than \$25,000;

(iii) a severity level 7, nonperson felony, if the amount is more than \$25,000, but less than \$50,000;

(iv) a severity level 6, nonperson felony if the amount is more than \$50,000, but less than \$100,000; or

(v) a severity level 5, nonperson felony if the amount is more than \$100,000.

(b) Any person who knowingly and intentionally presents a false certificate of insurance that purports that the presenter is insured under the workers compensation act, shall be guilty of a level 8, nonperson felony.

(c) A health care provider under the workers compensation act who knowingly and intentionally submits a charge for health care that was not furnished, shall be guilty of a level 9, nonperson felony.

(d) Any person who obtains or attempts to obtain a more favorable workers compensation insurance premium rate than that to which the person is entitled, who prevents, reduces, avoids or attempts to prevent, reduce or avoid the payment of any compensation under the workers compensation act, or who fails to communicate a settlement offer or similar information to a claimant under the workers compensation act, by, in any such case knowingly or intentionally: (1) Making a false or misleading statement; (2) misrepresenting or concealing a material fact; (3) fabricating, concealing or destroying a document; or (4) conspiring with another person or persons to commit the acts described in clause (1), (2) or (3) of this subsection shall be guilty of a level 9, nonperson felony.

(e) Any person who has received any amount of money as a benefit or other payment under the workers compensation act as a result of a violation of subsection (a) or (c) and any person who has otherwise benefited monetarily as a result of a violation of subsection (a) or (c) shall be liable to repay an amount equal to the amount so received by such person or the amount by which such person has benefited monetarily, with interest thereon. Any such amount, plus any accrued interest thereon, shall bear interest at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204, and amendments thereto per month or fraction of a month until repayment of such amount, plus any accrued interest thereon. The interest shall accrue from the date of overpayment or erroneous payment of any such amount or the date such person benefited monetarily.

(f) Any person aggrieved by a violation of subsection (a), (b), (c) or (d) shall have a cause of action against any other person to recover any amounts of money erroneously paid as benefits or any other amounts of money paid under the workers compensation act, and to seek relief for other monetary damages, for which liability has accrued under this section against such other person. Relief under this subsection is to be predicated upon exhaustion of administrative remedies available in K.S.A. 44-5,120, and amendments thereto.

(g) Nothing in this section shall prohibit an employer from exercising

a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a, and amendments thereto.

(h) Prosecution for any crime under this section shall be commenced within five years subject to the time period set forth in subsection (8) of K.S.A. 21-3106, *prior to its repeal, or subsection (e) of section 7 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 187. K.S.A. 2010 Supp. 44-706 is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection (a) if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the individual left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same

and other employers in the locality shall be considered; as used in this paragraph (5), “hazardous working conditions” means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of (A) the safety measures used or the lack thereof, and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual’s work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual’s past adversely affected employment (as defined for purposes of the federal trade act of 1974), and wages for such work are not less than 80% of the individual’s average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of (A) the rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted, (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted, and (C) the distance from the individual’s place of residence to the work accepted in comparison to the distance from the individual’s residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating;

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; or

(12) (A) the individual left work due to circumstances resulting from domestic violence, including:

(i) The individual’s reasonable fear of future domestic violence at or en route to or from the individual’s place of employment; or

(ii) the individual's need to relocate to another geographic area in order to avoid future domestic violence; or

(iii) the individual's need to address the physical, psychological and legal impacts of domestic violence; or

(iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or

(v) the individual's reasonable belief that termination of employment is necessary to avoid other situations which may cause domestic violence and to provide for the future safety of the individual or the individual's family.

(B) An individual may prove the existence of domestic violence by providing one of the following:

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction; or

(ii) a police record documenting the abuse; or

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 77, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, where the victim was a family or household member; or

(iv) medical documentation of the abuse; or

(v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

(vi) a sworn statement from the individual attesting to the abuse.

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual.

(b) If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall

be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection (b), “misconduct” is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. The term “gross misconduct” as used in this subsection (b) shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection (b). Failure of the employee to notify the employer of an absence shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(2) For the purposes of this subsection (b), the use of or impairment caused by alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which is a violation of a duty or obligation reasonably owed to the employer as a condition of employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A. 41-2701, and amendments thereto. Controlled substance shall be defined as provided in K.S.A. 2010 Supp. 21-36a01, and amendments thereto. As used in this subsection (b)(2), “required by law” means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity. Chemical test shall include, but is not limited to, tests of urine, blood or saliva. A positive chemical test shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein. A positive breath test shall mean a test result showing an alcohol concentration of .04 or greater. Alcohol concentration means the number of grams of alcohol per 210 liters of breath. An individual’s refusal to submit to a chemical test or breath alcohol test shall be conclusive evidence of misconduct if the test meets the standards of the drug free workplace act, 41 U.S.C. § 701 et seq.; the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment; the test was otherwise required by law and the test constituted a required condition of employment for the individual’s job; the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a

positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met:

(A) Either (i) the test was required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq., (ii) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment, (iv) the test was required by law and the test constituted a required condition of employment for the individual's job, or (v) there was probable cause to believe that the individual used, had possession of, or was impaired by alcoholic liquor, the cereal malt beverage or the controlled substance while working;

(B) the test sample was collected either (i) as prescribed by the drug free workplace act, 41 U.S.C. § 701 et seq., (ii) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment, (iv) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job, or (v) at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(2)(F) or authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force or effect of law, including law enforcement personnel;

(D) the chemical test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test;

(F) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(G) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) (A) For the purposes of this subsection (b), misconduct shall in-

clude, but not be limited to repeated absence, including incarceration, resulting in absence from work of three days or longer, excluding Saturdays, Sundays and legal holidays, and lateness, from scheduled work if the facts show:

- (i) The individual was absent without good cause;
- (ii) the absence was in violation of the employer's written absenteeism policy;
- (iii) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence may or will result in discharge; and
- (iv) the employee had knowledge of the employer's written absenteeism policy.

(B) For the purposes of this subsection (b), if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause. If the employee alleges that the employee's repeated absences were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a)(1).

(4) An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available

work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, and/or legal needs relating to such domestic violence.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (d) be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (d), failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual

has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor.

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection (j) and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual

filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection (j).

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly

amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any person or organization) who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n); or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n). No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) which an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection (o), the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection (p) for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer de-

scribed in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection (r) provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance; or

(2) the individual is attending approved training as defined in subsection (s) of K.S.A. 44-703, and amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under subsection (c) of K.S.A. 44-705, and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

(t) If the individual has been discharged for failing a preemployment drug screen required by the employer and if such discharge occurs not later than seven days after the employer is notified of the results of such drug screen. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto. The disqualification shall begin the day following the

separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

Sec. 188. K.S.A. 2010 Supp. 44-719 is hereby amended to read as follows: 44-719. (a) Any person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for such person or for any other person, shall be guilty of theft and shall be punished in accordance with the provisions of ~~K.S.A. 21-3701~~ *section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(b) Any employing unit or any officer or agent for any employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than 60 days, or both such fine and imprisonment. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who willfully violates any provision of this act or any rule and regulation adopted by the secretary hereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein or provided by any other applicable statute, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) (1) Any person who has received any amount of money as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall in the discretion of the secretary, either be liable to have such amount of money deducted from any future benefits payable to such person under this act or shall be liable to repay to the secretary for the employment security fund an amount of money equal to the amount so received by such person. After a period of five years, the secretary may waive the collection of any such amount of money when the secretary has determined that the payment of such amount of money was not due to fraud, misrepresentation, or willful nondisclosure on the part of the person receiving such amount of money, and the collection thereof

would be against equity or would cause extreme hardship with regard to such person. The collection of benefit overpayments which were made in the absence of fraud, misrepresentation or willful nondisclosure of required information on the part of the person who received such overpayments, may be waived by the secretary at any time if such person met all eligibility requirements of the employment security law during the weeks in which the overpayments were made.

(2) Any benefit erroneously paid which is not repaid shall bear interest at the rate of 1.5% per month or fraction of a month. If the benefit was received as a result of fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue from the date of the final determination of overpayment until repayment plus interest is received by the secretary. If the overpayment was without fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue upon any balance which remains unpaid two years after the final determination of overpayment is made and shall continue until payment plus accrued interest is received by the secretary. Interest collected pursuant to this section shall be paid into the special employment security fund, except that interest collected on federal administrative programs shall be returned to the federal government. Upon written request and for good cause shown, the secretary may abate any interest or portion thereof provided for by this subsection (d)(2). Interest accrued may not be paid by money deducted from any future benefits payable to such persons liable for any overpayment.

(3) Unless collection is waived by the secretary, any such amount shall be collectible in the manner provided in subsection (b) of K.S.A. 44-717, and amendments thereto, for the collection of past due contributions. The courts of this state shall in like manner entertain actions to collect amounts of money erroneously paid as benefits, or unlawfully obtained, for which liability has accrued under the employment security law of any other state or of the federal government.

(e) Any employer or person who willfully fails or refuses to pay contributions, payments in lieu of contributions or benefit cost payments or attempts in any manner to evade or defeat any such contributions, payments in lieu of contributions or benefit cost payments or the payment thereof, shall be liable for the payment of such contributions, payments in lieu of contributions or benefit cost payments and, in addition to any other penalties provided by law, shall be liable to pay a penalty equal to the total amount of the contributions, payments in lieu of contributions or benefit cost payments evaded or not paid.

(f) (1) It shall be unlawful for an employing unit to knowingly obtain or attempt to obtain a reduced liability for contributions under subsection (b)(1) of K.S.A. 44-710a, and amendments thereto, through manipulation of the employer's workforce, or for an employing unit that is not an employing unit at the time it acquires the trade or business, to knowingly obtain or attempt to obtain a reduced liability for contributions under subsection

(b)(5) of K.S.A. 44-710a, and amendments thereto, or any other provision of K.S.A. 44-710a, and amendments thereto, related to determining the assignment of a contribution rate, when the sole or primary purpose of the business acquisition was for the purpose of obtaining a lower rate of contributions, or for a person to knowingly advise an employing unit in such a way that results in such a violation, such employing unit or person shall be subject to the following penalties:

(A) If the person is an employer, then such employer shall be assigned the highest rate assignable under K.S.A. 44-710a, and amendments thereto, for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the employer's business is already at such highest rate for any year, or if the amount of increase in the employer's rate would be less than 2% for such year, then a penalty rate of contributions of 2% of taxable wages shall be imposed for such year. Any moneys resulting from the difference of the computed rate and the penalty rate 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 special employment security fund.

(B) If the person is not an employer, such person shall be subject to a civil money penalty of not more than \$5,000. All fines assessed and collected 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 special employment security fund.

(2) For purposes of this subsection, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this subsection, the term "violates or attempts to violate" includes, but is not limited to, any intent to evade, misrepresentation or willful nondisclosure.

(4) (A) In addition to, or in lieu of, any civil penalty imposed by paragraph (1) if, the director of employment security or a special assistant attorney general assigned to the department of labor, has probable cause to believe that a violation of this subsection (f) should be prosecuted as a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of employment security which relates to such violation, may be forwarded to the prosecuting attorney in the county in which the act or any of the acts were performed which constitute a violation of this subsection (f). Any case which a county or district attorney fails to prosecute within 90 days shall be returned promptly to the director of employment security. The special assistant attorney general assigned to the Kansas department of labor shall then prosecute the case, if, in the opinion

of the special assistant attorney general, the acts or practices involved still warrant prosecution.

(B) Violation of this subsection (f) shall be a level 9, nonperson felony.

(5) The secretary shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(6) For purposes of subsection (f):

(A) “Person” has the meaning given such term by section 7701(a)(1) of the internal revenue code of 1986;

(B) “trade or business” shall include the employer’s workforce; and

(C) the provisions of ~~K.S.A. 21-3206 and K.S.A. 21-3207~~ *sections 31 and 32 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall apply.

(7) This subsection (f) shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulation issued by the United States department of labor.

Sec. 189. K.S.A. 44-1039 is hereby amended to read as follows: 44-1039. Any person ~~willfully, knowingly,~~ *intentionally* and falsely swearing, testifying, affirming, declaring or subscribing to any material fact upon any oath or affirmation required by the Kansas act against discrimination shall be deemed guilty of perjury as defined by ~~K.S.A. 21-3805~~ *in section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and ~~any~~ amendments thereto.

Sec. 190. K.S.A. 2010 Supp. 44-1131 is hereby amended to read as follows: 44-1131. As used in K.S.A. 44-1131 and 44-1132, and amendments thereto:

(a) “Domestic violence” means abuse as defined in K.S.A. 60-3102, and amendments thereto.

(b) “Sexual assault” means any crime defined in K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, (rape), 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, (indecent liberties with a child), 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, (aggravated indecent liberties with a child), 21-3505, *prior to its repeal, or subsection (a) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, (criminal sodomy), 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, (aggravated criminal sodomy), 21-3602, *prior to its repeal, or subsection (a) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, (incest) or 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, (aggravated incest); ~~and amendments thereto.~~

Sec. 191. K.S.A. 2010 Supp. 45-217 is hereby amended to read as follows: 45-217. As used in the open records act, unless the context otherwise requires:

(a) “Business day” means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) “Clearly unwarranted invasion of personal privacy” means revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.

(c) “Criminal investigation records” means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701, and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405, *prior to its repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(d) “Custodian” means the official custodian or any person designated by the official custodian to carry out the duties of custodian of this act.

(e) “Official custodian” means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer’s or employee’s actual personal custody and control.

(f) (1) “Public agency” means the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) “Public agency” shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; (B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or (C) any officer or employee of the state or political or taxing subdivision of the state if the state or political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

~~(f) (1)~~ (g) (1) “Public record” means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency including, but not limited to, an agreement in settlement of litigation involving the Kansas public employees retirement system and the investment of moneys of the fund.

(2) “Public record” shall not include records which are owned by a

private person or entity and are not related to functions, activities, programs or operations funded by public funds or records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state.

(3) "Public record" shall not include records of employers related to the employer's individually identifiable contributions made on behalf of employees for workers compensation, social security, unemployment insurance or retirement. The provisions of this subsection shall not apply to records of employers of lump-sum payments for contributions as described in this subsection paid for any group, division or section of an agency.

(h) "Undercover agent" means an employee of a public agency responsible for criminal law enforcement who is engaged in the detection or investigation of violations of criminal law in a capacity where such employee's identity or employment by the public agency is secret.

Sec. 192. K.S.A. 2010 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. 2010 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. 2010 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 per-

sons, 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 sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, 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 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 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.

(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. 193. K.S.A. 2010 Supp. 45-230 is hereby amended to read as

follows: 45-230. (a) No person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records except:

(1) Lists of names and addresses from public records of the division of vehicles obtained under K.S.A. 74-2012, and amendments thereto;

(2) lists of names and addresses of persons licensed, registered or issued certificates or permits to practice a profession or vocation may be sold or given to, and received by, an organization of persons who practice that profession or vocation for membership, informational or other purposes related to the practice of the profession or vocation;

(3) lists of names and addresses of persons applying for examination for licenses, registrations, certificates or permits to practice a profession or vocation shall be sold or given to, and received by, organizations providing professional or vocational educational materials or courses to such persons for the sole purpose of providing such persons with information relating to the availability of such materials or courses;

(4) lists of names, addresses and other information from voter registration lists may be compiled, used, given, received, sold or purchased by any person, as defined in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, solely for political campaign or election purposes;

(5) lists of names and addresses from the public records of postsecondary institutions as defined in K.S.A. 74-3201b, and amendments thereto, may be given to, and received and disseminated by such institution's separately incorporated affiliates and supporting organizations, which qualify under section 501(c)(3) of the federal internal revenue code of 1986, for use in the furtherance of the purposes and programs of such institutions and such affiliates and supporting organizations; and

(6) to the extent otherwise authorized by law.

(b) Any person subject to this section who knowingly violates the provisions of this section shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney in a sum set by the court not to exceed \$500 for each violation.

(c) The provisions of this section shall not apply to nor impose any civil liability or penalty upon any public official, public agency or records custodian for granting access to or providing copies of public records or information containing names and addresses, in good faith compliance with the Kansas open records act, to a person who has made a written request for access to such information and has executed a written certification pursuant to subsection (c)(2) of K.S.A. 45-220, and amendments thereto.

(d) This section shall be a part of and supplemental to the Kansas open records act.

Sec. 194. K.S.A. 46-920 is hereby amended to read as follows: 46-920.

(a) The secretary of corrections may reimburse any inmate of any correctional institution or other facility under the secretary's jurisdiction for any personal injury or personal property damage or loss occurring under circumstances which establish, in the secretary's opinion, that such loss or damage was caused by the negligence of the state or any agency, officer or employee thereof. No reimbursement payment shall be made on any claim for an amount of more than \$500. Nothing in this section shall prohibit the crediting of any payment made to an inmate of a correctional institution or other facility under the secretary's jurisdiction to such inmate's account within the institution or facility, as the case may be.

(b) When an inmate owes an outstanding unpaid amount of restitution ordered by a court pursuant to K.S.A. 21-4603, 21-4603d or 21-4610, *prior to their repeal, or section 244, 247 or 271 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, the secretary of corrections shall withdraw from the inmate's trust account as a set-off:

(1) Money received by the inmate from the state as a settlement of a claim against the state through the joint committee on special claims against the state which is otherwise specifically approved for payment by appropriation act of the legislature, or which is approved through the department of corrections internal claims procedure under this section; or

(2) money received by the inmate from the state as the result of a settlement or a final judgment in a civil action in which the state of Kansas or an employee of the department of corrections was a named defendant and the state was found to be liable.

(c) When an inmate on post release, parole or conditional release supervision owes an outstanding unpaid amount of restitution ordered by a court pursuant to K.S.A. 21-4603, 21-4603d or 21-4610, *prior to their repeal, or section 244, 247 or 271 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, the state shall setoff the unpaid restitution from:

(1) Money payable to the inmate from the state as a settlement of a claim against the state through the joint committee against the state which is specifically approved for payment by appropriation act of the legislature or which is approved through the department of corrections under this section; or

(2) money payable to the inmate from the state as a result of a settlement or final judgment in a civil action in which the state of Kansas or an employee of the department of corrections was a named defendant and the state was found to be liable.

(d) Vouchers certifying the amount to be setoff under subsection (c) for the outstanding unpaid restitution and any balance remaining payable to the inmate shall be prepared and submitted to the director of accounts and reports of the department of administration.

(e) When more than one state court order of restitution is outstanding and unpaid, moneys shall be applied to and paid for the restitution orders

in accordance with this section in the order in which the final judgment orders were entered.

(f) Moneys collected for payment towards outstanding unpaid restitution in accordance with this section shall be forwarded to the appropriate clerk of the district court for disbursement.

Sec. 195. K.S.A. 47-653c is hereby amended to read as follows: 47-653c. Any person who shall violate any provision of this act or regulations adopted in accordance therewith shall be deemed guilty of a misdemeanor and upon conviction shall be punished as prescribed by ~~K.S.A. 21-4502~~ *section 242 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

Sec. 196. K.S.A. 2010 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.

(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 conviction of cruelty to animals, K.S.A. 21-4310, *prior to its repeal, or subsections (a)(1) through (a)(5) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, 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 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) 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. 21-4311~~ *section 223 of chapter 136 of the 2010 Session Laws of Kansas*, 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. 197. K.S.A. 2010 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 not exceeding \$1,000 for each violation or requirement 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 or the educational course. If such person chooses the fine, the commissioner shall establish the amount pursuant to the fine 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 pursuant to this section shall be only upon notice and 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. 21-4311~~ *section 223 of chapter 136 of the 2010 Session Laws of Kansas*, 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. 198. K.S.A. 47-1715 is hereby amended to read as follows: 47-1715. (a) Any violation of or failure to comply with any provision of the Kansas pet animal act, or any rule and regulation adopted hereunder, shall constitute a class A nonperson misdemeanor. Continued operation, after a conviction, shall constitute a separate offense for each day of operation.

(b) Upon a conviction of a person for any violation of the Kansas pet animal act, or any rule and regulation adopted hereunder, the court shall order the commissioner to seize and impound any animals in the convicted person's possession, custody or care if there are reasonable grounds to believe that the animals' health, safety or welfare is endangered. Except as provided by ~~K.S.A. 21-4311~~ *section 223 of chapter 136 of the 2010 Session Laws of Kansas*, 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 convicted person. Such funds shall be paid to the commissioner for reimbursement of care and services provided during seizure and impoundment. If the person is not convicted, the commissioner shall pay the costs of care and services provided during seizure and impoundment.

Sec. 199. K.S.A. 50-618 is hereby amended to read as follows: 50-618. Whenever any person, firm, partnership, association, corporation or other business organization, or any agent thereof, shall voluntarily issue or cause to be issued a ~~credit~~ *financial* card, as defined by ~~K.S.A. 21-3729~~ *in section 114 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, where the person to whom the card is issued has not requested or solicited such issuance, and has neither signed nor used such card, the person to whom the card is issued shall not be liable for any use or misuse

of such card if it shall be lost or stolen. In any action for the return of ~~said credit~~ *such* card, or for the return of any goods, wares or merchandise acquired through use of ~~said credit~~ *such* card subsequent to it being lost by or stolen from the recipient thereof, or for the payment of the purchase price of said goods, wares or merchandise, it shall be a complete defense by such recipient that the ~~credit~~ card was issued, sent or delivered, or caused to be issued, sent or delivered, to the recipient unsolicited or that the recipient did not actually order or request the same and that the recipient neither signed nor used such card. Where any person has requested or solicited the issuance of a ~~credit~~ *financial* card from any person, firm, partnership, association, corporation or other business organization, or any agent thereof or such person has signed or used such card, the reissuance or renewal of such card, regardless of any specific request or solicitation therefor by the holder of such card, shall not be deemed to be the receipt of an unsolicited ~~credit~~ *financial* card within the meaning of this act.

Sec. 200. K.S.A. 50-648 is hereby amended to read as follows: 50-648. (a) Any consumer who has purchased a motor vehicle from a supplier and who proves: (1) That any of the acts declared to be a violation of ~~K.S.A. 21-3757~~ *section 121 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, have taken place; and (2) that the mileage or use of the motor vehicle is materially different from that shown on the vehicle's odometer shall be entitled to a declaration from the court that the purchase of the motor vehicle is voidable at the consumer's request.

(b) If the purchase of a motor vehicle is voided under subsection (a), the consumer shall recover the greater of the following but recovery shall not exceed the actual purchase price of the vehicle:

- (1) Purchase price before trade-in allowance less set off;
  - (2) Purchase price before trade-in allowance plus verified repairs less set off; or
  - (3) The civil penalties in K.S.A. 50-651, *and amendments thereto*.
- (c) The consumer may recover reasonable attorney fees, if the consumer prevails in an action against the supplier under this section.

Sec. 201. K.S.A. 50-651 is hereby amended to read as follows: 50-651. (a) The commission of any act or practice declared to be a violation of ~~K.S.A. 21-3757~~ *section 121 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, or K.S.A. 50-653, and amendments thereto, shall make the violator liable to the aggrieved consumer, or to the state, for the payment of a civil penalty, recoverable in an individual action or in an action brought by the attorney general in a sum set by the court of not more than \$2,000 per violation of K.S.A. 50-653, and amendments thereto, and not more than \$10,000 per violation of ~~K.S.A. 21-3757~~ *section 121 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*.

(b) The remedies provided in subsection (a) are in addition to any remedies available under federal odometer law.

Sec. 202. K.S.A. 50-653 is hereby amended to read as follows: 50-653. A supplier as defined herein shall disclose in writing to the purchaser of a motor vehicle at or before the time of entering into the purchase agreement whether the supplier has or has not performed a title search for such motor vehicle and such disclosure statement shall be signed by the purchaser acknowledging such disclosure was made to the purchaser. A supplier who makes the foregoing disclosure shall have no liability under K.S.A. 50-648, 50-650 and 50-651, *and amendments thereto*, to a purchaser of the vehicle in the event the mileage shown for the motor vehicle is inaccurate or untrue, unless such supplier violated the provisions of subsection ~~(f) of K.S.A. 21-3757~~ *(a)(4) of section 121 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

Sec. 203. K.S.A. 57-227 is hereby amended to read as follows: 57-227. This act shall not apply to:

(a) Investigations by law enforcement officers or other persons concerning a suspected violation of ~~K.S.A. 21-3750~~ *subsection (a)(3) of section 92 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or*

(b) contracts between copyright owners or performing rights societies and broadcasters licensed by the federal communications commission or contracts with cable operators, programmers or other transmission services.

Sec. 204. K.S.A. 58-2573 is hereby amended to read as follows: 58-2573. The provisions of this act shall not: (a) Apply to or affect any valid rental agreement entered into prior to the effective date of this act, nor shall it apply to or affect any conduct or transaction of the parties to such rental agreement, if such conduct or transaction is in accordance with and pursuant to such rental agreement; but the provisions of this act shall apply to and govern any renewal, extension or modification of any such rental agreement, where such renewal, extension or modification is effected on or after the effective date of this act; or

(b) apply to any person or persons who enter and remain in a dwelling unit without a rental agreement and without the landlord's knowledge and such person knows that such person is not authorized or privileged to do so and an order to leave has been personally communicated to such person by the landlord. Such person or persons may be prosecuted pursuant to ~~K.S.A. 21-3721~~ *section 94 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

Sec. 205. K.S.A. 2010 Supp. 58-3043 is hereby amended to read as follows: 58-3043. (a) In determining whether to grant or renew a license the commission shall consider:

(1) Any revocation or suspension of a prior real estate license;

(2) (A) Whether an applicant has committed any of the following during the term of any prior real estate license:

(i) A violation of any of the practices enumerated in K.S.A. 58-3062, and amendments thereto;

(ii) a violation of this act or rules and regulations adopted hereunder; or

(iii) a violation of the brokerage relationships in real estate transactions act, K.S.A. 58-30,101 et seq., and amendments thereto;

(B) whether an applicant has been finally adjudicated and a determination was made by a federal, state or other appropriate licensing body that the applicant committed any violation that is comparable to a violation in subparagraph (A) during the term of any real estate license issued to the applicant by another jurisdiction;

(3) any plea of guilty or nolo contendere to, or any conviction of any misdemeanor which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate;

(4) any conduct of the applicant which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate; and

(5) such other matters as the commission deems pertinent.

(b) The commission may renew or grant an original license to an applicant who has any prior revocation or suspension, conduct or plea of guilty or nolo contendere to or conviction of a misdemeanor as specified in subsection (a) if the applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such a manner as to safeguard the interest of the public. The burden of proof shall be on the applicant to present such evidence to the commission. In its consideration of any prior revocation, conduct or plea of guilty or nolo contendere to or conviction of a misdemeanor as specified in subsection (a), the commission shall consider the following factors:

(1) The nature of the offense;

(2) any aggravating or extenuating circumstances;

(3) the time elapsed since such revocation, conduct or plea of guilty or nolo contendere to or conviction of a misdemeanor;

(4) the rehabilitation or restitution performed by the applicant; and

(5) any other factors that the commission deems relevant.

(c) The commission may deny a license to any person who, without a license, has engaged in a real estate activity for which a license was required.

(d) When an applicant has made a false statement of material fact on the application, such false statement may be sufficient reason for refusal of a license.

(e) (1) Except as provided in paragraph (2), the commission shall refuse

to grant a license to an applicant if the applicant has entered a plea of guilty or nolo contendere to, or has been convicted of:

(A) (i) Any offense that is comparable to any crime which would require the applicant to register as provided in the Kansas offender registration act; or

(ii) any federal, military or other state conviction for an offense that is comparable to any crime under the laws of this state which would require the applicant to register as provided in the Kansas offender registration act; or

(B) (i) Any felony other than a felony under subparagraph (A); or

(ii) any federal, military or other state conviction for an offense that is comparable to any under the laws of this state other than a felony under subparagraph (A).

(2) The commission may grant an original license pursuant to subsection (f) if the applicant's application is received at least:

(A) Fifteen years after the date of the applicant's discharge from post-release supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (A) of paragraph (1); or

(B) five years after the date of the applicant's discharge from post-release supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (B) of paragraph (1), whichever is applicable.

(3) For the purposes of this subsection, "postrelease supervision" and "nonprison sanction" shall have the meaning ascribed to it in ~~K.S.A. 21-4703~~ *them in section 284 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

~~(4) For the purposes of this subsection, "nonprison sanction" shall have the meaning ascribed to it in K.S.A. 21-4703, and amendments thereto.~~

(f) (1) The commission may renew or grant an original license to an applicant who has entered a plea of guilty or nolo contendere to, or has been convicted of any crime listed in paragraph (1) of subsection (e) if the applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such a manner as to safeguard the interest of the public. The burden of proof shall be on the applicant to present such evidence to the commission.

(2) In addition to the factors listed in subsections (a) and (b), in determining whether or not the applicant presently has a good reputation as required in subsection (f), the commission shall consider the following additional factors:

(A) The extent and nature of the applicant's past criminal activity;

- (B) the age of the applicant at the time of the commission of the crime or crimes;
- (C) the amount of time elapsed since the applicant's last criminal activity;
- (D) the conduct and work activity of the applicant prior to and following the criminal activity;
- (E) evidence of the applicant's rehabilitation or rehabilitative effort; and
- (F) all other evidence of the applicant's present fitness for a license.

Sec. 206. K.S.A. 2010 Supp. 58-3068 is hereby amended to read as follows: 58-3068. (a) Except as provided in subsection (d), moneys in the real estate recovery revolving fund shall be used in the manner provided by this act to reimburse persons who suffer monetary damages by reason of any of the following acts committed in connection with any transaction involving the sale of real estate in this state by any broker or salesperson who was licensed under the laws of this state at the time the act was committed or by any unlicensed employee of such broker or salesperson:

- (1) Violation of any of the following provisions of this act:
  - (A) K.S.A. 58-3061, and amendments thereto; or
  - (B) subsection (a)(1), (2), (13), (18), (19) or (25) or subsection (b)(2) of K.S.A. 58-3062, and amendments thereto; or
  - (2) violation of any provision of the brokerage relationships in real estate transactions act; or
  - (3) obtaining money or property by any act which would constitute any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3707, 21-3710, 21-3711 or 21-3712, *prior to their repeal, or section 87, 89, 107, 109, 110 or 112 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(b) Any person may seek recovery from the real estate recovery revolving fund under the following conditions:

- (1) Such person has received final judgment in a court of competent jurisdiction of this state in any action wherein the cause of action was based on any of the acts described in subsection (a);
- (2) the claim is made within two years after the date that final judgment is entered;
- (3) such person has caused to be issued a writ of execution upon such judgment, and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;
- (4) such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, subject to being sold or applied in satisfaction of the

judgment, and by such search such person has discovered no such property or assets, or that such person has discovered such property and assets and that such person has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment;

(5) any amounts recovered by such person from the judgment debtor, or from any other source, has been applied to the damages awarded by the court; and

(6) such person is not a person who is precluded by subsection (c) from making a claim for recovery.

(c) A person shall not be qualified to make a claim for recovery from the real estate recovery revolving fund, if:

(1) The person is the spouse of the judgment debtor or a personal representative of such spouse;

(2) the person acted as principal or agent in the real estate transaction which is the subject of the claim and is a licensed broker or salesperson or is an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation whose partners, members, officers and employees are licensed as provided by subsection (b) of K.S.A. 58-3042, and amendments thereto; or

(3) such person's claim is based upon a real estate transaction in which the licensed broker or salesperson was acting on the broker's or salesperson's own behalf with respect to property owned or controlled by such broker or salesperson.

(d) At any time that the balance remaining in the real estate recovery revolving fund is greater than \$250,000, any amount over \$250,000 may be used by the commission for the following purposes:

(1) Production and distribution of an agency newsletter;

(2) monitoring education courses;

(3) expansion of materials available for consumers; and

(4) education grants to high schools and universities for course materials on money management and home ownership.

Sec. 207. K.S.A. 2010 Supp. 58-4505 is hereby amended to read as follows: 58-4505. (a) Except as provided in subsections (b) and (c), the board may deny, suspend or revoke a registration, or may impose probationary conditions on a registrant or applicant if the registrant or applicant has engaged in any of the following conduct:

(1) Making a materially false or fraudulent statement in an application for registration or renewal;

(2) been convicted of or plead guilty or nolo contendere in a court of competent jurisdiction to any misdemeanor involving dishonesty;

(3) intentionally falsifying a home inspection report;

(4) performing any of the following acts as part of the home inspection:

(A) Inspecting for a fee any property in which the home inspector has

any personal or financial interest unless the interest is disclosed in writing to the client before the home inspection is performed and the client signs an acknowledgment of receipt of the disclosure;

(B) offering or delivering any commission, referral fee or kickback for the referral of any business to the home inspector; and

(C) accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established or prescribed findings or the closing of the underlying real estate transaction;

(5) including as a term or condition in an agreement to conduct a home inspection any provision that disclaims the liability of the registered home inspector for any errors and omissions which may arise during a home inspection or to limit the amount of damage for liability for any errors and omissions which may arise during a home inspection to less than \$10,000 in the aggregate for each home inspection;

(6) failing to provide a client with a pre-inspection notice prior to the home inspection;

(7) failing to substantially follow the approved standards of practice and code of ethics;

(8) failing to respond as requested by the board to any summons for attendance and testimony or to produce documents or any other physical evidence during an investigation into the qualifications of or allegations of misconduct of an applicant or registrant; and

(9) violating any provision of this act or rules and regulations promulgated by the board pursuant to this act.

(b) (1) Except as provided in paragraph (2), the board shall refuse to issue a registration to an applicant or registrant if the applicant or registrant has entered a plea of guilty or nolo contendere to, or has been convicted of:

(A) (i) Any offense that is comparable to any crime which would require the applicant to register as provided in the Kansas offender registration act; or

(ii) any federal, military or other state conviction for an offense that is comparable to any crime under the laws of this state which would require the applicant to register as provided in the Kansas offender registration act; or

(B) (i) Any felony other than a felony under subparagraph (A); or

(ii) any federal, military or other state conviction for an offense that is comparable to any under the laws of this state other than a felony under subparagraph (A).

(2) The board may grant an original registration pursuant to subsection (c) if the applicant's or registrant's application is received at least:

(A) Fifteen years after the date of the applicant's or registrant's discharge from postrelease supervision, completion of any nonprison sanction

or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (A) of paragraph (1); or

(B) five years after the date of the applicant's discharge from post-release supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (B) of paragraph (1), whichever is applicable.

(3) For the purposes of this subsection, "postrelease supervision" and "nonprison sanction" shall have the meaning ascribed to it in ~~K.S.A. 21-4703~~ *them in section 284 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

~~(4) For the purposes of this subsection, "nonprison sanction" shall have the meaning ascribed to it in K.S.A. 21-4703 and amendments thereto.~~

(c) (1) The board may renew or grant an original registration to an applicant or registrant who has entered a plea of guilty or nolo contendere to, or has been convicted of any misdemeanor or any crime listed in paragraph (1) of subsection (b) if the applicant or registrant presents to the board satisfactory proof that the applicant or registrant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of registered home inspector in such a manner as to safeguard the interest of the public. The burden of proof shall be on the applicator or registrant to present such evidence to the board.

(2) In determining whether or not the applicant or registrant presently has a good reputation as required in this subsection, the board shall consider the following additional factors:

(A) The extent and nature of the applicant's or registrant's past criminal activity;

(B) the age of the applicant or registrant at the time of the commission of the crime or crimes;

(C) the amount of time elapsed since the applicant's or registrant's last criminal activity;

(D) the conduct and work activity of the applicant or registrant prior to and following the criminal activity; and

(E) evidence of the applicant's or registrant's rehabilitation or rehabilitative effort; and

(F) all other evidence of the applicant's or registrant's present fitness for a registration.

(d) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, if the board determines after notice and an opportunity for a hearing in accordance with the Kansas administrative procedures act that a registrant has violated any provision of this act or any rule and regulation adopted hereunder, the board may impose on such registrant a civil fine not to exceed \$500 for each violation.

(e) All proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 208. K.S.A. 2010 Supp. 59-2132 is hereby amended to read as follows: 59-2132. (a) Except as provided in subsection (h), in independent and agency adoptions, the court shall require the petitioner to obtain an assessment of the advisability of the adoption by a court approved:

(1) (A) Licensed social worker, licensed specialist social worker, licensed specialist clinical social worker, licensed masters social worker, licensed baccalaureate social worker or licensed associate social worker licensed by the behavioral sciences regulatory board;

(B) licensed clinical marriage and family therapist as defined in K.S.A. 65-6402, and amendments thereto;

(C) licensed marriage and family therapist as defined in K.S.A. 65-6402, and amendments thereto;

(D) licensed clinical professional counselor as defined in K.S.A. 65-5802, and amendments thereto;

(E) licensed professional counselor as defined in K.S.A. 65-5802, and amendments thereto;

(F) licensed psychologist as defined in K.S.A. 65-6319, and amendments thereto;

(G) licensed masters level psychologist as defined in K.S.A. 74-5362, and amendments thereto;

(H) licensed clinical psychotherapist as defined in K.S.A. 74-5363, and amendments thereto; or

(I) a licensed child-placing agency.

(2) Any person performing an assessment pursuant to this subsection shall:

(A) Possess a minimum of two years experience in adoption services or be supervised by a person with such experience; or

(B) if licensed by the behavioral sciences regulatory board to diagnose and treat mental disorders in independent practice, possess a minimum of one year of experience in adoption services or be supervised by a person with such experience.

(b) The petitioner shall file with the court, not less than 10 days before the hearing on the petition, a report of the assessment and, if necessary, confirmation or clarification of the information filed under K.S.A. 59-2130, and amendments thereto.

(c) If there is no one authorized pursuant to this section available to make the assessment and report to the court, the court may use the department of social and rehabilitation services for that purpose.

(d) The costs of making the assessment and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(e) In making the assessment, the person authorized pursuant to this

section or department of social and rehabilitation services is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, shall clear the name of the petitioner with the child abuse and neglect registry through the department of social and rehabilitation services and, when appropriate, with a similar registry in another state or nation, shall determine whether the petitioner has been convicted of a felony for any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or section 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or, within the last five years been convicted of a felony violation of 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, and, when appropriate, any similar conviction in another jurisdiction, and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by any person authorized pursuant to this section to perform this assessment shall include the results of the investigation of the petitioner, the petitioner's home and the ability of the petitioner to care for the child.

(f) In the case of a nonresident who is filing a petition to adopt a child in Kansas, the assessment and report required by this section must be completed in the petitioner's state of residence by a person authorized in that state to conduct such assessments. Such report shall be filed with the court not less than 10 days before the hearing on the petition.

(g) The assessment and report required by this section shall comply with any applicable rules and regulations of the department of health and environment and shall have been completed not more than one year prior to the filing of the petition for adoption.

(h) The assessment and report required by this section may be waived by the court upon: (1) Review of a petition requesting such waiver by a relative of the child; or

(2) the court's own motion.

Sec. 209. K.S.A. 2010 Supp. 59-2948 is hereby amended to read as follows: 59-2948. (a) The fact that a person may have voluntarily accepted any form of psychiatric treatment, or become subject to a court order entered under authority of this act, shall not be construed to mean that such person shall have lost any civil right they otherwise would have as a resident or citizen, any property right or their legal capacity, except as may be specified within any court order or as otherwise limited by the provisions of this act or the reasonable rules and regulations which the head of a treatment facility may for good cause find necessary to make for the orderly operations of that facility. No person held in custody under the provisions of this act shall be denied the right to apply for a writ of habeas corpus.

(b) There shall be no implication or presumption that a patient within the terms of this act is for that reason alone a person in need of a guardian or a conservator as provided for in K.S.A. 59-3050 through 59-3095, and amendments thereto.

(c) A person who is a mentally ill person subject to involuntary commitment for care and treatment as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto, shall be subject to ~~K.S.A. 21-4204~~ *section 186 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 210. K.S.A. 2010 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 section 67 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 72 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(8) sexual exploitation of a child as defined in K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(9) aggravated sexual battery as defined in K.S.A. 21-3518, *prior to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(10) aggravated incest as defined in K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, 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 sections 33, 34 and 35 of chapter 136 of the 2010 Session Laws of Kansas*, 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 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. 211. K.S.A. 2010 Supp. 59-29a07 is hereby amended to read as follows: 59-29a07. (a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the secretary of social and rehabilitation services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the department of social and rehabilitation services.

(b) At all times, persons committed for control, care and treatment by the department of social and rehabilitation services pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be kept in a secure facility and such persons shall be segregated at all times from any other patient under the supervision of the secretary of social and rehabilitation services and commencing June 1, 1995, such persons committed pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be kept in a facility or building separate from any other patient under the supervision of the secretary. The provisions of this subsection shall apply to any facility or building utilized in any transitional release program or conditional release program.

(c) The department of social and rehabilitation services is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the secretary of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

(d) If any person while committed to the custody of the secretary pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be taken into custody by any law enforcement officer as defined in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto pursuant to any parole revocation proceeding or any arrest or conviction for a criminal offense of any nature, upon the person's release from the custody of any law enforcement officer, the person shall be returned to the custody of the secretary for further treatment pursuant to K.S.A. 59-29a01 et seq., and amendments thereto. During any such period of time a person is not in the actual custody or supervision of the secretary, the secretary shall be excused from the provisions of K.S.A. 59-29a08, and amendments thereto, with regard to providing that person an annual examination, annual notice and annual report to the court, except that the secretary shall give notice to the court as soon as reasonably possible after the taking of the person into custody that the person is no longer in treatment

pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, and notice to the court when the person is returned to the custody of the secretary for further treatment.

(e) If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(f) Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in K.S.A. 59-29a06, and amendments thereto.

(g) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released pursuant to K.S.A. 22-3305, and amendments thereto, and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

Sec. 212. K.S.A. 2010 Supp. 59-29a14 is hereby amended to read as follows: 59-29a14. (a) The county or district attorney shall file a special allegation of sexual motivation within 14 days after arraignment in every criminal case other than sex offenses as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(b) In a criminal case wherein there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of

whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury, if it finds the defendant guilty, also shall find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(c) The county or district attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

Sec. 213. K.S.A. 2010 Supp. 59-29b48 is hereby amended to read as follows: 59-29b48. (a) The fact that a person may have voluntarily accepted any form of treatment for an alcohol or substance abuse problem, or become subject to a court order entered under authority of this act, shall not be construed to mean that such person shall have lost any civil right they otherwise would have as a resident or citizen, any property right or their legal capacity, except as may be specified within any court order or as otherwise limited by the provisions of this act or the reasonable rules and regulations which the head of a treatment facility may for good cause find necessary to make for the orderly operations of that facility. No person held in custody under the provisions of this act shall be denied the right to apply for a writ of habeas corpus.

(b) There shall be no implication or presumption that a patient within the terms of this act is for that reason alone 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) A person who is a mentally ill person subject to involuntary commitment for care and treatment as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto, shall be subject to ~~K.S.A. 21-4204~~ *section 186 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 214. K.S.A. 2010 Supp. 60-312 is hereby amended to read as follows: 60-312. Proof of service must be filed with the court and made as follows:

(a) Personal and residence service.(1) Every officer to whom summons or other process is delivered for service must make a statement subject to penalty of perjury as provided in ~~K.S.A. 21-3805~~ *section 128 of chapter*

*136 of the 2010 Session Laws of Kansas*, and amendments thereto, as to the time, place and manner of service.

(2) If process is delivered to a person, other than an officer, for service, the person must make an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, as to the time, place and manner of service.

(b) Service by return receipt delivery. Service by return receipt delivery must be proved in the manner provided by subsection (c) of K.S.A. 60-303, and amendments thereto.

(c) Publication service. Service by publication must be proved by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, showing the dates on which and the newspaper in which notice was published. A copy of the notice must be filed with the affidavit or declaration. When mailing of copies of the publication notice is required by subsection (e) of K.S.A. 60-307, and amendments thereto, the proof of mailing must be by affidavit or by declaration pursuant to K.S.A. 53-601, and amendments thereto, of the person who mailed the copies. If mailing was by certified mail, the return receipt must be filed with the affidavit or declaration.

(d) Time for return. An officer or other person receiving a summons or other process for service must file a return of service not later than 14 days after the service is effected. If the summons or other process cannot be served it must be returned to the court within 30 days after the date issued with a statement of the reason for the failure to serve it, except the court may extend the time for service up to 90 days after the date issued. Upon receipt of the return on any summons or other process, the clerk must serve a copy of the return on the attorney for the party requesting issuance of the summons or other process or, if the party has no attorney, on the requesting party.

Sec. 215. K.S.A. 2010 Supp. 60-455 is hereby amended to read as follows: 60-455. (a) Subject to K.S.A. 60-447, and amendments thereto, evidence that a person committed a crime or civil wrong on a specified occasion, is inadmissible to prove such person's disposition to commit crime or civil wrong as the basis for an inference that the person committed another crime or civil wrong on another specified occasion.

(b) Subject to K.S.A. 60-445 and 60-448, and amendments thereto, such evidence is admissible when relevant to prove some other material fact including motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

(c) Subject to K.S.A. 60-445 and 60-448, and amendments thereto, in any criminal action other than a criminal action in which the defendant is accused of a sex offense under articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, such evidence is admissible to

show the modus operandi or general method used by a defendant to perpetrate similar but totally unrelated crimes when the method of committing the prior acts is so similar to that utilized in the current case before the court that it is reasonable to conclude the same individual committed both acts.

(d) Except as provided in K.S.A. 60-445, and amendments thereto, in a criminal action in which the defendant is accused of a sex offense under articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, evidence of the defendant's commission of another act or offense of sexual misconduct is admissible, and may be considered for its bearing on any matter to which it is relevant and probative.

(e) In a criminal action in which the prosecution intends to offer evidence under this rule, the prosecuting attorney shall disclose the evidence to the defendant, including statements of witnesses, at least 10 days before the scheduled date of trial or at such later time as the court may allow for good cause.

(f) This rule shall not be construed to limit the admission or consideration of evidence under any other rule or to limit the admissibility of the evidence of other crimes or civil wrongs in a criminal action under a criminal statute other than in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(g) As used in this section, an "act or offense of sexual misconduct" includes:

(1) Any conduct proscribed by article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(2) the sexual gratification component of aggravated *human* trafficking, as described in subsection (a)(1)(B) and (a)(2) of K.S.A. 21-3447, *prior to its repeal, or subsection (b)(1)(B) or (b)(2) of section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(3) exposing another to a life threatening communicable disease, as described in subsection (a)(1) of K.S.A. 21-3435, *prior to its repeal, or subsection (a)(1) of section 59 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(4) incest, as described in K.S.A. 21-3602, *prior to its repeal, or subsection (a) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(5) aggravated incest, as described in K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(6) contact, without consent, between any part of the defendant's body or an object and the genitals, mouth or anus of the victim;

(7) contact, without consent, between the genitals, mouth or anus of the defendant and any part of the victim's body;

(8) deriving sexual pleasure or gratification from the infliction of death, bodily injury or physical pain to the victim;

(9) an attempt, solicitation or conspiracy to engage in conduct described in paragraphs (1) through (8); or

(10) any federal or other state conviction of an offense, or any violation of a city ordinance or county resolution, that would constitute an offense under article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, the sexual gratification component of aggravated *human* trafficking, as described in subsection (a)(1)(B) and (a)(2) of K.S.A. 21-3447, *prior to its repeal, or subsection (b)(1)(B) or (b)(2) of section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; incest, as described in K.S.A. 21-3602, *prior to its repeal, or subsection (a) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or aggravated incest, as described in K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or involved conduct described in paragraphs (6) through (9).

(h) If any provisions of this section or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or application. To this end the provisions of this section are severable.

Sec. 216. K.S.A. 60-523 is hereby amended to read as follows: 60-523.

(a) No action for recovery of damages suffered as a result of childhood sexual abuse shall be commenced more than three years after the date the person attains 18 years of age or more than three years from the date the person discovers or reasonably should have discovered that the injury or illness was caused by childhood sexual abuse, whichever occurs later.

(b) As used in this section:

(1) "Injury or illness" includes psychological injury or illness, whether or not accompanied by physical injury or illness.

(2) "Childhood sexual abuse" includes any act committed against the person which act occurred when the person was under the age of 18 years and which act would have been a violation of any of the following:

(A) Indecent liberties with a child as defined in K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (B) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, *prior to its repeal, or*

*subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (C) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (D) enticement of a child as defined in K.S.A. 21-3509, and amendments thereto prior to its repeal; (E) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (F) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (G) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or (H) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or any prior laws of this state of similar effect at the time the act was committed.*

(c) Discovery that the injury or illness was caused by childhood sexual abuse shall not be deemed to have occurred solely by virtue of the person's awareness, knowledge or memory of the acts of abuse. The person need not establish which act in a series of continuing sexual abuse incidents caused the injury or illness complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is a part of a common scheme or plan of sexual abuse.

(d) This section shall be applicable to:

(1) Any action commenced on or after July 1, 1992, including any action which would be barred by application of the period of limitation applicable prior to July 1, 1992;

(2) any action commenced prior to July 1, 1992, and pending on July 1, 1992.

Sec. 217. K.S.A. 2010 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) Minor children. (1) Child support and education. The court shall make provisions for the support and education of the minor children. Subject to the provisions of K.S.A. 23-9,207, and amendments thereto, the court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any

increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (C) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (a)(1)(C), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 12-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(C). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child. Except for good cause shown, every order requiring payment of child support under this section shall require that the support be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct child support payments to the obligee and not pay through the central unit shall constitute good cause, unless the court

finds the agreement is not in the best interest of the child or children. The obligor shall file such written agreement with the court. The obligor shall maintain written evidence of the payment of the support obligation and, at least annually, shall provide such evidence to the court and the obligee. If the divorce decree of the parties provides for an abatement of child support during any period provided in such decree, the child support such nonresidential parent owes for such period shall abate during such period of time, except that if the residential parent shows that the criteria for the abatement has not been satisfied there shall not be an abatement of such child support.

(2) Child custody and residency. (A) Changes in custody. Subject to the provisions of the uniform child custody jurisdiction and enforcement act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown, but no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 15 days of the date that a party requests a hearing whether to vacate or modify the order.

(B) Examination of parties. The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 60-235, and amendments thereto.

(3) Child custody or residency criteria. The court shall determine custody or residency of a child in accordance with the best interests of the child.

(A) If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

(B) In determining the issue of child custody, residency and parenting time, the court shall consider all relevant factors, including but not limited to:

(i) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;

(ii) the desires of the child's parents as to custody or residency;

(iii) the desires of the child as to the child's custody or residency;

(iv) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;

(v) the child's adjustment to the child's home, school and community;

(vi) the willingness and ability of each parent to respect and appreciate

the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;

(vii) evidence of spousal abuse;

(viii) whether a parent is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law;

(ix) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(x) whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; and

(xi) whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(C) Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

(D) There shall be a rebuttable presumption that it is not in the best interest of the child to have custody or residency granted to a parent who:

(i) Is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901; et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; or

(ii) is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(E) If a court of competent jurisdiction within this state has entered an order pursuant to the revised Kansas code for care of children regarding custody of a child or children who are involved in a proceeding filed pursuant to this section, and such court has determined pursuant to subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the orders in that case shall become the custody orders in the divorce case, such court shall file a certified copy of the orders with the civil case number in the caption and then close the case under the revised Kansas code for care of children. Such orders shall be binding on the parties, unless modified based on a material change in circumstances, even if such courts have different venues.

(4) Types of legal custodial arrangements. Subject to the provisions of this article, the court may make any order relating to custodial arrangements

which is in the best interests of the child. The order shall provide one of the following legal custody arrangements, in the order of preference:

(A) Joint legal custody. The court may order the joint legal custody of a child with both parties. In that event, the parties shall have equal rights to make decisions in the best interests of the child.

(B) Sole legal custody. The court may order the sole legal custody of a child with one of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include on the record specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent shall not deprive the other parent of access to information regarding the child unless the court shall so order, stating the reasons for that determination.

(5) Types of residential arrangements. After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:

(A) Residency. The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

(B) Divided residency. In an exceptional case, the court may order a residential arrangement in which one or more children reside with each parent and have parenting time with the other.

(C) Nonparental residency. If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2010 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds by written order that: (i) (a) The child is likely to sustain harm if not immediately removed from the home;

(b) allowing the child to remain in home is contrary to the welfare of the child; or

(c) immediate placement of the child is in the best interest of the child; and

(ii) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close

emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-2244, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 2010 Supp. 38-2234, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. If a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any order pursuant to the revised Kansas code for care of children shall take precedence over any order under this section.

(6) Priority. 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 order under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce), until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

(7) Child health insurance coverage. The court may order that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage.

(b) Financial matters. (1) Division of property. The decree shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: (A) A division of the property in kind; (B) awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or (C) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale. Upon request, the trial court shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing

or trial as the facts and circumstances of the case may dictate. The trial court may consider evidence regarding changes in value of various assets before and after the valuation date in making the division of property. In dividing defined-contribution types of retirement and pension plans, the court shall allocate profits and losses on the nonparticipant's portion until date of distribution to that nonparticipant. In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property. The decree shall provide for any changes in beneficiary designation on: (A) Any insurance or annuity policy that is owned by the parties, or in the case of group life insurance policies, under which either of the parties is a covered person; (B) any trust instrument under which one party is the grantor or holds a power of appointment over part or all of the trust assets, that may be exercised in favor of either party; or (C) any transfer on death or payable on death account under which one or both of the parties are owners or beneficiaries. Nothing in this section shall relieve the parties of the obligation to effectuate any change in beneficiary designation by the filing of such change with the insurer or issuer in accordance with the terms of such policy.

(2) Maintenance. The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on

any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. Except for good cause shown, every order requiring payment of maintenance under this section shall require that the maintenance be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct maintenance payments to the obligee and not pay through the central unit shall constitute good cause. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has made a determination concerning the manner of payment of child support, then maintenance payments shall be paid in the same manner.

(3) Separation agreement. If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation agreement may include provisions relating to a parenting plan. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions relating to the legal custody, residency, visitation parenting time, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

(4) Costs and fees. Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(c) Miscellaneous matters. (1) Restoration of name. Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name. The court shall have jurisdiction to restore the spouse's maiden or former name at or after the time the decree of divorce becomes final. The judicial council shall develop a form which is simple, concise and direct for use with this paragraph.

(2) Effective date as to remarriage. Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the

parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

Sec. 218. K.S.A. 60-1620 is hereby amended to read as follows: 60-1620. (a) Except as provided in subsection (d), a parent entitled to legal custody or residency of or parenting time with a child pursuant to K.S.A. 60-1610, and amendments thereto, shall give written notice to the other parent not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time. In determining any motion seeking a modification of a prior order based on change of residence or removal as described in (a), the court shall consider all factors the court deems appropriate including, but not limited to: (1) The effect of the move on the best interests of the child; (2) the effect of the move on any party having rights granted pursuant to K.S.A. 60-1610, and amendments thereto; and (3) the increased cost the move will impose on any party seeking to exercise rights granted under K.S.A. 60-1610, and amendments thereto.

(d) A parent entitled to the legal custody or residency of a child pursuant to K.S.A. 60-1610, and amendments thereto, shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, in which the child is the victim of such crime.

Sec. 219. K.S.A. 2010 Supp. 60-1629 is hereby amended to read as follows: 60-1629. (a) A parent entitled to legal custody of, or residency of, or parenting time with a child pursuant to K.S.A. 60-1610, and amendments thereto, shall give written notice to the other parent of one or more of the following events when such parent: (1) Is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901; et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; (2) has been convicted of abuse of a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*; (3) is residing with an individual who

is known by the parent to be subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901; et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; or (4) is residing with an individual who is known by the parent to have been convicted of abuse of a child, K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent within 14 days following such event.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) An event described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time.

Sec. 220. K.S.A. 60-2610 is hereby amended to read as follows: 60-2610. (a) If a person gives a worthless check, the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the incurred service charge, interest at the statutory rate and the costs of collection including but not limited to reasonable attorney fees, plus an amount equal to the greater of the following:

(1) Damages equal to three times the amount of the check but not exceeding the amount of the check by more than \$500; or

(2) \$100.

The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(b) The amounts specified by subsection (a) shall be recoverable in a civil action brought by or on behalf of the holder of the check only if: (1) Not less than 14 days before filing the civil action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check, the incurred service charge and accrued interest; and (2) the maker or drawer failed to tender to the holder, prior to the filing of the action, an amount not less than the amount demanded.

The written demand shall be sent by first class mail, to the person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer. The written demand shall include notice that, if the money is not paid within 14 days, triple damages in addition to an amount of money equal to the sum of the

amount of the check, the incurred service charge, court costs, accrued interest, the costs of collection, including but not limited to, reasonable attorney fees unless the court otherwise orders, may be incurred by the maker or drawer of the check.

Notice required by subsection (b)(1) shall state the exact amount and date due, as well as an estimate of the amount that may be incurred if the amount demanded is not paid by the specified date.

(c) Subsequent to the filing of an action under this section but prior to the commencement of a dispositional hearing by the court, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, the incurred service charge, accrued interest, the costs of collection including, but not limited to, reasonable attorney fees and court costs. The plaintiff shall include in the petition a statement alleging that the defendant may tender such amount as satisfaction of the claim as provided in this subsection. If the amount alleged in the petition is tendered to the plaintiff in full satisfaction of the debt prior to the commencement of the dispositional hearing by the court, the case shall be dismissed by the plaintiff. For purposes of this subsection only, the amount tendered as satisfaction of the claim shall not include triple damages or damages of \$100 as provided in subsections (a)(1) and (2). For purposes of this subsection, a dispositional hearing means a trial or other hearing by the court in which the plaintiff is seeking the entry of judgment against the defendant. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the amount tendered is sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amount tendered is sufficient to adequately compensate the holder of the check.

(d) If the trier of fact determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(e) Any amount previously paid as restitution or reparations to the holder of the check by or on behalf of its maker or drawer shall be credited against the amount for which the maker or drawer is liable under subsection (a).

(f) Conviction of giving a worthless check or ~~habitually giving a worthless check~~, as defined by ~~K.S.A. 21-3707~~ *section 107 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall not be a prerequisite or bar to recovery pursuant to this section.

(g) The service charge on a check which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of each check, order or draft in full upon its presentation, shall not exceed \$30.

(h) As used in this section, “giving a worthless check” means the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent:

(1) With intent to defraud or in payment for a preexisting debt; or  
(2) Which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation; and

(3) for which the maker or drawer has not tendered to the holder’s agent the amount of money demanded and within the time allowed by the demand required in subsection (b).

Sec. 221. K.S.A. 2010 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 ~~provided in K.S.A. 21-3408~~ *defined in subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, battery as ~~provided in K.S.A. 21-3412~~ *defined in subsection (a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, domestic battery as ~~provided in K.S.A. 21-3412a~~ *defined in section 49 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto and violation of a protective order as ~~provided in K.S.A. 21-3843~~ *defined in section 149 of chapter 136 of the 2010 Session Laws of Kansas*, 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 ~~provided in subsection (c) of K.S.A. 21-3721~~ *defined in subsection*

(a)(1)(C) of section 94 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and violation of a protective order as ~~provided in K.S.A. 21-3843~~ defined in section 149 of chapter 136 of the 2010 Session Laws of Kansas, 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., 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., 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. 60-1610 et seq., 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. 60-1610 et seq., or K.S.A. 38-1101 et seq., 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. 60-1610, 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, on motion of the plaintiff, such period may be extended for one additional year.

(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 ~~provided in subsection (c) of K.S.A. 21-3721~~ *defined in subsection (a)(1)(C) of section 94 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and violation of a protective order as ~~provided in K.S.A. 21-3843~~ *defined in section 149 of chapter 136 of the 2010 Session Laws of Kansas*, 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 ~~provided in K.S.A. 21-3408~~ defined in subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, battery as ~~provided in K.S.A. 21-3412~~ defined in subsection (a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, domestic battery as ~~provided in K.S.A. 21-3412a~~ defined in section 49 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and violation of a protective order as ~~provided in K.S.A. 21-3843~~ defined in section 149 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

Sec. 222. K.S.A. 2010 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 ~~provided in K.S.A. 21-3438~~ defined in section 62 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and violation of a protective order as ~~provided in K.S.A. 21-3843~~ defined in section 149 of chapter 136 of the 2010 Session Laws of Kansas, 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 ~~provided in K.S.A. 21-3438~~ defined in section 62 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, assault as ~~provided in K.S.A. 21-3408~~ defined in subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, battery as ~~provided in K.S.A. 21-3412~~ defined in subsection (a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and violation of a protective order as ~~provided in K.S.A. 21-3843~~ defined in section 149 of chapter 136 of the 2010 Session Laws of Kansas, 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 ~~provided in subsection (a)(1)(C) of K.S.A. 21-3721~~ defined in subsection (a)(1)(C) of section 94 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and violation of a protective order as ~~provided in K.S.A. 21-3843~~ defined in section 149 of chapter 136 of the 2010 Session Laws of Kansas, 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.

(c) The court may amend its order at any time upon motion filed by either party.

(d) 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) 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. 223. K.S.A. 2010 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 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto;

(c) theft which is classified as a felony violation pursuant to ~~K.S.A. 21-3701~~ *section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, in which the property taken was livestock;

(d) ~~unlawful~~ *criminal discharge of a firearm, K.S.A. 21-4219 as defined in subsections (a)(1) and (a)(2) of section 193 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(e) violations of K.S.A. 2010 Supp. 21-36a16, and amendments thereto;

(f) gambling, ~~K.S.A. 21-4303~~ *section 215 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and commercial gambling, ~~K.S.A. 21-4304~~ *as defined in subsection (a)(1) of section 217 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(g) counterfeiting, ~~K.S.A. 21-3763~~ *section 111 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(h) violations of ~~K.S.A. 21-4019~~ *section 178 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(i) medicaid fraud, ~~K.S.A. 21-3844 et seq.~~ *sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(j) 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;

(k) 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;

(l) 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;

(m) ~~furtherance of terrorism or illegal use of weapons of mass destruction, K.S.A. 21-3451~~ *violations of section 58 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(n) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, ~~K.S.A. 21-4315~~ *as defined in subsections (a) and (b) of section 225 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(o) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, ~~K.S.A. 21-4319~~ *as defined in subsections (a) and (b) of section 228 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(p) prostitution, ~~K.S.A. 21-3512~~ *section 229 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, promoting prostitution, ~~K.S.A. 21-3513~~ *section 230 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and patronizing a prostitute, ~~K.S.A. 21-3515~~ *section 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; and

(q) human trafficking, ~~K.S.A. 21-3446~~, and amendments thereto; and aggravated human trafficking, ~~K.S.A. 21-3447~~ *section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 224. K.S.A. 2010 Supp. 60-4105 is hereby amended to read as follows: 60-4105. The following property is subject to forfeiture:

(a) Property described in a statute authorizing forfeiture;

(b) except as otherwise provided by law, all property, of every kind, including, but not limited to, cash and negotiable instruments and the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:

(1) Furnished or intended to be furnished by any person in an exchange that constitutes conduct giving rise to forfeiture; or

(2) used or intended to be used in any manner to facilitate conduct

giving rise to forfeiture, including, but not limited to, any computer, computer system, computer network or any software or data owned by the defendant which is used during the commission of a violation of ~~K.S.A. 21-4019~~ *section 178 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(c) all proceeds of any conduct giving rise to forfeiture;

(d) all property of every kind, including, but not limited to, cash and negotiable instruments derived from or realized through any proceeds which were obtained directly or indirectly from the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;

(e) all weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture;

(f) ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;

(g) contraband, which shall be seized and summarily forfeited to the state without regard to the procedures set forth in this act;

(h) all controlled substances, raw materials, controlled substance analogs, counterfeit substances, or imitation controlled substances that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state; and

(i) any items bearing a counterfeit mark.

Sec. 225. K.S.A. 60-4111 is hereby amended to read as follows: 60-4111. (a) Only an owner of or interest holder in property seized for forfeiture may file a claim, and shall do so in the manner provided in this section. The claim shall be mailed to the seizing agency and to the plaintiff's attorney by certified mail, return receipt requested, within 30 days after the effective date of notice of pending forfeiture. No extension of time for the filing of a claim shall be granted except for good cause shown.

(b) The claim and all supporting documents shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury, ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or making a false writing, ~~K.S.A. 21-3711~~ *section 110 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and shall set forth all of the following:

(1) The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint, the name of the claimant, and the name of the plaintiff's attorney who authorized the notice of pending forfeiture or complaint.

(2) The address where the claimant will accept mail.

(3) The nature and extent of the claimant's interest in the property.

(4) The date, the identity of the transferor, and a detailed description

of the circumstances of the claimant's acquisition of the interest in the property.

(5) The specific provision of this act relied on in asserting that the property is not subject to forfeiture.

(6) All essential facts supporting each assertion.

(7) The specific relief sought.

Sec. 226. K.S.A. 2010 Supp. 60-4113 is hereby amended to read as follows: 60-4113. (a) A judicial in rem forfeiture proceeding brought by the plaintiff's attorney pursuant to a notice of pending forfeiture or verified petition for forfeiture is also subject to the provisions of this section. If a forfeiture is authorized by this act, it shall be ordered by the court in the in rem action.

(b) An action in rem may be brought by the plaintiff's attorney in addition to, or in lieu of, civil in personam forfeiture procedures. The seizing agency may serve the complaint in the manner provided by subsection (a)(3) of K.S.A. 60-4109, and amendments thereto, or as provided by the rules of civil procedure.

(c) Only an owner of or an interest holder in the property who has timely filed a proper claim may file an answer in an action in rem. For the purposes of this section, an owner of or interest holder in property who has filed a claim and answer shall be referred to as a claimant.

(d) The answer shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury, ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or making a false writing, ~~K.S.A. 21-3711~~ *section 110 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and shall otherwise be in accordance with the rules of civil procedure on answers and shall also set forth all of the following:

(1) The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint and the name of the claimant.

(2) The address where the claimant will accept mail.

(3) The nature and extent of the claimant's interest in the property.

(4) The date, the identity of the transferor, and the detailed description of the circumstances of the claimant's acquisition of the interest in the property.

(5) The specific provision of this act relied on in asserting that such property is not subject to forfeiture.

(6) All essential facts supporting each assertion.

(7) The specific relief sought.

(e) The answer shall be filed within 21 days after service of the civil in rem complaint.

(f) The seizing agency and any claimant who has timely answered the

complaint, at the time of filing such agency's pleadings, or at any other time not less than 30 days prior to the hearing, may serve discovery requests on any other party, the answers or response to which shall be due within 21 days of service. Discovery may include deposition of any person at any time after the expiration of 14 days after the filing and service of the complaint. Any party may move for a summary judgment at any time after an answer or responsive pleading is served and not less than 30 days prior to the hearing.

(g) The issue shall be determined by the court alone, and the hearing on the claim shall be held within 60 days after service of the petition unless continued for good cause. The plaintiff's attorney shall have the initial burden of proving the interest in the property is subject to forfeiture by a preponderance of the evidence. If the state proves the interest in the property is subject to forfeiture, the claimant has the burden of showing by a preponderance of the evidence that the claimant has an interest in the property which is not subject to forfeiture.

(h) If the plaintiff's attorney fails to meet the burden of proof for forfeiture, or a claimant establishes by a preponderance of the evidence that the claimant has an interest that is exempt under the provisions of K.S.A. 60-4106, and amendments thereto, the court shall order the interest in the property returned or conveyed to the claimant. The court shall order all other property forfeited to the seizing agency and conduct further proceedings pursuant to the provision of K.S.A. 60-4116 and 60-4117, and amendments thereto.

Sec. 227. K.S.A. 2010 Supp. 60-4119 is hereby amended to read as follows: 60-4119. (a) If a person is or may be called to produce evidence at a deposition, hearing or trial under this act or at an investigation brought by the attorney under K.S.A. 60-4118, and amendments thereto, the district court for the county in which the deposition, hearing, trial, or investigation is or may be held, upon certification in writing of a request of the county or district attorney for the county, or the attorney general, shall issue an order, ex parte or after a hearing, requiring the person to produce evidence, notwithstanding that person's refusal to do so on the basis of the privilege against self-incrimination.

(b) The county or district attorney, or the attorney general, may certify in writing a request for an ex parte order under this section if in such attorney's judgment:

(1) The production of the evidence may be necessary to the public interest; and

(2) the person has refused or is likely to refuse to produce evidence on the basis of such person's privilege against self-incrimination.

(c) If a person refuses, on the basis of such person's privilege against self-incrimination, to produce evidence in any proceeding described in this act, and the presiding officer informs the person of an order issued under

this section, the person may not refuse to comply with the order. The person may be compelled or punished by the district court issuing an order for civil or criminal contempt.

(d) The production of evidence compelled by order issued under this section, and any information directly or indirectly derived from such evidence, may not be used against the person in a subsequent criminal case, except in a prosecution for perjury, ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, making false writing, ~~K.S.A. 21-3711~~ *section 110 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or an offense otherwise involving a failure to comply with the order. Nothing in this subsection shall be interpreted as preventing the use in a criminal action any evidence lawfully obtained independently of these procedures.

Sec. 228. K.S.A. 60-4402 is hereby amended to read as follows: 60-4402. As used in *section 42 of chapter 136 of the 2010 Session Laws of Kansas*, K.S.A. ~~21-3406~~, 60-4401 through 60-4407, 65-1120, 65-1436, 65-1627i, 65-2006 and 65-2836, *and amendments thereto*:

(a) “Licensed health care professional” means a person licensed to practice medicine and surgery, licensed podiatrist, licensed physician assistant, licensed nurse, dentist or licensed pharmacist.

(b) “Suicide” means the act or instance of taking one’s own life voluntarily and intentionally.

Sec. 229. K.S.A. 2010 Supp. 60-4403 is hereby amended to read as follows: 60-4403. (a) A licensed health care professional who administers, prescribes or dispenses medications or procedures to relieve another person’s pain or discomfort does not violate ~~K.S.A. 21-3406~~ *section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto unless the medications or procedures are knowingly administered, prescribed or dispensed with the intent to cause death. A mid-level practitioner as defined in K.S.A. 65-1626, and amendments thereto, who prescribes medications or procedures to relieve another person’s pain or discomfort does not violate ~~K.S.A. 21-3406~~ *section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto unless the medications or procedures are knowingly prescribed with the intent to cause death.

(b) A licensed health care professional, family member or other legally authorized person who participates in the act of, or the decision making process which results in the withholding or withdrawal of a life-sustaining procedure does not violate ~~K.S.A. 21-3406~~ *section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(c) Providing spiritual treatment through prayer alone, in lieu of medical treatment, does not violate ~~K.S.A. 21-3406~~ *section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 230. K.S.A. 60-4404 is hereby amended to read as follows: 60-4404. (a) A cause of action for injunctive relief may be maintained against

any person who is reasonably believed to be about to violate or who is in the course of violating ~~K.S.A. 21-3406~~ *section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, by any person who is:

- (1) The spouse, parent, child or sibling of the person who would commit suicide.
- (2) Entitled to inherit from the person who would commit suicide.
- (3) A health care provider of the person who would commit suicide.
- (4) A public official with appropriate jurisdiction to prosecute or enforce the laws of this state.

Sec. 231. K.S.A. 60-4405 is hereby amended to read as follows: 60-4405. A cause of action for civil damages may be maintained against any person who violates or who attempts to violate ~~K.S.A. 21-3406~~ *section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, by any person who is the spouse, parent, child, sibling, or entitled to inherit from the person or who is the personal representative of the person who did or would commit suicide for compensatory damages and exemplary damages, whether or not the plaintiff consented to or had prior knowledge of the violation or attempt.

Sec. 232. K.S.A. 2010 Supp. 60-5001 is hereby amended to read as follows: 60-5001. (a) Any person who, while under the age of 18, was a victim of an offense described in article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, incest as defined in K.S.A. 21-3602, *prior to its repeal, or subsection (a) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or aggravated incest as defined in subsection (a)(2) of K.S.A. 21-3603, *prior to its repeal, or subsection (b)(2) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, where such offense resulted in a conviction and any portion of such offense was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such child pornography, may bring an action in an appropriate state court against the producer, promoter or intentional possessor of such child pornography, regardless of whether the victim is now an adult.

(b) In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person sustained and the cost of the suit, including reasonable attorney's fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$150,000.

(c) Notwithstanding any other provision of law, any action commenced under this section shall be filed within three years after the later of:

- (1) The conclusion of a related criminal case;

(2) the notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of the child pornography; or

(3) in the case of a victim younger than 18, within three years after the person reaches the age of 18.

(d) It is not a defense to a civil cause of action under this section that the respondent did not know the victim or commit the abuse depicted in the child pornography.

(e) At the victim's request, the attorney general may pursue cases on behalf of any Kansas victim under this section. All damages obtained shall go to the victim, and the attorney general may seek reasonable attorney's fees and costs.

(f) Any action brought under this section shall be subject to the provisions of K.S.A. 74-7312, and amendments thereto.

(g) As used in this section, "child pornography" includes, but is not limited to, any visual depiction, as described in subsection (a) of K.S.A. 21-3516, *prior to its repeal, or subsection (a) of section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and any performance, as defined in subsection (b) of K.S.A. 21-3516, *prior to its repeal, or subsection (c) of section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(h) This section shall not apply to acts done in the performance of duty by any: (1) Law enforcement officer of the state of Kansas or any political subdivision thereof; (2) forensic examiner; (3) any prosecuting attorney, as defined in K.S.A. 22-2202, and amendments thereto; or (4) any bona fide child advocacy organization, including, but not limited to, the national center for missing and exploited children.

Sec. 233. K.S.A. 65-444 is hereby amended to read as follows: 65-444. No hospital, hospital administrator or governing board shall be required to permit the termination of human pregnancies within its institution and the refusal to permit such procedures shall not be grounds for civil liability to any person. A hospital 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: ~~Provided, No pregnancy shall be purposely terminated until the opinions of three (3) duly licensed physicians attesting to the necessity of such termination have been recorded in writing in the permanent records of the hospital, except in an emergency as defined in section 21-3407 (2) (b) of the Kansas criminal code.~~

Sec. 234. K.S.A. 2010 Supp. 65-448 is hereby amended to read as follows: 65-448. (a) Upon the request of any law enforcement officer and with the written consent of the reported victim, or upon the request of the victim, any physician, a licensed physician assistant, who has been specially trained in performing sexual assault evidence collection, or a registered

professional nurse, who has been specially trained in performing sexual assault evidence collection, on call or on duty at a medical care facility of this state, as defined by subsection (h) of K.S.A. 65-425, and amendments thereto, shall examine persons who may be victims of sexual offenses cognizable as violations of ~~K.S.A. 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3602 or 21-3603~~ *section 67, 68, 70 or 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime. If an examination has taken place solely upon the request of the victim, the medical care facility shall not notify any law enforcement agency without the written consent of the victim, unless otherwise required by law. If the physician, licensed physician assistant or registered professional nurse refuses to perform such physical examination the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician, licensed physician assistant or registered professional nurse to enforce the provisions of this act. Any refusal by a physician, licensed physician assistant or registered professional nurse to perform an examination which has been requested pursuant to this section shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action. The department of health and environment, in cooperation with the Kansas bureau of investigation, shall establish procedures for gathering evidence pursuant to this section. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or medical facility shall give written notice to the parent or guardian of a minor that such an examination has taken place.

(b) All sexual assault kits collected that are not released to law enforcement shall be sealed by either the sexual assault nurse examiner program or the facility that provided the examination and kept for five years in the evidence storage facilities of the Kansas bureau of investigation. After five years, such kits shall be destroyed by the Kansas bureau of investigation.

(c) The fee chargeable for conducting an examination of a victim as herein provided shall be established by the department of health and environment. Such fee, including the cost of the sexual assault evidence collection kit shall be charged to and paid by the county where the alleged offense was committed, and refusal of the victim to report the alleged offense to law enforcement shall not excuse or exempt the county from paying such fee. The fee for conducting an examination of a victim as herein provided shall not be charged or billed to the victim or to the victim's insurance carrier. Such county shall be reimbursed such fee upon the costs being paid by the defendant as court costs assessed pursuant to K.S.A. 28-172a, and amendments thereto.

(d) No medical care facility shall incur any civil, administrative or criminal liability as a result of notifying or failing to notify any law enforcement agency if an examination has taken place solely upon the request of the victim and such notification is not otherwise required by law.

(e) The Kansas bureau of investigation may adopt rules and regulations as deemed necessary to implement the provisions of this section.

Sec. 235. K.S.A. 2010 Supp. 65-516 is hereby amended to read as follows: 65-516. (a) No person shall knowingly maintain a child care facility ~~or maintain a family day care home if, in the child care facility or family day care home,~~ 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 sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto, to commit any such act or a conviction of conspiracy under K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the 2010 Session Laws of Kansas,* 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 section 212 of chapter 136 of the 2010 Session Laws of Kansas,* 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 sections 36 through 86, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas,* 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 section 212 of chapter 136 of the 2010 Session Laws of Kansas,* 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. 2010 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. 2010 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. 2010 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. 2010 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 ~~or a family day care home~~ 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 ~~or family day care home~~ 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. 2010 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 ~~or a family day care home~~. 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 65-519~~, 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 ~~or family day care home~~. 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 ~~or family day care home~~. 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 ~~or family day care home~~.

(f) The secretary shall notify the child care applicant, ~~or licensee or registrant~~, 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 family day care home~~ 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 ~~or family day care home~~ 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 information 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. The provisions of this subsection shall not apply to any person who was maintaining a child care facility on the day immediately prior to July 1, 2010 or who has an application for an initial license or the renewal of an existing license pending on July 1, 2010.*

Sec. 236. K.S.A. 65-1120 is hereby amended to read as follows: 65-1120. (a) Grounds for disciplinary actions. The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:

(1) To be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing;

(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120, *and amendments thereto*, no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated ~~and acts amendatory thereof or supplemental thereto~~, *prior to their repeal, or sections 36 through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*;

(3) to have committed an act of professional incompetency as defined in subsection (e);

(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

(5) to be a person who has been adjudged in need of a guardian or

conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

(7) to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122, and amendments thereto;

(8) to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8); or

(9) to have assisted suicide in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. ~~2002~~ Supp. 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. ~~2002 Supp.~~ 60-4405 and amendments thereto.

(b) Proceedings. Upon filing of a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct an investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Witnesses. No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the

laws of this state except the crime of perjury as defined in ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(d) Costs. If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.

(e) Professional incompetency defined. As used in this section, "professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of 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 care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.

(f) Criminal justice information. The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

Sec. 237. K.S.A. 2010 Supp. 65-1436 is hereby amended to read as follows: 65-1436. (a) The Kansas dental board may refuse to issue the license provided for in this act, or may take any of the actions with respect to any dental or dental hygiene license as set forth in subsection (b), whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that any applicant for a dental or dental hygiene license or any licensed dentist or dental hygienist practicing in the state of Kansas has:

(1) Committed fraud, deceit or misrepresentation in obtaining any license, money or other thing of value;

(2) habitually used intoxicants or drugs which have rendered such person unfit for the practice of dentistry or dental hygiene;

(3) been determined by the board to be professionally incompetent;

(4) committed gross, wanton or willful negligence in the practice of dentistry or dental hygiene;

(5) employed, allowed or permitted any unlicensed person or persons to perform any work in the licensee's office which constitutes the practice of dentistry or dental hygiene under the provisions of this act;

(6) willfully violated the laws of this state relating to the practice of dentistry or dental hygiene or the rules and regulations of the secretary of health and environment or of the board regarding sanitation;

(7) engaged in the division of fees, or agreed to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or the patient's legal representative, except the division of fees between dentists practicing in a partnership and sharing professional fees, or in case of one licensed dentist employing another;

(8) committed complicity in association with or allowed the use of the licensed dentist's name in conjunction with any person who is engaged in the illegal practice of dentistry;

(9) been convicted of a felony or a misdemeanor involving moral turpitude in any jurisdiction and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;

(10) prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity outside the scope of practice of dentistry or in a manner that impairs the health and safety of an individual;

(11) prescribed, purchased, administered, sold or given away prescription drugs, including a controlled substance, for other than legal and legitimate purposes;

(12) violated or been convicted of any federal or state law regulating possession, distribution or use of any controlled substance;

(13) failed to pay license fees;

(14) used the name "clinic," "institute" or other title that may suggest a public or semipublic activity except that the name "clinic" may be used as authorized in K.S.A. 65-1435, and amendments thereto;

(15) committed, after becoming a licensee, any conduct which is detrimental to the public health, safety or welfare as defined by rules and regulations of the board;

(16) engaged in a misleading, deceptive, untrue or fraudulent misrepresentation in the practice of dentistry or on any document connected with the practice of dentistry by knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement, including the systematic waiver of patient co-payment or co-insurance;

(17) failed to keep adequate records;

(18) the licensee has had a license to practice dentistry revoked, suspended or limited, has been censured or has had other disciplinary action taken, an application for license denied, or voluntarily surrendered the license after formal proceedings have been commenced by the proper li-

censing authority or another state, territory or the District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;

(19) failed to furnish the board, or its investigators or representatives any information legally requested by the board; or

(20) assisted suicide in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.

(b) Whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that a licensee is in any of the circumstances or has committed any of the acts described in subsection (a), the Kansas dental board may take one or any combination of the following actions with respect to the license of the licensee:

(1) Revoke the license.

(2) Suspend the license for such period of time as may be determined by the board.

(3) Restrict the right of the licensee to practice by imposing limitations upon dental or dental hygiene procedures which may be performed, categories of dental disease which may be treated or types of patients which may be treated by the dentist or dental hygienist. Such restrictions shall continue for such period of time as may be determined by the board, and the board may require the licensee to provide additional evidence at hearing before lifting such restrictions.

(4) Grant a period of probation during which the imposition of one or more of the actions described in subsections (b)(1) through (b)(3) will be stayed subject to such conditions as may be imposed by the board including a requirement that the dentist or dental hygienist refrain from any course of conduct which may result in further violation of the dental practice act or the dentist or dental hygienist complete additional or remedial instruction. The violation of any provision of the dental practice act or failure to meet any condition imposed by the board as set forth in the order of the board will result in immediate termination of the period of probation and imposition of such other action as has been taken by the board.

(c) As used in this section, “professionally incompetent” means:

(1) One or more instances involving failure to adhere to the applicable standard of dental or dental hygienist 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 dental or dental hygienist care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of dental or dental hygienist practice or other behavior which demonstrates a manifest incapacity or incompetence to practice dentistry.

(d) In addition to or in lieu of one or more of the actions described in subsections (b)(1) through (b)(4) or in subsection (c) of K.S.A. 65-1444, and amendments thereto, the board may assess a fine not in excess of \$10,000 against a licensee. All fines collected pursuant to this subsection 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 and of the amount so remitted, an amount equal to the board's actual costs related to fine assessment and enforcement under this subsection, as certified by the president of the board to the state treasurer, shall be credited to the dental board fee fund and the balance shall be credited to the state general fund.

(e) The board, upon its own motion or upon the request of any licensee who is a party to a licensure action, may require a physical or mental examination, or both, of such licensee either prior to a hearing to be held as a part of a licensure action or prior to the termination of any period of suspension or the termination of any restrictions imposed upon the licensee as provided in subsection (b).

Sec. 238. K.S.A. 2010 Supp. 65-1627 is hereby amended to read as follows: 65-1627. (a) The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that:

(1) The license was obtained by fraudulent means;

(2) the licensee has been convicted of a felony and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;

(3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency;

(4) the licensee is addicted to the liquor or drug habit to such a degree as to render the licensee unfit to practice the profession of pharmacy;

(5) the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act;

(6) the licensee is found by the board to have filled a prescription not in strict accordance with the directions of the practitioner or a mid-level practitioner;

(7) the licensee is found to be mentally or physically incapacitated to

such a degree as to render the licensee unfit to practice the profession of pharmacy;

(8) the licensee has violated any of the provisions of the pharmacy act of the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act;

(9) the licensee has failed to comply with the requirements of the board relating to the continuing education of pharmacists;

(10) the licensee as a pharmacist in charge or consultant pharmacist under the provisions of subsection (c) or (d) of K.S.A. 65-1648, and amendments, thereto has failed to comply with the requirements of subsection (c) or (d) of K.S.A. 65-1648, and amendments thereto;

(11) the licensee has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement;

(12) the licensee has had a license to practice pharmacy revoked, suspended or limited, has been censured or has had other disciplinary action taken, or voluntarily surrendered the license after formal proceedings have been commenced, or has had an application for 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;

(13) the licensee has self-administered any controlled substance without a practitioner's prescription order or a mid-level practitioner's prescription order; or

(14) the licensee has assisted suicide in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto; or

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

(b) In determining whether or not the licensee has violated subsection (a)(3), (a)(4), (a)(7) or (a)(13), the board upon reasonable suspicion of such violation has authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate. To determine whether reasonable suspicion of such violation exists, the investigative information shall be presented to the board as a whole. Information submitted to the board as a whole and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report

of such examination or drug screen, or both. 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 pharmacy with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice pharmacy and who shall accept the privilege to practice pharmacy in this state by so practicing or by the making and filing of a renewal application to practice pharmacy in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen 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 or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist for disciplinary action under subsection (a) against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

(d) The board may suspend, revoke, place in a probationary status or deny a renewal of any retail dealer's permit issued by the board when information in possession of the board discloses that such operations for which the permit was issued are not being conducted according to law or the rules and regulations of the board. When the board determines that action under this subsection requires the immediate protection of the public interest, the board shall conduct an emergency proceeding in accordance with K.S.A. 77-536, and amendments thereto, under the Kansas administrative procedure act.

(e) The board may revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy upon a finding that: (1) Such pharmacy has been operated in such manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith; (2) the owner or any pharmacist employed at such pharmacy is convicted, subsequent to such owner's acquisition of or such employee's employment at such pharmacy, of a violation of the pharmacy act or uniform controlled substances act of the state of Kansas, or the federal or state food, drug and cosmetic act; (3) the owner or any pharmacist employed by such pharmacy has fraudulently claimed money for pharmaceutical services; or (4) the

registrant has had a registration revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for registration denied, by the proper registering 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. When the board determines that action under this subsection requires the immediate protection of the public interest, the board shall conduct an emergency proceeding in accordance with K.S.A. 77-536, and amendments thereto, under the Kansas administrative procedure act.

(f) A registration to manufacture drugs, to distribute at wholesale a drug, to sell durable medical equipment or a registration for the place of business where any such operation is conducted may be suspended, revoked, placed in a probationary status or the renewal of such registration may be denied by the board upon a finding that the registrant or the registrant's agent: (1) Has materially falsified any application filed pursuant to or required by the pharmacy act of the state of Kansas; (2) has been convicted of a felony under any federal or state law relating to the manufacture or distribution of drugs; (3) has had any federal registration for the manufacture or distribution of drugs suspended or revoked; (4) has refused to permit the board or its duly authorized agents to inspect the registrant's establishment in accordance with the provisions of K.S.A. 65-1629, and amendments thereto; (5) has failed to keep, or has failed to file with the board or has falsified records required to be kept or filed by the provisions of the pharmacy act of the state of Kansas or by the board's rules and regulations; or (6) has violated the pharmacy act of the state of Kansas or rules and regulations adopted by the state board of pharmacy under the pharmacy act of the state of Kansas or has violated the uniform controlled substances act or rules and regulations adopted by the state board of pharmacy under the uniform controlled substances act. When the board determines that action under this subsection requires the immediate protection of the public interest, the board shall conduct an emergency proceeding in accordance with K.S.A. 77-536, and amendments thereto, under the Kansas administrative procedure act.

(g) Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

Sec. 239. K.S.A. 65-2006 is hereby amended to read as follows: 65-2006. (a) The board, upon hearing, may revoke, suspend or limit any license or permit to practice podiatry, may deny issuance or renewal of any such license or permit, or may publicly or privately censure a licensee or permittee, if the person holding or applying for such license or permit is found by the board to:

- (1) Have committed fraud in securing the license or permit;
- (2) have engaged in unprofessional or dishonorable conduct or professional incompetency;

(3) have been convicted of a felony if the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(4) have used untruthful or improbable statements or flamboyant, exaggerated or extravagant claims in advertisements concerning the licensee's or permit holder's professional excellence or abilities;

(5) be addicted to or have distributed intoxicating liquors or drugs for any other than lawful purposes;

(6) have willfully or repeatedly violated the podiatry act, the pharmacy act or the uniform controlled substances act, or any rules and regulations adopted thereunder, or any rules and regulations of the secretary of health and environment which are relevant to the practice of podiatry;

(7) have unlawfully invaded the field of practice of any branch of the healing arts;

(8) have failed to submit proof of completion of a continuing education course required pursuant to the podiatry act;

(9) have engaged in the practice of podiatry under a false or assumed name or impersonated another podiatrist, but practice by a licensee or permit holder under a professional corporation or other legal entity duly authorized to provide podiatry services in the state shall not be considered to be practice under an assumed name;

(10) be unable to practice podiatry with reasonable skill and safety to patients by reason of any mental or physical condition, illness, alcoholism or excessive use of drugs, controlled substances or chemical or any other type of material;

(11) have had the person's license or permit to practice podiatry revoked, suspended or limited, or have had other disciplinary actions taken or an application for a license or permit denied, by the proper licensing authority of any state, territory or country or the District of Columbia;

(12) have violated any rules and regulations of the board or any lawful order or directive of the board;

(13) have knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement; or

(14) have assisted suicide in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. ~~2002-Supp.~~ 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. ~~2002-Supp.~~ 60-4405 and amendments thereto.

(b) In determining whether or not a licensee or permit holder is unable

to practice podiatry with reasonable skill and safety to patients as provided in subsection (a)(10), the board, upon probable cause, shall have authority to compel a licensee or permit holder to submit to mental or physical examination by such persons as the board may designate. Failure of a licensee or permit holder to submit to such examination when directed shall constitute an admission of the allegations against the licensee or permit holder, unless the failure was due to circumstances beyond the licensee's or permit holder's control. 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 podiatry with reasonable skill and safety to patients. Each licensee or permit holder accepting the privilege to practice podiatry in this state, by practicing podiatry in this state or by making and filing an application for a license or permit, or renewal of a license or permit, to practice podiatry in this state, shall be deemed to have consented to submit to a mental or physical examination when directed in writing by the board pursuant to this subsection and 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 ground that such testimony or examination report constitutes a privileged communication. The record of any board proceedings involving a mental or physical examination pursuant to this subsection shall not be used in any other administrative or judicial proceeding.

Whenever the board directs that a licensee or permit holder submit to an examination pursuant to this subsection, the time from the date of the board's directive until the submission to the board of the report of the examination shall not be included in the computation of the time limit for hearing prescribed by the Kansas administrative procedure act.

(c) As used in this section, "professional incompetency" and "unprofessional conduct" shall have the meanings ascribed thereto by K.S.A. 65-2837, and amendments thereto.

(d) The procedure for revocation, suspension, limitation, temporary suspension, temporary limitation, or for denial of issuance or renewal pursuant to this section, of any license or permit to practice podiatry shall be in accordance with the provisions of the Kansas administrative procedure act.

Sec. 240. K.S.A. 2010 Supp. 65-2434 is hereby amended to read as follows: 65-2434. (a) Vital records identity fraud related to birth, death, marriage and divorce certificates shall be prosecuted pursuant to ~~K.S.A. 21-3830~~ *section 143 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(b) Any person who knowingly transports or accepts for transportation, a dead body located in this state to a location outside the boundaries of this state without an accompanying permit issued in accordance with the pro-

visions of K.S.A. 65-2428a, and amendments thereto, shall be guilty of a class C misdemeanor.

(c) Except where a different penalty is provided in this section, any person who violates any of the provisions of this act or neglects or refuses to perform any of the duties imposed upon such person by this act, shall be fined not more than \$200.

Sec. 241. K.S.A. 2010 Supp. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied 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, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a 2/3 majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

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

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts 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.

(i) The licensee has the inability to practice the healing arts with reasonable skill and safety to patients by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. In determining whether or not such inability exists, the board, upon reasonable suspicion of such inability, shall have authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate either in the course of an investigation or a disciplinary proceeding. To determine whether reasonable suspicion of such inability exists, the investigative information shall be presented to the board as a whole, to a review committee of professional peers of the licensee established pursuant to K.S.A. 65-2840c, and amendments thereto, or to a committee consisting of the officers of the board elected pursuant to K.S.A. 65-2818, and amendments thereto, and the executive director appointed pursuant to K.S.A. 65-2878, and amendments thereto, or to a presiding officer authorized pursuant to K.S.A. 77-514, and amendments thereto. The determination shall be made by a majority vote of the entity which reviewed the investigative information. Information submitted to the board as a whole or a review committee of peers or a committee of the officers and executive director of the board and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. 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 the healing arts with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice the healing arts and who shall accept the privilege to practice the healing arts in this state by so practicing or by the making and filing of a renewal to practice the healing arts in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen 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 or drug

screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(j) The licensee has had a license to practice the healing arts 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.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122, and amendments thereto.

(m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.

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

(o) 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.

(p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

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

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

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department 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.

(t) 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.

(u) The licensee has surrendered a license or authorization to practice

the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility 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.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts 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 similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) 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.

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

(y) 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.

(z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404, and amendments thereto.

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

(bb) The licensee as the responsible physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.

(cc) The licensee has assisted suicide in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.

Sec. 242. K.S.A. 65-2859 is hereby amended to read as follows: 65-2859. Any person who shall file or attempt to file with the board any false

or forged diploma, certificate, affidavit or identification or qualification, or any other written or printed instrument, shall be guilty of forgery as ~~provided by K.S.A. 21-3710 and a severity level 8, nonperson felony defined in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.~~

Sec. 243. K.S.A. 65-28,108 is hereby amended to read as follows: 65-28,108. (a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this act shall not, for any purpose, constitute a suicide and shall not constitute the crime of assisting suicide as defined ~~by K.S.A. 21-3406 in section 42 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.~~

(b) The making of a declaration pursuant to K.S.A. 65-28,103, *and amendments thereto*, shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, medical care facility, or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan or nonprofit medical and hospital service corporation shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

(d) Nothing in this act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this act are cumulative.

(e) This act shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition.

Sec. 244. K.S.A. 65-28a05 is hereby amended to read as follows: 65-28a05. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed an act of unprofessional conduct as defined by rules and regulations adopted by the board;

(b) the licensee has obtained a license by means of fraud, misrepresentations or concealment of material facts;

(c) the licensee has committed an act of professional incompetency as defined by rules and regulations adopted by the board;

(d) the licensee has been convicted of a felony;

(e) the licensee has violated any provision of this act and amendments thereto;

(f) the licensee has violated any lawful order or rule and regulation of the board;

(g) the licensee has exceeded or has acted outside the scope of authority given the physician assistant by the responsible physician or by this act;

(h) the licensee has assisted suicide in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, as established by any of the following:

(1) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(2) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. ~~2002 Supp.~~ 60-4404 and amendments thereto.

(3) A copy of the record of a judgment assessing damages under K.S.A. 2002 Supp. 60-4405, and amendments thereto.

Sec. 245. K.S.A. 65-4209 is hereby amended to read as follows: 65-4209. (a) The board may deny, revoke, limit or suspend any license to practice as a mental health technician issued or applied for in accordance with the provisions of this act, may publicly or privately censure a licensee or may otherwise discipline a licensee upon proof that the licensee:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice mental health technology;

(2) is unable to practice with reasonable skill and safety due to current abuse of drugs or alcohol;

(3) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(4) is incompetent or grossly negligent in carrying out the functions of a mental health technician;

(5) has committed unprofessional conduct as defined by rules and regulations of the board;

(6) has been convicted of a felony or has been convicted of a misdemeanor involving an illegal drug offense, unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120, *and amendments thereto*, no license, certificate of qualification or authorization to practice as a licensed mental health technician shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated ~~and acts amendatory thereof or supplemental thereto, prior to their repeal, or sections 36 through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

(7) has committed an act of professional incompetency as defined in subsection (e);

(8) to have willfully or repeatedly violated the provisions of the mental health technician's licensure act or rules and regulations adopted under that act and amendments thereto; or

(9) to have a license to practice mental health technology denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (9).

(b) Upon filing a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct an investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds to believe the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the Kansas administrative procedure act.

(c) No person shall be excused from testifying in any proceedings before the board under the mental health technician's licensure act or in any civil proceedings under such act before a court of competent jurisdiction on the ground that the testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(d) If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.

(e) As used in this section, "professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of 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 care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice mental health technology.

(f) The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

(g) All proceedings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 246. K.S.A. 2010 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402, *prior to its repeal, or subsection (a) of section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, *prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437, *prior to its repeal, or section 52 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, rape, pursuant to K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, *prior to its repeal, or sub-*

*section (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, prior to its repeal, or section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, prior to its repeal, or section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection (a)(2)(C) shall not apply to any person who is employed by a home health agency on ~~the effective date of this act~~ July 1, 2010 and while continuously employed by the same home health agency.*

(2) A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or sections 65 through 86 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605, prior to its repeal, or section 83 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, prior to its repeal, or*

*section 33 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (F) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, *prior to its repeal, or section 35 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or (G) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency 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. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to

convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning any criminal history information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the

appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2010 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, *prior to its repeal, or section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, *prior to its repeal, or section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).

(j) No person who has been employed by the same home health agency since July 1, 1992, shall be subject to the requirements of this section while employed by such home health agency.

(k) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a

background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, *prior to their repeal, or section 52, subsection (a) of section 69 and section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to the secretary of health and environment when a background check is requested.

(m) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated ~~and acts amendatory thereof or supplemental thereto, and amendments thereto.~~

Sec. 247. K.S.A. 65-6703 is hereby amended to read as follows: 65-6703. (a) No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) (1) Except in the case of a medical emergency, prior to performing an abortion upon a woman, the physician shall determine the gestational age of the fetus according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination.

(2) If the physician determines the gestational age of the fetus is 22 or more weeks, prior to performing an abortion upon the woman the physician shall determine if the fetus is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the fetus and shall enter such findings and determinations of viability in the medical record of the woman.

(3) If the physician determines the gestational age of a fetus is 22 or

more weeks, and determines that the fetus is not viable and performs an abortion on the woman, the physician shall report such determinations and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report such determinations and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(4) If the physician who is to perform the abortion determines the gestational age of a fetus is 22 or more weeks, and determines that the fetus is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, the reasons for such determinations and the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, the reasons for such determinations and the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection (b) for not less than five years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection (b) for not less than five years.

(c) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to ~~K.S.A. 21-3302~~ *section 34 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(d) Nothing in this section shall be construed to create a right to an

abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

(e) As used in this section, “viable” means that stage of fetal development when it is the physician’s judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother’s womb with natural or artificial life-supportive measures.

(f) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

(g) Upon a first conviction of a violation of this section, a person shall be guilty of a class A nonperson misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, nonperson felony.

Sec. 248. K.S.A. 65-6721 is hereby amended to read as follows: 65-6721. (a) No person shall perform or induce a partial birth abortion on a viable fetus unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major physical or mental function of the pregnant woman.

(b) As used in this section:

(1) “Partial birth abortion” means an abortion procedure which includes the deliberate and intentional evacuation of all or a part of the intracranial contents of a viable fetus prior to removal of such otherwise intact fetus from the body of the pregnant woman.

(2) “Partial birth abortion” shall not include the: (A) Suction curettage abortion procedure; (B) suction aspiration abortion procedure; or (C) dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the body of the pregnant woman.

(c) If a physician determines in accordance with the provisions of subsection (a) that a partial birth abortion is necessary and performs a partial birth abortion on the woman, the physician shall report such determination and the reasons for such determination in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report the reasons for such determination in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and envi-

ronment under K.S.A. 65-445, and amendments thereto. The physician shall retain a copy of the written reports required under this subsection for not less than five years.

(d) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to ~~K.S.A. 21-3302~~ *section 34 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(e) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

(f) Upon conviction of a violation of this section, a person shall be guilty of a severity level 10 person felony.

Sec. 249. K.S.A. 2010 Supp. 66-2304 is hereby amended to read as follows: 66-2304. (a) An armed nuclear security guard is justified in using physical force against another person at a nuclear generating facility or structure or fenced yard of a nuclear generating facility if the armed nuclear security guard reasonably believes that such force is necessary to prevent or terminate the commission or attempted commission of criminal damage to property ~~under K.S.A. 21-3720 (a)(1) as defined in subsection (a)(1) of section 99 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, criminal use of weapons ~~under K.S.A. 21-4201 as defined in subsections (a)(1) through (a)(6) of section 186 or subsection (a)(1) through (a)(5) of section 187 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, or criminal trespass on a nuclear generating facility under K.S.A. 2010 Supp. 66-2303, and amendments thereto.

(b) Notwithstanding the provisions of ~~K.S.A. 21-3211, 21-3212, 21-3213, 21-3215 and 21-3216~~ *sections 21, 22, 23, 25 and 26 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, an armed nuclear security guard is justified in using physical force up to and including deadly physical force against another person at a nuclear generating facility or structure or fenced yard of a nuclear generating facility if the armed nuclear security guard reasonably believes that such force is necessary to:

(1) Prevent the commission of manslaughter ~~under K.S.A. 21-3403 or 21-3404 as defined in section 39 or 40 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, murder in the first degree ~~under K.S.A. 21-3401 as defined in section 37 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, murder in the second degree ~~under K.S.A. 21-3402 as defined in section 38 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, aggravated assault ~~under K.S.A. 21-3410 as defined in subsection (b) of section 47 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, kidnapping ~~under K.S.A. 21-3420 as defined in subsection (a) of section 44 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, aggravated kidnapping ~~under K.S.A. 21-3421 as defined in subsection (b) of~~

*section 44 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated burglary ~~under K.S.A. 21-3716 as defined in subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, arson under K.S.A. 21-3718 as defined in subsection (a) of section 98 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated arson under K.S.A. 21-3719 as defined in subsection (b) of section 98 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, aggravated robbery under K.S.A. 21-3427 as defined in subsection (b) of section 55 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or~~*

(2) defend oneself or a third person from the use or imminent use of deadly physical force.

(c) Notwithstanding any other provision of this act, an armed nuclear security guard is justified in threatening to use physical or deadly physical force if and to the extent a reasonable armed nuclear security guard believes it necessary to protect oneself or others against another person's potential use of physical force or deadly physical force.

(d) No armed nuclear security guard, employer of an armed nuclear security guard or owner of a nuclear generating facility shall be subject to civil liability for conduct of an armed nuclear security guard which is justified pursuant to this act.

Sec. 250. K.S.A. 68-422a is hereby amended to read as follows: 68-422a. The secretary of transportation, the board of county commissioners of each county and the governing body of each incorporated city shall cause signs to be erected at suitable intervals on public highways in their respective areas of authority, including public parks, informing the public that littering, as defined ~~by K.S.A. 21-3722 in section 101 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto~~, is unlawful.

Sec. 251. K.S.A. 2010 Supp. 72-1397 is hereby amended to read as follows: 72-1397. (a) The state board of education shall not knowingly issue a license to or renew the license of any person who has been convicted of:

(1) Rape, as defined in K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(4) 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 section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, *prior*

*to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 72 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(8) *sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(9) *aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(10) *aggravated endangering a child, as defined in K.S.A. 21-3608a, prior to its repeal, or subsection (b) of section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(11) *abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(12) *capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(13) *murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(14) *murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(15) *voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(16) *involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(17) *involuntary manslaughter while driving under the influence of alcohol or drugs, as defined in K.S.A. 21-3442, and amendments thereto prior to its repeal;*

(18) *sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when, at the time the crime was committed, the victim was less than 18 years of age or a student of the person committing such crime;*

(19) *aggravated sexual battery, as defined in K.S.A. 21-3518, prior to*

*its repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(20) attempt under K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit any act specified in this subsection;*

(21) conspiracy under K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit any act specified in this subsection;*

(22) an act in another state or by the federal government that is comparable to any act described in this subsection; or

(23) an offense in effect at any time prior to the effective date of this act that is comparable to an offense as provided in this subsection.

(b) Except as provided in subsection (c), the state board of education shall not knowingly issue a license to or renew the license of any person who has been convicted of, or has entered into a criminal diversion agreement after having been charged with:

(1) A felony 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;

(2) a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, other than an act specified in subsection (a), or a battery, as described in K.S.A. 21-3412, *prior to its repeal, or subsection (a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, or domestic battery, as described in K.S.A. 21-3412a, *prior to its repeal, or section 49 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, if the victim is a minor or student;

(3) a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, other than an act specified in subsection (a);

(4) any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 78 through 86 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, other than an act specified in subsection (a);

(5) a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 87 through 125 or subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(6) promoting obscenity, as described in K.S.A. 21-4301, *prior to its repeal, or subsection (a) of section 212 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, promoting obscenity to minors, as described in K.S.A. 21-4301a, *prior to its repeal, or subsection (b) of section 212 of chapter 136 of the 2010 Session Laws of Kansas, and amend-*

ments thereto, or promoting to minors obscenity harmful to minors, as described in K.S.A. 21-4301c, *prior to its repeal, or section 213 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(7) endangering a child, as defined in K.S.A. 21-3608, *prior to its repeal, or subsection (a) of section 78 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(8) driving under the influence of alcohol or drugs in violation of K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation is punishable as a felony;

(9) attempt under K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to commit any act specified in this subsection;

(10) conspiracy under K.S.A. 21-3302, *prior to its repeal, or section 34 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to commit any act specified in this subsection; or

(11) an act committed in violation of a federal law or in violation of another state's law that is comparable to any act described in this subsection.

(c) The state board of education may issue a license to or renew the license of a person who has been convicted of committing an offense or act described in subsection (b) or who has entered into a criminal diversion agreement after having been charged with an offense or act described in subsection (b) if the state board determines, following a hearing, that the person has been rehabilitated for a period of at least five years from the date of conviction of the offense or commission of the act or, in the case of a person who has entered into a criminal diversion agreement, that the person has satisfied the terms and conditions of the agreement. The state board of education may consider factors including, but not limited to, the following in determining whether to grant a license:

- (1) The nature and seriousness of the offense or act;
  - (2) the conduct of the person subsequent to commission of the offense or act;
  - (3) the time elapsed since the commission of the offense or act;
  - (4) the age of the person at the time of the offense or act;
  - (5) whether the offense or act was an isolated or recurring incident;
- and
- (6) discharge from probation, pardon or expungement.

(d) Before any license is denied by the state board of education for any of the offenses or acts specified in subsections (a) and (b), the person shall be given notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) The county or district attorney shall file a report with the state board of education indicating the name, address and social security number of any person who has been determined to have committed any offense or act specified in subsection (a) or (b) or to have entered into a criminal diversion agreement after having been charged with any offense or act specified in

subsection (b). Such report shall be filed within 30 days of the date of the determination that the person has committed any such act or entered into any such diversion agreement.

(f) The state board of education shall not be liable for civil damages to any person refused issuance or renewal of a license by reason of the state board's compliance, in good faith, with the provisions of this section.

Sec. 252. K.S.A. 2010 Supp. 72-5445 is hereby amended to read as follows: 72-5445. (a) (1) Subject to the provisions of subsection (b), the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, apply only to: (A) Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed; and (B) teachers who have completed not less than two consecutive years of employment, and been offered a third contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of subpart (A) in any school district, area vocational-technical school or community college in this state.

(2) Any board may waive, at any time, the years of employment requirements of provision (1) for any teachers employed by it.

(3) The provisions of this subsection are subject to the provisions of K.S.A. 72-5446, and amendments thereto.

(b) The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply to any teacher whose license has been nonrenewed or revoked by the state board of education for the reason that the teacher: (1) Has been convicted of a felony 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; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, or an act described in K.S.A. 21-3412, *prior to its repeal, or subsection (a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, or K.S.A. 21-3412a, prior to its repeal, or section 49 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the victim is a minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, or has been convicted of an act described in K.S.A. 21-3517, *prior to its repeal, or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described

in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 78 through 86 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 87 through 125 or subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*; (6) has been convicted of an attempt under K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, *prior to their repeal, or section 212 or 213 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

Sec. 253. K.S.A. 2010 Supp. 74-4924 is hereby amended to read as follows: 74-4924. (1) Any person who shall knowingly make any false statement, or who shall falsify or permit to be falsified any record necessary for carrying out the intent of this act for the purpose of committing fraud, shall be subject to the provisions of ~~K.S.A. 21-3904~~ *subsection (a) of section 168 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

(2) Should any error in any records or in any calculation of the Kansas public employees retirement system result in any member or beneficiary receiving more or less than he would have been entitled to receive had the records or calculations been correct, the board shall correct such error, and, as far as practicable, make future payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was entitled shall be paid and may recover any overpayments. In the event a member has withdrawn, all or part of, such member's accumulated contributions in a manner not in compliance with the provisions of this act or the regulations of the system, the member shall forfeit all service credit related to such withdrawn accumulated contributions.

(3) (a) Notwithstanding the provisions of subsection (2) and except as provided in subsection (3)(d), the board is not required to collect any benefit overpayment that is of more than 60 months' standing when discovered, if any errors in the records or calculations of the system that resulted in such overpayment are attributable solely to incorrect procedures or calculations by the system and there is no evidence of fraud or misconduct on the part of the member or other person receiving the benefit.

(b) The board shall make reasonable efforts to recover all benefit overpayment of 60 months' standing or less, including the imposition of an actuarially calculated reduction in an ongoing monthly benefit payment or

the deduction of the total overpaid amount from any refund of contributions or group life insurance benefits that become due and payable to the member or member's beneficiary.

(c) No monthly benefit reduction imposed under this section for the purpose of collecting an overpayment shall result in a monthly benefit payment that is more than 10% lower than the monthly benefit payment would have been without such collection-related reduction, except that the monthly benefit payment in all cases must first be reduced to the correct amount as provided by the terms of this section before the 10% cap on collection-related reductions is imposed.

(d) Notwithstanding the provisions of this section, on and after the effective date of this act, the board shall not collect any benefit overpayment, attributable to errors in the calculation of benefits by the system that resulted in such overpayments to any person that first occurred after and as a result of a statutory increase in benefits passed by the legislature in 1993, and there is no evidence of fraud or other misconduct on the part of the person receiving the benefit.

Sec. 254. K.S.A. 2010 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; 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. 2010 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. 2010 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; 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 section 49 of chapter 136 of the 2010 Session Laws of Kansas*, 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. 255. K.S.A. 2010 Supp. 74-7301 is hereby amended to read as follows: 74-7301. As used in this act:

(a) “Allowance expense” means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care and for the replacement of items of clothing or bedding which were seized for evidence. Such term includes a total charge not in excess of \$5,000 for expenses in any way related to funeral, cremation or burial; but such term shall not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless other accommodations are medically required. Such term includes a total charge not in excess of \$1,000 for expenses in any way related to crime scene cleanup.

(b) “Board” means the crime victims compensation board established under K.S.A. 74-7303, and amendments thereto.

(c) “Claimant” means any of the following persons claiming compensation under this act: A victim; a dependent of a deceased victim; a third person other than a collateral source; or an authorized person acting on behalf of any of them.

(d) “Collateral source” means a source of benefits or advantages for economic loss otherwise reparable under this act which the victim or claimant has received, or which is readily available to the victim or claimant, from:

- (1) The offender;
- (2) the government of the United States or any agency thereof, a state or any of its political subdivisions or an instrumentality or two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this act;
- (3) social security, medicare and medicaid;
- (4) state-required temporary nonoccupational disability insurance;

- (5) workers' compensation;
- (6) wage continuation programs of any employer;
- (7) proceeds of a contract of insurance payable to the victim for loss which the victim sustained because of the criminally injurious conduct; or
- (8) a contract providing prepaid hospital and other health care services or benefits for disability.

(e) "Criminally injurious conduct" means conduct that: (1) (A) Occurs or is attempted in this state or occurs to a person whose domicile is in Kansas who is the victim of a violent crime which occurs in another state, possession, or territory of the United States of America may make an application for compensation if:

(i) The crimes would be compensable had it occurred in the state of Kansas; and

(ii) the places the crimes occurred are states, possessions or territories of the United States of America not having eligible crime victim compensation programs;

(B) poses a substantial threat or personal injury or death; and

(C) either is punishable by fine, imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; or

(2) is an act of terrorism, as defined in 18 U.S.C. § 2331, or a violent crime that posed a substantial threat or caused personal injury or death, committed outside of the United States against a person whose domicile is in Kansas, except that criminally injurious conduct does not include any conduct resulting in injury or death sustained as a member of the United States armed forces while serving on active duty.

Such term shall not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except for violations of K.S.A. 8-1567 and amendments thereto, or violations of municipal ordinances prohibiting the acts prohibited by that statute, or violations of K.S.A. 8-1602, *and amendments thereto*, K.S.A. 21-3404, 21-3405 and 21-3414, *prior to their repeal, or sections 40, 41 and subsection (b) of section 48 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto or when such conduct was intended to cause personal injury or death.

(f) "Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of the victim born after the victim's death.

(g) "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to the decedent's dependents, not including services they would have received from the decedent if the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

(h) "Dependent's replacement services loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for

their benefit if the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.

(i) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss and dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

(j) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

(k) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of self or family, if such person had not been injured.

(l) "Work loss" means loss of income from work the injured person would have performed if such person had not been injured, and expenses reasonably incurred by such person in obtaining services in lieu of those the person would have performed for income, reduced by any income from substitute work actually performed by such person or by income such person would have earned in available appropriate substitute work that the person was capable of performing but unreasonably failed to undertake.

(m) "Victim" means a person who suffers personal injury or death as a result of: (1) Criminally injurious conduct; (2) the good faith effort of any person to prevent criminally injurious conduct; or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

(n) "Crime scene cleanup" means removal of blood, stains, odors or other debris caused by the crime or the processing of the crime scene.

Sec. 256. K.S.A. 2010 Supp. 74-7305 is hereby amended to read as follows: 74-7305. (a) An application for compensation shall be made in the manner and form prescribed by the board.

(b) Compensation may not be awarded unless an application has been filed with the board within two years of the reporting of the incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the following crimes: (1) Indecent liberties with a child as defined in K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (4) enticement of a child as defined in K.S.A. 21-3509 ~~and amendments thereto~~ *prior to*

*its repeal*; (5) indecent solicitation of a child as defined in K.S.A. 21-3510, *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or (8) aggravated incest as defined in K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Compensation for mental health counseling may be awarded, if a claim is filed within two years of testimony, to a claimant who is, or will be, required to testify in a sexually violent predator commitment, pursuant to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, of an offender who victimized the claimant or the victim on whose behalf the claim is made. For all other incidents of criminally injurious conduct, compensation may not be awarded unless the claim has been filed with the board within two years after the injury or death upon which the claim is based. Compensation may not be awarded to a claimant 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.

(c) Compensation otherwise payable to a claimant shall be reduced or denied, to the extent, if any that the:

(1) Economic loss upon which the claimant's claim is based is recouped from other persons, including collateral sources;

(2) board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims; or

(3) board deems reasonable, because the victim was likely engaging in, or attempting to engage in, unlawful activity at the time of the crime upon which the claim for compensation is based. This subsection shall not be construed to reduce or deny compensation to a victim of domestic abuse or sexual assault.

(d) Compensation may be awarded only if the board finds that unless the claimant is awarded compensation the claimant will suffer financial stress as the result of economic loss otherwise repairable. A claimant suffers financial stress only if the claimant cannot maintain the claimant's customary level of health, safety and education for self and dependents without undue financial hardship. In making its determination of financial stress, the board shall consider all relevant factors, including:

(1) The number of claimant's dependents;

(2) the usual living expenses of the claimant and the claimant's family;

(3) the special needs of the claimant and the claimant's dependents;

(4) the claimant's income and potential earning capacity; and

(5) the claimant's resources.

(e) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the board finds there was good cause for the failure to report within that time.

(f) The board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw or reduce an award of compensation.

(g) Except in K.S.A. 21-3602 or 21-3603, *prior to their repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, or cases of sex offenses established in article 35 of chapter 21, of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, compensation may not be awarded if the economic loss is less than \$100.

(h) Compensation for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss may not exceed \$400 per week or actual loss, whichever is less.

(i) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed \$25,000 in the aggregate.

Sec. 257. K.S.A. 74-7325 is hereby amended to read as follows: 74-7325. (a) There is hereby created in the state treasury the protection from abuse fund. All moneys credited to the fund shall be used solely for the purpose of making grants to programs providing: (1) Temporary emergency shelter for adult victims of domestic abuse or sexual assault and their dependent children; (2) counseling and assistance to those victims and their children; or (3) educational services directed at reducing the incidence of domestic abuse or sexual assault and diminishing its impact on the victims. All moneys credited to the fund pursuant to K.S.A. 20-367, and amendments thereto, shall be used only for on-going operating expenses of domestic violence programs. All moneys credited to the fund pursuant to any increase in docket fees as provided by this act as described in K.S.A. 20-367 and 60-2001, and amendments thereto, shall not be awarded to programs until July 1, 2003, and shall be used for ongoing operating expenses of domestic violence or sexual assault programs.

(b) All expenditures from the protection from abuse 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 attorney general or by a person or persons designated by the attorney general.

(c) The attorney general may apply for, receive and accept moneys from any source for the purposes for which moneys in the protection from abuse fund may be expended. Upon receipt of any such moneys, the attorney general shall remit the entire amount 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 protection from abuse fund.

(d) Grants made to programs pursuant to this section shall be based on the numbers of persons served by the program and shall be made only to the city of Wichita or to agencies which are engaged, as their primary function, in programs aimed at preventing domestic violence or sexual assault or providing residential services or facilities to family or household members who are victims of domestic violence or sexual assault. In order for programs to qualify for funding under this section, they must:

- (1) Meet the requirements of section 501(c) of the internal revenue code of 1986;
- (2) be registered and in good standing as a nonprofit corporation;
- (3) meet normally accepted standards for nonprofit organizations;
- (4) have trustees who represent the racial, ethnic and socioeconomic diversity of the county or counties served;
- (5) have received 50% or more of their funds from sources other than funds distributed through the fund, which other sources may be public or private and may include contributions of goods or services, including materials, commodities, transportation, office space or other types of facilities or personal services;
- (6) demonstrate ability to successfully administer programs;
- (7) make available an independent certified audit of the previous year's financial records;
- (8) have obtained appropriate licensing or certification, or both;
- (9) serve a significant number of residents of the county or counties served;
- (10) not unnecessarily duplicate services already adequately provided to county residents; and
- (11) agree to comply with reporting requirements of the attorney general.

The attorney general may adopt rules and regulations establishing additional standards for eligibility and accountability for grants made pursuant to this section.

(e) As used in this section:

- (1) "Domestic abuse" means abuse as defined by the protection from abuse act (K.S.A. 60-3101 et seq., and amendments thereto).
- (2) "Sexual assault" means acts defined in article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(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 protection from abuse fund interest earnings based on:

- (1) The average daily balance of moneys in the protection from abuse fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

Sec. 258. K.S.A. 74-7333 is hereby amended to read as follows: 74-7333. (a) In order to ensure the fair and compassionate treatment of victims of crime and to increase the effectiveness of the criminal justice system by affording victims of crime certain basic rights and considerations, victims of crime shall have the following rights:

(1) Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.

(2) Victims should receive, through formal and informal procedures, prompt and fair redress for the harm which they have suffered.

(3) Information regarding the availability of criminal restitution, recovery of damages in a civil cause of action, the crime victims compensation fund and other remedies and the mechanisms to obtain such remedies should be made available to victims.

(4) Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings.

(5) The views and concerns of victims should be ascertained and the appropriate assistance provided throughout the criminal process.

(6) When the personal interests of victims are affected, the views or concerns of the victim should, when appropriate and consistent with criminal law and procedure, be brought to the attention of the court.

(7) Measures may be taken when necessary to provide for the safety of victims and their families and to protect them from intimidation and retaliation.

(8) Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims and guidelines should be developed for this purpose.

(9) Victims should be informed of the availability of health and social services and other relevant assistance that they might continue to receive the necessary medical, psychological and social assistance through existing programs and services.

(10) Victims should report the crime and cooperate with law enforcement authorities.

(b) As used in this act, "victim" means any person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime against such person.

(c) As used in this act and as used in article 15 of section 15 of the Kansas constitution, the term "crime" shall not include violations of ordinances of cities except for violations of ordinances of cities which prohibit acts or omissions which are prohibited by articles 33, 34, 35 and 36 of

chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 33 through 86, 14, 210, 211 and 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, and as provided in subsection (d).

(d) The governing body of any city which has established a municipal court shall adopt policies which afford the rights granted to victims of crime pursuant to this act and pursuant to article 15 of section 15 of the Kansas constitution to victims of ordinance violations specified in such policies.

(e) Nothing in this act shall be construed as creating a cause of action on behalf of any person against the state, a county, a municipality or any of their agencies, instrumentalities or employees responsible for the enforcement of rights as provided in this act.

(f) This section shall be known and may be cited as the bill of rights for victims of crime act.

Sec. 259. K.S.A. 2010 Supp. 74-8702 is hereby amended to read as follows: 74-8702. As used in the Kansas lottery act, unless the context otherwise requires:

(a) “Ancillary lottery gaming facility operations” means additional non-lottery facility game products and services not owned and operated by the state which may be included in the overall development associated with the lottery gaming facility. Such operations may include, but are not limited to, restaurants, hotels, motels, museums or entertainment facilities.

(b) “Commission” means the Kansas lottery commission.

(c) “Electronic gaming machine” means any electronic, electromechanical, video or computerized device, contrivance or machine authorized by the Kansas lottery which, upon insertion of cash, tokens, electronic cards or any consideration, is available to play, operate or simulate the play of a game authorized by the Kansas lottery pursuant to the Kansas expanded lottery act, including, but not limited to, bingo, poker, blackjack, keno and slot machines, and which may deliver or entitle the player operating the machine to receive cash, tokens, merchandise or credits that may be redeemed for cash. Electronic gaming machines may use bill validators and may be single-position reel-type, single or multi-game video and single-position multi-game video electronic game, including, but not limited to, poker, blackjack and slot machines. Electronic gaming machines shall be directly linked to a central computer at a location determined by the executive director for purposes of security, monitoring and auditing.

(d) “Executive director” means the executive director of the Kansas lottery.

(e) “Gaming equipment” means any electric, electronic, computerized or electromechanical machine, mechanism, supply or device or any other equipment, which is: (1) Unique to the Kansas lottery and used pursuant to the Kansas lottery act; and (2) integral to the operation of an electronic gaming machine or lottery facility game; and (3) affects the results of an

electronic gaming machine or lottery facility game by determining win or loss.

(f) “Gaming zone” means: (1) The northeast Kansas gaming zone, which consists of Wyandotte county; (2) the southeast Kansas gaming zone, which consists of Crawford and Cherokee counties; (3) the south central Kansas gaming zone, which consists of Sedgwick and Sumner counties; and (4) the southwest Kansas gaming zone, which consists of Ford county.

(g) “Gray machine” means any mechanical, electro-mechanical or electronic device, capable of being used for gambling, that is: (1) Not authorized by the Kansas lottery, (2) not linked to a lottery central computer system, (3) available to the public for play or (4) capable of simulating a game played on an electronic gaming machine or any similar gambling game authorized pursuant to the Kansas expanded lottery act.

(h) “Kansas lottery” means the state agency created by this act to operate a lottery or lotteries pursuant to this act.

(i) “Lottery” or “state lottery” means the lottery or lotteries operated pursuant to this act.

(j) “Lottery facility games” means any electronic gaming machines and any other games which, as of January 1, 2007, are authorized to be conducted or operated at a tribal gaming facility, as defined in K.S.A. 74-9802, and amendments thereto, located within the boundaries of this state.

(k) “Lottery gaming enterprise” means an entertainment enterprise which includes a lottery gaming facility authorized pursuant to the Kansas expanded lottery act and ancillary lottery gaming facility operations that have a coordinated business or marketing strategy. A lottery gaming enterprise shall be designed to attract to its lottery gaming facility consumers who reside outside the immediate area of such enterprise.

(l) “Lottery gaming facility” means that portion of a building used for the purposes of operating, managing and maintaining lottery facility games.

(m) “Lottery gaming facility expenses” means normal business expenses, as defined in the lottery gaming facility management contract, associated with the ownership and operation of a lottery gaming facility.

(n) “Lottery gaming facility management contract” means a contract, subcontract or collateral agreement between the state and a lottery gaming facility manager for the management of a lottery gaming facility, the business of which is owned and operated by the Kansas lottery, negotiated and signed by the executive director on behalf of the state.

(o) “Lottery gaming facility manager” means a corporation, limited liability company, resident Kansas American Indian tribe or other business entity authorized to construct and manage, or manage alone, pursuant to a lottery gaming facility management contract with the Kansas lottery, and on behalf of the state, a lottery gaming enterprise and lottery gaming facility.

(p) “Lottery gaming facility revenues” means the total revenues from

lottery facility games at a lottery gaming facility after all related prizes are paid.

(q) (1) “Lottery machine” means any machine or device that allows a player to insert cash or other form of consideration and may deliver as the result of an element of chance, regardless of the skill required by the player, a prize or evidence of a prize, including, but not limited to:

(A) Any machine or device in which the prize or evidence of a prize is determined by both chance and the player’s or players’ skill, including, but not limited to, any machine or device on which a lottery game or lottery games, such as poker or blackjack, are played;

(B) any machine or device in which the prize or evidence of a prize is determined only by chance, including, but not limited to, any slot machine or bingo machine; or

(C) any lottery ticket vending machine, such as a keno ticket vending machine, pull-tab vending machine or an instant-bingo vending machine.

(2) “Lottery machine” shall not mean:

(A) Any food vending machine defined by K.S.A. 36-501, and amendments thereto;

(B) any nonprescription drug machine authorized under K.S.A. 65-650, and amendments thereto;

(C) any machine which dispenses only bottled or canned soft drinks, chewing gum, nuts or candies;

(D) any machine excluded from the definition of gambling devices under subsection (d) of K.S.A. 21-4302, *prior to its repeal, or section 214 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or

(E) any electronic gaming machine or lottery facility game operated in accordance with the provisions of the Kansas expanded lottery act.

(r) “Lottery retailer” means any person with whom the Kansas lottery has contracted to sell lottery tickets or shares, or both, to the public.

(s) (1) “Major procurement” means any gaming product or service, including but not limited to facilities, advertising and promotional services, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the Kansas lottery, but not including materials, supplies, equipment and services common to the ordinary operations of state agencies.

(2) “Major procurement” shall not mean any product, service or other matter covered by or addressed in the Kansas expanded lottery act or a lottery gaming facility management contract or racetrack gaming facility management contract executed pursuant to the Kansas expanded lottery act.

(t) “Net electronic gaming machine income” means all cash or other consideration utilized to play an electronic gaming machine operated at a racetrack gaming facility, less all cash or other consideration paid out to winning players as prizes.

(u) “Organization licensee” has the meaning provided by K.S.A. 74-8802, and amendments thereto.

(v) “Parimutuel licensee” means a facility owner licensee or facility manager licensee under the Kansas parimutuel racing act.

(w) “Parimutuel licensee location” means a racetrack facility, as defined in K.S.A. 74-8802, and amendments thereto, owned or managed by the parimutuel licensee. A parimutuel licensee location may include any existing structure at such racetrack facility or any structure that may be constructed on real estate where such racetrack facility is located.

(x) “Person” means any natural person, association, limited liability company, corporation or partnership.

(y) “Prize” means any prize paid directly by the Kansas lottery pursuant to the Kansas lottery act or the Kansas expanded lottery act or any rules and regulations adopted pursuant to either act.

(z) “Progressive electronic game” means a game played on an electronic gaming machine for which the payoff increases uniformly as the game is played and for which the jackpot, determined by application of a formula to the income of independent, local or interlinked electronic gaming machines, may be won.

(aa) “Racetrack gaming facility” means that portion of a parimutuel licensee location where electronic gaming machines are operated, managed and maintained.

(bb) “Racetrack gaming facility management contract” means an agreement between the Kansas lottery and a racetrack gaming facility manager, negotiated and signed by the executive director on behalf of the state, for placement of electronic gaming machines owned and operated by the state at a racetrack gaming facility.

(cc) “Racetrack gaming facility manager” means a parimutuel licensee specifically certified by the Kansas lottery to become a certified racetrack gaming facility manager and offer electronic gaming machines for play at the racetrack gaming facility.

(dd) “Returned ticket” means any ticket which was transferred to a lottery retailer, which was not sold by the lottery retailer and which was returned to the Kansas lottery for refund by issuance of a credit or otherwise.

(ee) “Share” means any intangible manifestation authorized by the Kansas lottery to prove participation in a lottery game, except as provided by the Kansas expanded lottery act.

(ff) “Ticket” means any tangible evidence issued by the Kansas lottery to prove participation in a lottery game other than a lottery facility game.

(gg) “Token” means a representative of value, of metal or other material, which is not legal tender, redeemable for cash only by the issuing lottery gaming facility manager or racetrack gaming facility manager and which is issued and sold by a lottery gaming facility manager or racetrack gaming facility manager for the sole purpose of playing an electronic gaming machine or lottery facility game.

(hh) “Vendor” means any person who has entered into a major procurement contract with the Kansas lottery.

(ii) “Video lottery machine” means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game authorized by the commission, including, but not limited to, bingo, poker, black jack and keno, and which uses a video display and microprocessors and in which, by chance, the player may receive free games or credits that can be redeemed for cash.

Sec. 260. K.S.A. 2010 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 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 stan-

dards 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 limited 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. 21-4725~~ *section 303 of chapter 136 of the 2010 Session Laws of Kansas*, 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. 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 sections 266 and 267 of chapter 136 of the 2010 Session Laws of Kansas*, 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. 261. K.S.A. 2010 Supp. 75-452 is hereby amended to read as follows: 75-452. The following words and phrases when used in K.S.A. 2010 Supp. 75-451 to 75-458, inclusive, and amendments thereto, shall have the meanings respectively ascribed to them herein, unless the context clearly requires otherwise:

(a) "Abuse" means:

- (1) Causing or attempting to cause physical harm;
  - (2) placing another person in fear of imminent physical harm;
  - (3) causing another person to engage involuntarily in sexual relations by force, threats or duress, or threatening to do so;
  - (4) engaging in mental abuse, which includes threats, intimidation and acts designed to induce terror;
  - (5) depriving another person of necessary health care, housing or food;
- or
- (6) unreasonably and forcibly restraining the physical movement of another.

(b) “Confidential address” means a residential street address, school street address or work street address of an individual, as specified on the individual’s application to be a program participant under K.S.A. 2010 Supp. 75-451 to 75-458, inclusive, and amendments thereto.

(c) “Confidential mailing address” means an address that is recognized for delivery by the United States postal service.

(d) “Domestic violence” means abuse committed against a victim or the victim’s spouse or dependent child by:

- (1) A current or former spouse of the victim;
- (2) a person with whom the victim shares parentage of a child in common;
- (3) a person who is cohabitating with, or has cohabitated with, the victim;
- (4) a person who is related by blood or marriage; or
- (5) a person with whom the victim has or had a dating or engagement relationship.

(e) “Program participant” means a person certified as a program participant under K.S.A. 2010 Supp. 75-453, and amendments thereto.

(f) “Enrolling agent” means state and local agencies, law enforcement offices, nonprofit agencies and any others designated by the secretary of state that provide counseling and shelter services to victims of domestic violence, sexual assault, human trafficking or stalking.

(g) “Sexual assault” means an act which if committed in this state would constitute any crime defined in article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

(h) “Stalking” means an act which if committed in this state would constitute “stalking” as defined by K.S.A. 60-31a01, and amendments thereto.

(i) “Human trafficking” means an act which if committed in this state would constitute the crime of human trafficking as defined by K.S.A. 21-3446, *prior to its repeal, or subsection (a) of section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*

Sec. 262. K.S.A. 2010 Supp. 75-453 is hereby amended to read as follows: 75-453. (a) An adult person, an adult family member residing with the victim, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may apply by and through an enrolling agent to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. Program participants shall not apply directly to the secretary of state. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state signed by the applicant and enrolling agent under penalty of perjury and providing:

(1) A statement by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, human trafficking or stalking and:

(i) That the applicant fears for the applicant's safety or the applicant's children's safety or the safety of the minor or incapacitated person on whose behalf the application is made; or

(ii) that by virtue of living with an enrolled program participant, the applicant fears that the knowledge or publication of the applicant's whereabouts will put the enrolled participant in danger.

(2) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail.

(3) The confidential mailing address where the applicant can be contacted by the secretary of state, and the phone number or numbers where the applicant can be called by the secretary of state.

(4) The confidential address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, sexual assault, human trafficking or stalking.

(5) Evidence that the applicant or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, human trafficking or stalking, or is an adult family member residing with the victim. This evidence may include any of the following:

(A) Law enforcement, court or other federal, state or local government records or files.

(B) Documentation from a public or private entity that provides assistance to victims of domestic violence, sexual assault, human trafficking or stalking.

(C) Documentation from a religious, medical or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual assault, human trafficking or stalking.

(D) Other forms of evidence as determined by the secretary of state.

(6) A statement of whether there are any existing court orders involving the applicant for child support, child custody or child visitation and whether there are any active court actions involving the applicant for child support, child custody or child visitation, the name and address of legal counsel of

record and the last known address of the other parent or parents involved in those court orders or court actions.

(7) The signature of the applicant and of any individual or representative of any enrolling agent who assisted in the preparation of the application, and the date on which the applicant signed the application.

(b) Applications shall be filed in accordance with procedures prescribed by the secretary of state.

(c) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule and regulation establish a renewal procedure.

(d) Upon certification in the program, in any case where there are court orders or court actions identified in subsection (a)(6), the secretary of state shall, within 10 days, notify the other parent or parents of the address designated by the secretary of state for the program participant and the designation of the secretary of state as agent for purpose of service of process. The notice shall be given by mail, return receipt requested, postage prepaid, to the last known address of the other parent to be notified. A copy shall also be sent to that parent's counsel of record.

(e) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under ~~K.S.A. 21-3711~~ *section 110 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or other applicable statutes.

Sec. 263. K.S.A. 2010 Supp. 75-755 is hereby amended to read as follows: 75-755. The attorney general shall promulgate rules and regulations necessary to carry out the provisions of subsection (p) of ~~K.S.A. 21-4603d~~ *section 244 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, on or before July 1, 2011.

Sec. 264. K.S.A. 2010 Supp. 75-7b01 is hereby amended to read as follows: 75-7b01. As used in this act:

(a) "Detective business" means the furnishing of, making of or agreeing to make any investigation for the purpose of obtaining information with reference to:

(1) Crime or wrongs done or threatened against the United States or any state or territory of the United States, or any political subdivision thereof when furnished or made by persons other than law enforcement officers;

(2) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity,

movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person;

(3) the location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, libels, losses, frauds, accidents or damage or injury to persons or to property; or

(5) securing evidence to be used before any court, board, officer or investigating committee.

(b) “Private detective” means any person who, for any consideration whatsoever, engages in detective business.

(c) “Private detective agency” means a person who regularly employs any other person, other than an organization, to engage in detective business.

(d) “Private patrol operator” means a person who, for any consideration whatsoever, agrees to furnish or furnishes a watchman, guard, patrolman or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind, or performs the service of such watchman, guard, patrolman or other person for any such purposes.

(e) “Law enforcement officer” means a law enforcement officer as defined by ~~K.S.A. 21-3110~~ in section 11 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(f) “Organization” means a corporation, trust, estate, partnership, cooperative or association.

(g) “Person” means an individual or organization.

(h) “Firearm permit” means a permit for the limited authority to carry a firearm concealed on or about the person by one licensed as a private detective.

(i) “Firearm” means:

(1) A pistol or revolver which is designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition; or

(2) any other weapon which will or is designed to expel a projectile by the action of an explosive and which is designed to be fired by the use of a single hand.

(j) “Client” means any person who engages the services of a private detective.

(k) “Dishonesty or fraud” means, in addition to other acts not specifically enumerated herein:

(1) Knowingly making a false statement relating to evidence or information obtained in the course of employment, or knowingly publishing a slander or a libel in the course of business;

(2) using illegal means in the collection or attempted collection of a debt or obligation;

(3) manufacturing or producing any false evidence; and

(4) acceptance of employment adverse to a client or former client relating to a matter with respect to which the licensee has obtained confidential information by reason of or in the course of the licensee's employment by such client or former client.

Sec. 265. K.S.A. 2010 Supp. 75-7b13 is hereby amended to read as follows: 75-7b13. (a) The attorney general may censure, limit, condition, suspend or revoke a license issued under this act if, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the attorney general determines that the licensee or, if the licensee is an organization, any of its officers, directors, partners or associates has:

(1) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement thereof;

(2) violated any provisions of this act;

(3) violated any rules and regulations of the attorney general adopted pursuant to the authority contained in this act;

(4) been convicted of a felony, vehicular homicide, assault, battery, assault of a law enforcement officer, misdemeanor battery against a law enforcement officer, criminal restraint, sexual battery, endangering a child, intimidation of a witness or victim or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon subsequent to the issuance of the license;

(5) impersonated, or permitted or aided and abetted an employee to impersonate, a law enforcement officer or employee of the United States of America, or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license was expired, which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties, and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) committed assault, battery or kidnapping or used force or violence on any person without proper justification;

(9) knowingly violated or advised, encouraged or assisted the violation of, any court order or injunction in the course of business as a licensee;

(10) acted as a runner or capper for any attorney;

(11) used any letterhead, advertisement or other printed matter, or in any manner whatever represented that such person is an instrumentality of the federal government, a state or any political subdivision thereof;

(12) used false, misleading or deceptive information in any advertisement, solicitation or contract for business;

(13) has committed any act in the course of the licensee's business constituting dishonesty or fraud;

(14) failed to obtain continuing education as required by this act;  
(15) misused a firearm permit badge; or  
(16) committed any act which is a ground for denial of an application for a license under this act.

(b) The record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction as that term is used in this section or in K.S.A. 75-7b04, and amendments thereto, and a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning thereof.

(c) Upon final disposition of the proceedings for a violation relating to the misuse of a firearm permit badge, the attorney general may bring an action for violation of ~~K.S.A. 21-3824 or 21-3825~~ *section 142 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 266. K.S.A. 2010 Supp. 75-7c03 is hereby amended to read as follows: 75-7c03. (a) The attorney general shall issue licenses to carry concealed handguns to persons who comply with the application and training requirements of this act and who are not disqualified under K.S.A. 2010 Supp. 75-7c04, and amendments thereto. Such licenses shall be valid throughout the state for a period of four years from the date of issuance.

(b) The license shall be a separate card, in a form prescribed by the attorney general, that is approximately the size of a Kansas driver's license and shall bear the licensee's signature, name, address, date of birth and driver's license number or nondriver's identification card number except that the attorney general shall assign a unique number for military applicants or their dependents described in subsection (a)(1)(B) of K.S.A. 2010 Supp. 75-7c05, and amendments thereto. At all times when the licensee is in actual possession of a concealed handgun, the licensee shall carry the valid license to carry concealed handguns. On demand of a law enforcement officer, the licensee shall display the license to carry concealed handguns and proper identification. Verification by a law enforcement officer that a person holds a valid license to carry a concealed handgun may be accomplished by record check using the person's driver's license information or the person's concealed carry license number.

The license of any person who violates the provisions of this subsection shall be suspended for not less than 30 days upon the first violation and shall be revoked for not less than five years upon a second or subsequent violation. However, a violation of this subsection shall not constitute a violation of subsection (a)(4) of K.S.A. 21-4201, *prior to its repeal, or subsection (a)(4) of section 187 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, if the licensee's license is valid.

(c) A valid license, issued by any other state or the District of Columbia, to carry a firearm shall be recognized as valid in this state, but only while the holder is not a resident of Kansas, if the attorney general determines that standards for issuance of such license or permit by such state or

district are reasonably similar to or greater than the standards imposed by this act. The attorney general shall maintain and publish a list of such other jurisdictions which the attorney general determines have standards reasonably similar to or greater than the standards imposed by this act.

(d) A person who establishes residency in this state may carry concealed handguns under the terms of this act until the person's application for a license under this act is approved or denied, provided that the person has been issued and possesses a valid license or permit to carry a firearm from a jurisdiction recognized by the attorney general under subsection (c) and carries with that license or permit a receipt issued by the attorney general, which states the person's application for licensure under this act has been received. For purposes of such application, possession of the valid nonresident license or permit to carry a firearm shall satisfy the requirements of subsection (b)(2) of K.S.A. 2010 Supp. 75-7c04, and amendments thereto.

Sec. 267. K.S.A. 2010 Supp. 75-7c04 is hereby amended to read as follows: 75-7c04. (a) The attorney general shall not issue a license pursuant to this act if the applicant:

(1) Is not a resident of the county where application for licensure is made or is not a resident of the state;

(2) is prohibited from shipping, transporting, possessing or receiving a firearm or ammunition under 18 U.S.C. § 922(g) or (n), and amendments thereto, or K.S.A. 21-4204, *prior to its repeal, or subsection (a)(10) through (a)(13) of section 186 or subsection (a)(1) through (a)(3) of section 189 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or

(3) is less than 21 years of age.

(b) (1) The attorney general shall adopt rules and regulations establishing procedures and standards as authorized by this act for an eight-hour handgun safety and training course required by this section. Such standards shall include: (A) A requirement that trainees receive training in the safe storage of handguns, actual firing of weapons and instruction in the laws of this state governing the carrying of concealed handguns and the use of deadly force; (B) general guidelines for courses which are compatible with the industry standard for basic firearms training for civilians; (C) qualifications of instructors; and (D) a requirement that the course be: (i) A handgun course certified or sponsored by the attorney general; or (ii) a handgun course certified or sponsored by the national rifle association or by a law enforcement agency, college, private or public institution or organization or handgun training school, if the attorney general determines that such course meets or exceeds the standards required by rules and regulations adopted by the attorney general and is taught by instructors certified by the attorney general or by the national rifle association, if the attorney general determines that the requirements for certification of instructors by such

association meet or exceed the standards required by rules and regulations adopted by the attorney general. Any person wanting to be certified by the attorney general as an instructor shall submit to the attorney general an application in the form required by the attorney general and a fee not to exceed \$150.

(2) The cost of the handgun safety and training course required by this section shall be paid by the applicant. The following shall constitute satisfactory evidence of satisfactory completion of an approved handgun safety and training course: (A) Evidence of completion of the course, in the form provided by rules and regulations adopted by the attorney general; (B) an affidavit from the instructor, school, club, organization or group that conducted or taught such course attesting to the completion of the course by the applicant; or (C) for the purposes of subsection (d) of K.S.A. 2010 Supp. 75-7c03, and amendments thereto, a copy of a valid license to carry a firearm issued by another jurisdiction, as described in that subsection.

Sec. 268. K.S.A. 2010 Supp. 75-7c05 is hereby amended to read as follows: 75-7c05. (a) The application for a license pursuant to this act shall be completed, under oath, on a form prescribed by the attorney general and shall only include:

(1) (A) Subject to the provisions of subsection (a)(1)(B), the name, address, social security number, Kansas driver's license number or Kansas nondriver's license identification number, place and date of birth, a photocopy of the applicant's driver's license or nondriver's identification card and a photocopy of the applicant's certificate of training course completion; (B) in the case of an applicant who presents proof that such person is on active duty with any branch of the armed forces of the United States, or is the dependent of such a person, and who does not possess a Kansas driver's license or Kansas nondriver's license identification, the number of such license or identification shall not be required;

(2) a statement that the applicant is in compliance with criteria contained within K.S.A. 2010 Supp. 75-7c04, and amendments thereto;

(3) a statement that the applicant has been furnished a copy of this act and is knowledgeable of its provisions;

(4) a conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under ~~K.S.A. 21-3805~~ *section 128 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; and

(5) a statement that the applicant desires a concealed handgun license as a means of lawful self-defense.

(b) The applicant shall submit to the sheriff of the county where the applicant resides, during any normal business hours:

(1) A completed application described in subsection (a);

(2) except as provided by subsection (g), a nonrefundable license fee

of \$132.50, if the applicant has not previously been issued a statewide license or if the applicant's license has permanently expired, which fee shall be in the form of two cashier's checks, personal checks or money orders of \$32.50 payable to the sheriff of the county where the applicant resides and \$100 payable to the attorney general;

(3) a photocopy of a certificate or an affidavit or document as described in subsection (b) of K.S.A. 2010 Supp. 75-7c04, and amendments thereto, or if applicable, of a license to carry a firearm as described in subsection (d) of K.S.A. 2010 Supp. 75-7c03, and amendments thereto; and

(4) a full frontal view photograph of the applicant taken within the preceding 30 days.

(c) (1) The sheriff, upon receipt of the items listed in subsection (b) of this section, shall provide for the full set of fingerprints of the applicant to be taken and forwarded to the attorney general for purposes of a criminal history records check as provided by subsection (d). In addition, the sheriff shall forward to the attorney general a copy of the application and the portion of the original license fee which is payable to the attorney general. The cost of taking such fingerprints shall be included in the portion of the fee retained by the sheriff. Notwithstanding anything in this section to the contrary, an applicant shall not be required to submit fingerprints for a renewal application under K.S.A. 2010 Supp. 75-7c08, and amendments thereto.

(2) The sheriff of the applicant's county of residence or the chief law enforcement officer of any law enforcement agency, at the sheriff's or chief law enforcement officer's discretion, may participate in the process by submitting a voluntary report to the attorney general containing readily discoverable information, corroborated through public records, which, when combined with another enumerated factor, establishes that the applicant poses a significantly greater threat to law enforcement or the public at large than the average citizen. Any such voluntary reporting shall be made within 45 days after the date the sheriff receives the application. Any sheriff or chief law enforcement officer submitting a voluntary report shall not incur any civil or criminal liability as the result of the good faith submission of such report.

(3) All funds retained by the sheriff pursuant to the provisions of this section shall be credited to a special fund of the sheriff's office which shall be used solely for the purpose of administering this act.

(d) Each applicant shall be subject to a state and national criminal history records check which conforms to applicable federal standards, including an inquiry of the national instant criminal background check system for the purpose of verifying the identity of the applicant and whether the applicant has been convicted of any crime or has been the subject of any restraining order or any mental health related finding that would disqualify the applicant from holding a license under this act. The attorney general is authorized to use the information obtained from the state or national crim-

inal history record check to determine the applicant's eligibility for such license.

(e) Within 90 days after the date of receipt of the items listed in subsection (b), the attorney general shall:

(1) Issue the license and certify the issuance to the department of revenue; or

(2) deny the application based solely on: (A) The report submitted by the sheriff or other chief law enforcement officer under subsection (c)(2) for good cause shown therein; or (B) the ground that the applicant is disqualified under the criteria listed in K.S.A. 2010 Supp. 75-7c04, and amendments thereto. If the attorney general denies the application, the attorney general shall notify the applicant in writing, stating the ground for denial and informing the applicant the opportunity for a hearing pursuant to the Kansas administrative procedure act.

(f) Each person issued a license shall pay to the department of revenue a fee for the cost of the license which shall be in amounts equal to the fee required pursuant to K.S.A. 8-243 and 8-246, and amendments thereto, for replacement of a driver's license.

(g) (1) A person who is a retired law enforcement officer, as defined in ~~K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be: (A) Required to pay an original license fee of \$75, which fee shall be in the form of two cashier checks or money orders, \$25 payable to the sheriff of the county where the applicant resides and \$50 payable to the attorney general, to be forwarded by the sheriff to the attorney general; (B) exempt from the required completion of a weapons safety and training course if such person was certified by the Kansas commission on peace officer's standards and training, or similar body from another jurisdiction, not more than eight years prior to submission of the application; (C) required to pay the license renewal fee; (D) required to pay to the department of revenue the fees required by subsection (f); and (E) required to comply with the criminal history records check requirement of this section.

(2) Proof of retirement as a law enforcement officer shall be required and provided to the attorney general in the form of a letter from the agency head, or their designee, of the officer's retiring agency that attests to the officer having retired in good standing from that agency as a law enforcement officer for reasons other than mental instability and that the officer has a nonforfeitable right to benefits under a retirement plan of the agency.

Sec. 269. K.S.A. 2010 Supp. 75-7c09 is hereby amended to read as follows: 75-7c09. The application form for an original license and for a renewal license shall include, in a conspicuous place, the following: "WARNING: A false statement on this application may subject the applicant to prosecution for the crime of perjury (~~K.S.A. 21-3805~~ *section 128*

of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto).”

Sec. 270. K.S.A. 2010 Supp. 75-7c17 is hereby amended to read as follows: 75-7c17. (a) The legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed handguns for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed handguns for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this act is subjectively or arbitrarily denied the person’s rights. No city, county or other political subdivision of this state shall regulate, restrict or prohibit the carrying of concealed handguns by persons licensed under this act except as provided in subsection (b) of K.S.A. 2010 Supp. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, *prior to its repeal, or subsection (e) of section 194 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Any existing or future law, ordinance, rule, regulation or resolution enacted by any city, county or other political subdivision of this state that regulates, restricts or prohibits the carrying of concealed handguns by persons licensed under this act except as provided in subsection (b) of K.S.A. 2010 Supp. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, *prior to its repeal, or subsection (e) of section 194 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be null and void.

(b) Prosecution of any person licensed under the personal and family protection act, and amendments thereto, for violating any restrictions on licensees will be done through the district court.

(c) The legislature does not delegate to the attorney general the authority to regulate or restrict the issuing of licenses provided for in this act, beyond those provisions of this act pertaining to licensing and training. Subjective or arbitrary actions or rules and regulations which encumber the issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this act or which create restrictions beyond those specified in this act are in conflict with the intent of this act and are prohibited.

(d) This act shall be liberally construed. This act is supplemental and additional to existing constitutional rights to bear arms and nothing in this act shall impair or diminish such rights.

Sec. 271. K.S.A. 2010 Supp. 75-7c19 is hereby amended to read as follows: 75-7c19. Any person not subject to the provisions of subsection (a) of K.S.A. 21-4201, *prior to its repeal, or subsections (a)(1) through (a)(6) of section 186 or subsections (a)(1) through (a)(5) of section 187 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, under the authority of paragraph (7) of subsection (c) of K.S.A. 21-4201, *prior to its repeal, or subsection (d)(7) of section 187 of chapter 136 of the*

*2010 Session Laws of Kansas*, and amendments thereto, shall obtain at their own expense, and maintain a license to carry concealed handguns as authorized by K.S.A. 2010 Supp. 75-7c01 et seq., and amendments thereto. In addition, such person shall complete a handgun training course as determined by the director of police training of the law enforcement training center.

Sec. 272. K.S.A. 2010 Supp. 75-7c26 is hereby amended to read as follows: 75-7c26. On and after July 1, 2007, (a) a person who has been discharged pursuant to K.S.A. 59-2973 or 59-29b73, and amendments thereto, may file a petition in the court where treatment was ordered pursuant to K.S.A. 59-2966 or 59-29b66, and amendments thereto, for the restoration of the ability to legally possess a firearm.

(b) Notice of the filing of such petition shall be served on the petitioner who originally filed the action pursuant to K.S.A. 59-2952, 59-2957, 59-29b52 or 59-29b57, and amendments thereto, or the petitioner's attorney and the county or district attorney as appropriate.

(c) If the court finds the person is no longer likely to cause harm to such person's self or others, the court shall issue a certificate of restoration to the person. Such restoration shall have the effect of restoring the person's ability to legally possess a firearm, and the certification of restoration shall so state.

(d) The certificate of registration issued pursuant to this section shall only apply to the possession of a firearm for the purposes of an alleged violation of subsection (a)(7) of K.S.A. 21-4204, *prior to its repeal, or subsection (a)(13) of section 186 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 273. K.S.A. 2010 Supp. 75-1508 is hereby amended to read as follows: 75-1508. (a) For the purpose of maintaining the department of the state fire marshal and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the commissioner of insurance, on or before March 15 each year, in addition to the taxes, fees and charges now required by law to be paid by it, such levy as may be made by the state fire marshal. The levy shall not be more than .80% for calendar year 2004, and each calendar year thereafter, of a sum equal to the gross cash receipts as premiums of such company on all fire business transacted by it in the state of Kansas during the calendar year next preceding, as shown by its annual statement under oath to the state insurance department.

(b) For the purposes of maintaining the emergency medical services board and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the commissioner of insurance, on or before March 15 each year, beginning with calendar year 2002 and each calendar year thereafter, in addition to the taxes, fees and charges now required by law to be paid by it, such levy as may be made

by the emergency medical services board. The levy shall not be more than .25% of a sum equal to the gross cash receipts as premiums of such company on all fire business transacted by it in the state of Kansas during the calendar year next preceding, as shown by its annual statement to the state insurance department generated by or at the direction of its president and secretary or other chief officers under penalty of ~~K.S.A. 21-3711~~ *section 110 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(c) For the purposes of maintaining the fire service training program of the university of Kansas and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the commissioner of insurance, on or before March 15 each year, beginning with calendar year 2004, and each calendar year thereafter, in addition to the taxes, fees and charges now required by law to be paid by it, such levy as may be made by the Kansas fire service training commission. The levy shall not be more than .20% of a sum equal to the gross cash receipts as premiums of such company on all fire business transacted by it in the state of Kansas during the calendar year next preceding, as shown by its annual statement under oath to the state insurance department.

(d) The director of the fire service training program of the university of Kansas shall submit a report concerning expenditures and activities of the fire service training program of the university of Kansas to the house committee on appropriations on or before February 1, 2005, and each ensuing year thereafter.

Sec. 274. K.S.A. 75-4004 is hereby amended to read as follows: 75-4004. Any person who with intent to defraud uses on a public security or an instrument of payment:

(a) A facsimile signature, or any reproduction of it, of any authorized officer shall on conviction be adjudged guilty of forgery ~~in the first degree and punished as provided in K.S.A. 21-631, as defined in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~ or

(b) Any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, boards, officers, or other instrumentalities or of any of its political or taxing subdivisions shall on conviction be adjudged guilty of forgery ~~in the second degree and punished as provided in K.S.A. 21-631 as defined in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.~~

Sec. 275. K.S.A. 2010 Supp. 75-4362 is hereby amended to read as follows: 75-4362. (a) The director of the division of personnel services of the department of administration shall have the authority to establish and implement a drug screening program for persons taking office as governor, lieutenant governor or attorney general and for applicants for safety sensitive positions in state government, but no applicant for a safety sensitive

position shall be required to submit to a test as a part of this program unless the applicant is first given a conditional offer of employment.

(b) The director also shall have the authority to establish and implement a drug screening program based upon a reasonable suspicion of illegal drug use by any person currently holding one of the following positions or offices:

- (1) The office of governor, lieutenant governor or attorney general;
- (2) any safety sensitive position;
- (3) any position in an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, that is not a safety sensitive position;
- (4) any position in the Kansas state school for the blind, as established under K.S.A. 76-1101 et seq., and amendments thereto;
- (5) any position in the Kansas state school for the deaf, as established under K.S.A. 76-1001 et seq., and amendments thereto;
- (6) any employee of a state veteran's home operated by the Kansas commission on veteran's affairs as described in K.S.A. 76-1901 et seq. and K.S.A. 76-1951 et seq., and amendments thereto.

(c) Any public announcement or advertisement soliciting applications for employment in a safety sensitive position in state government shall include a statement of the requirements of the drug screening program established under this section for applicants for and employees holding a safety sensitive position.

(d) No person shall be terminated solely due to positive results of a test administered as a part of a program authorized by this section if:

- (1) The employee has not previously had a valid positive test result; and
- (2) the employee undergoes a drug evaluation and successfully completes any education or treatment program recommended as a result of the evaluation. Nothing herein shall be construed as prohibiting demotions, suspensions or terminations pursuant to K.S.A. 75-2949e or 75-2949f, and amendments thereto.

(e) Except in hearings before the state civil service board regarding disciplinary action taken against the employee, the results of any test administered as a part of a program authorized by this section shall be confidential and shall not be disclosed publicly.

(f) The secretary of administration may adopt such rules and regulations as necessary to carry out the provisions of this section.

(g) "Safety sensitive positions" means the following:

- (1) All state law enforcement officers who are authorized to carry firearms;
- (2) all state corrections officers;
- (3) all state parole officers;
- (4) heads of state agencies who are appointed by the governor and employees on the governor's staff;
- (5) all employees with access to secure facilities of a correctional in-

stitution, as defined in ~~K.S.A. 21-3826~~ *section 139 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(6) all employees of a juvenile correctional facility, as defined in K.S.A. 2010 Supp. 38-2302, and amendments thereto; and

(7) all employees within an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, who provide clinical, therapeutic or habilitative services to the clients and patients of those institutions.

Sec. 276. K.S.A. 2010 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 main-

tained 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 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 ~~subsection (e)(10) of K.S.A. 21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation; and

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department.

(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. 277. K.S.A. 2010 Supp. 75-5218 is hereby amended to read as follows: 75-5218. (a) When any person is sentenced to the custody of the secretary of corrections, the clerk of the court which imposed such sentence shall deliver to the officer having the offender in charge the judgment form or journal entry as required by *section 280 of chapter 136 of the 2010 Session Laws of Kansas*, or K.S.A. ~~21-4620~~ or 22-3426, and amendments thereto, together with the order of commitment to the custody of the secretary of corrections as required by ~~K.S.A. 21-4621~~ *section 281 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Within three business days of receipt of the order of commitment and the judgment form or journal entry, the officer having the offender in charge shall forward certified copies to the secretary of corrections. Copies of these materials shall also be delivered to the officers conveying the offender to the Topeka correctional facility, department of corrections reception and diagnostic unit or such other correctional institution prescribed by K.S.A. 75-5220, and amendments thereto, or by the secretary of corrections in accordance with such statute.

(b) When an offender's sentence has been modified in accordance with the provisions of ~~K.S.A. 21-4609~~ *section 245 of chapter 136 of the 2010*

*Session Laws of Kansas*, and amendments thereto, the clerk of the court which imposed such modified sentence shall within three business days notify the secretary of corrections by sending a certified copy of the court's order modifying the offender's sentence to the secretary or the secretary's designee.

Sec. 278. K.S.A. 75-5233 is hereby amended to read as follows: 75-5233. (a) Except when another cost effective method of transportation is available, the secretary of corrections may contract with qualified individuals, partnerships or corporations for the purpose of transporting individuals in the secretary's custody, including the exchange of inmates with other states and the return of individuals who have violated the conditions of their parole or conditional release.

(b) The secretary of corrections shall require that any party desiring to enter into such a contract have adequate levels of liability insurance.

(c) The secretary of corrections shall require the contracting party to present evidence of training for its employees prior to transporting any individual.

(d) An individual engaged in transportation pursuant to a contract with the secretary of corrections shall have the authority of a person assisting a law enforcement officer as provided in ~~K.S.A. 21-3215~~ *section 25 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(e) The secretary of corrections shall adopt such rules and regulations as necessary to implement the provisions of this section.

Sec. 279. K.S.A. 75-5269 is hereby amended to read as follows: 75-5269. The willful failure of an inmate to remain within the extended limits of ~~his or her~~ *such inmate's* confinement or to return within the time prescribed to an institution or facility designated by the secretary shall be deemed an aggravated escape from custody as provided for in ~~K.S.A. 21-3810~~ *subsection (b) of section 136 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

Sec. 280. K.S.A. 2010 Supp. 75-5291 is hereby amended to read as follows: 75-5291. (a) (1) The secretary of corrections may make grants to counties for the development, implementation, operation and improvement of community correctional services that address the criminogenic needs of felony offenders including, but not limited to, adult intensive supervision, substance abuse and mental health services, employment and residential services, and facilities for the detention or confinement, care or treatment of offenders as provided in this section except that no community corrections funds shall be expended by the secretary for the purpose of establishing or operating a conservation camp as provided by K.S.A. 75-52,127, and amendments thereto.

(2) Except as otherwise provided, placement of offenders in community correctional services programs by the court shall be limited to placement of adult offenders, convicted of a felony offense:

(A) 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. In addition, the court may place in a community correctional services program adult offenders, convicted of a felony offense, whose offense is classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the sentencing guidelines grid for nondrug crimes;

(B) whose severity level and criminal history score designate a presumptive prison sentence on either sentencing guidelines grid but receive a nonprison sentence as a result of departure;

(C) all offenders convicted of an offense which satisfies the definition of offender pursuant to K.S.A. 22-4902, and amendments thereto, and which is classified as a severity level 7 or higher offense and who receive a nonprison sentence, regardless of the manner in which the sentence is imposed;

(D) any offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in the offender being required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections;

(E) on and after January 1, 2011, for offenders who are expected to be subject to supervision in Kansas, who are determined to be “high risk or needs, or both” by the use of a statewide, mandatory, standardized risk assessment tool or instrument which shall be specified by the Kansas sentencing commission;

(F) placed in community correctional services programs as a condition of supervision following the successful completion of a conservation camp program; or

(G) who has been sentenced to community corrections supervision pursuant to K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(3) Notwithstanding any law to the contrary and subject to the availability of funding therefor, adult offenders sentenced to community supervision in Johnson county for felony crimes that occurred on or after July 1, 2002, but before January 1, 2011, shall be placed under court services or community corrections supervision based upon court rules issued by the chief judge of the 10th judicial district. The provisions contained in this subsection shall not apply to offenders transferred by the assigned agency to an agency located outside of Johnson county. The provisions of this paragraph shall expire on January 1, 2011.

(4) Nothing in this act shall prohibit a community correctional services program from providing services to juvenile offenders upon approval by the local community corrections advisory board. Grants from community

corrections funds administered by the secretary of corrections shall not be expended for such services.

(5) The court may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established, as provided in K.S.A. 22-3716, and amendments thereto, to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by such assignment to a community correctional services program.

(b) (1) In order to establish a mechanism for community correctional services to participate in the department of corrections annual budget planning process, the secretary of corrections shall establish a community corrections advisory committee to identify new or enhanced correctional or treatment interventions designed to divert offenders from prison.

(2) The secretary shall appoint one member from the southeast community corrections region, one member from the northeast community corrections region, one member from the central community corrections region and one member from the western community corrections region. The deputy secretary of community and field services shall designate two members from the state at large. The secretary shall have final appointment approval of the members designated by the deputy secretary. The committee shall reflect the diversity of community correctional services with respect to geographical location and average daily population of offenders under supervision.

(3) Each member shall be appointed for a term of three years and such terms shall be staggered as determined by the secretary. Members shall be eligible for reappointment.

(4) The committee, in collaboration with the deputy secretary of community and field services or the deputy secretary's designee, shall routinely examine and report to the secretary on the following issues:

- (A) Efficiencies in the delivery of field supervision services;
- (B) effectiveness and enhancement of existing interventions;
- (C) identification of new interventions; and
- (D) statewide performance indicators.

(5) The committee's report concerning enhanced or new interventions shall address:

- (A) Goals and measurable objectives;
- (B) projected costs;
- (C) the impact on public safety; and
- (D) the evaluation process.

(6) The committee shall submit its report to the secretary annually on or before July 15 in order for the enhanced or new interventions to be

considered for inclusion within the department of corrections budget request for community correctional services or in the department's enhanced services budget request for the subsequent fiscal year.

Sec. 281. K.S.A. 2010 Supp. 75-52,127 is hereby amended to read as follows: 75-52,127. On or after the effective date of this act, the secretary of corrections may establish conservation camps to provide inmates with a highly structured residential work program. Such conservation camps shall be a state correctional institution or facility for confinement under the supervision of the secretary. A conservation camp may accept defendants assigned to such camp as provided in K.S.A. 21-4603 or K.S.A. 21-4603d, *prior to its repeal, or section 244 or 271 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. Defendants assigned pursuant to K.S.A. 21-4603 or K.S.A. 21-4603d, *prior to its repeal, or section 244 or 271 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to a conservation camp may be transferred by the secretary to any other correctional institution or facility. Any inmate sentenced to the custody of the secretary may be confined in a conservation camp, however, only those inmates assigned to the conservation camp pursuant to subsection (a)(5) or (e) of K.S.A. 21-4603d, *prior to its repeal, or subsection (a)(15) of section 244 of chapter 136 of the 2010 Session Laws of Kansas*, or subsection (b)(6) of K.S.A. 21-4603, *prior to its repeal, or subsection (b)(6) of section 271 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be eligible for release upon successful completion of the conservation camp program.

Sec. 282. K.S.A. 2010 Supp. 75-52,144 is hereby amended to read as follows: 75-52,144. (a) Drug abuse treatment programs certified in accordance with subsection (b) shall provide:

(1) Presentence drug abuse assessments of any person who is convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such sections repeal or K.S.A. 2010 Supp. 21-36a06, and amendments thereto, and meets the requirements of K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(2) treatment of all persons who are convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such sections repeal or K.S.A. 2010 Supp. 21-36a06, and amendments thereto, meet the requirements of K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and whose sentence requires completion of a certified drug abuse treatment program, as provided in this section;

(3) one or more treatment options in the continuum of services needed to reach recovery: Detoxification, rehabilitation, continuing care and after-care, and relapse prevention;

(4) treatment options to incorporate family and auxiliary support services; and

(5) treatment options for alcohol abuse when indicated by the assessment of the offender or required by the court.

(b) The presentence criminal risk-need assessment shall be conducted by a court services officer or a community corrections officer. The presentence drug abuse treatment program placement assessment shall be conducted by a drug abuse treatment program certified in accordance with the provisions of this subsection to provide assessment and treatment services. A drug abuse treatment program shall be certified by the secretary of corrections. The secretary may establish qualifications for the certification of programs, which may include requirements for supervision and monitoring of clients; fee reimbursement procedures; handling of conflicts of interest; delivery of services to clients unable to pay; and other matters relating to quality and delivery of services by the program. Drug abuse treatment may include community based and faith based programs. The certification shall be for a four-year period. Recertification of a program shall be by the secretary. To be eligible for certification under this subsection, the secretary shall determine that a drug abuse treatment program: (1) Meets the qualifications established by the secretary; (2) is capable of providing the assessments, supervision and monitoring required under subsection (a); (3) has employed or contracted with certified treatment providers; and (4) meets any other functions and duties specified by law.

(c) Any treatment provider who is employed or has contracted with a certified drug abuse treatment program who provides services to offenders shall be certified by the secretary of corrections. The secretary shall require education and training which shall include, but not be limited to, case management and cognitive behavior training. The duties of providers who prepare the presentence drug abuse assessment may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring offenders in the treatment programs, notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation.

(d) The cost for all drug abuse assessments and certified drug abuse treatment programs for any person shall be paid by the Kansas sentencing commission from funds appropriated for such purpose. The Kansas sentencing commission shall contract for payment for such services with the supervising agency. The sentencing court shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall be used by the supervising agency to offset costs to the state. If such financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the offender's sentence.

(e) The community corrections staff shall work with the substance

abuse treatment staff to ensure effective supervision and monitoring of the offender.

(f) The secretary of corrections is hereby authorized to adopt rules and regulations to carry out the provisions of this section.

Sec. 283. K.S.A. 2010 Supp. 75-52,148 is hereby amended to read as follows: 75-52,148. (a) The department of corrections shall be required to review and report on the following serious offenses committed by sex offenders, as defined by K.S.A. 22-4902, and amendments thereto, while such offenders are in the custody of the secretary of corrections:

(1) Murder in the first degree, as ~~provided in K.S.A. 21-3401~~ *defined in section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(2) murder in the second degree, as ~~provided in K.S.A. 21-3402~~ *defined in section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(3) capital murder, as ~~provided in K.S.A. 21-3439~~ *defined in section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(4) rape, as ~~provided in K.S.A. 21-3502~~ *defined in section 67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(5) aggravated criminal sodomy, as ~~provided in K.S.A. 21-3506~~ *defined in subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(6) sexual exploitation of a child, as ~~provided in K.S.A. 21-3516~~ *defined in section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(7) kidnapping as ~~provided in K.S.A. 21-3420~~ *defined in subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(8) aggravated kidnapping, as ~~provided in K.S.A. 21-3421~~ *defined in subsection (b) of section 43 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(9) criminal restraint, as ~~provided in K.S.A. 21-3424~~ *defined in section 46 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(10) indecent solicitation of a child, as ~~provided in K.S.A. 21-3510~~ *defined in subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(11) aggravated indecent solicitation of a child, as ~~provided in K.S.A. 21-3511~~ *defined in subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(12) indecent liberties with a child, as ~~provided in K.S.A. 21-3503~~ *defined in subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(13) aggravated indecent liberties with a child, as ~~provided in K.S.A. 21-3504~~ defined in subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(14) criminal sodomy, as ~~provided in K.S.A. 21-3505~~ defined in subsection (a) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(15) ~~aggravated~~ child abuse, as ~~provided in K.S.A. 21-3609~~ defined in section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(16) aggravated robbery, as ~~provided in K.S.A. 21-3427~~ defined in subsection (b) of section 55 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(17) burglary, as ~~provided in K.S.A. 21-3715~~ defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(18) aggravated burglary, as ~~provided in K.S.A. 21-3716~~ defined in subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(19) theft, as ~~provided in K.S.A. 21-3701~~ defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(20) vehicular homicide, as ~~provided in K.S.A. 21-3405~~ defined in section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(21) involuntary manslaughter while driving under the influence, as ~~provided in K.S.A. 21-3442~~ defined in subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or

(22) stalking, as ~~provided in K.S.A. 21-3438~~ defined in section 62 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(b) The secretary of corrections shall submit such report to the speaker of the house of representatives and the president of the senate annually, beginning January 1, 2007.

Sec. 284. K.S.A. 2010 Supp. 76-11a13 is hereby amended to read as follows: 76-11a13. (a) (1) Subject to the provisions of subsection (b), the provisions of K.S.A. 76-11a06 through 76-11a11, and amendments thereto, apply only to: (A) Teachers who have completed not less than three consecutive years of employment, and been offered a contract for a fourth year of employment, at the state school in which the teacher is currently employed; and (B) teachers who have completed not less than two consecutive years of employment, and been offered a contract for a third year of employment, at the state school in which the teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of subpart (A) at the other state school.

(2) The state board may waive, at any time, the years of employment requirements of provision (1) for any teachers employed at a state school.

(3) The provisions of this subsection are subject to the provisions of K.S.A. 76-11a14, and amendments thereto.

(b) The provisions of K.S.A. 76-11a06 through 76-11a11, and amendments thereto, do not apply to any teacher whose certificate has been non-renewed or revoked by the state board for the reason that the teacher: (1) Has been convicted of a felony 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; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 36 through 64, 174, 210 or 211 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, or an act described in K.S.A. 21-3412, *prior to its repeal, or subsection (a) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, if the victim is a minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, or has been convicted of an act described in K.S.A. 21-3517, *prior to its repeal, or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, *prior to their repeal, or sections 78 through 86 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated; *prior to their repeal, or sections 87 through 125 or subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*; (6) has been convicted of an attempt under K.S.A. 21-3301, *prior to its repeal, or section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, *prior to their repeal, or section 212 or 213 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto*; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

Sec. 285. Section 79 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 79. (a) Abuse of a child is knowingly:

(1) Torturing; ~~or cruelly beating or shaking~~ any child under the age of 18 years ~~which results in great bodily harm to the child;~~

(2) *shaking any child under the age of 18 years which results in great bodily harm to the child*; or

(2) (3) inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

(b) Abuse of a child is a severity level 5, person felony.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide.

Sec. 286. Section 228 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 228. (a) Unlawful conduct of cockfighting is:

(1) Causing, for amusement or gain, any gamecock to fight with or injure or kill another gamecock, *with no requirement of culpable mental state*;

(2) knowingly permitting such fighting or injuring on premises under one's ownership, charge or control; or

(3) training, grooming, preparing or medicating any gamecock with the intent of having it fight with or injure or kill another gamecock.

(b) Unlawful possession of cockfighting paraphernalia is possession of, *with the intent to use in the unlawful conduct of cockfighting*, spurs, gaffs, swords, leather training spur covers or anything worn by a gamecock during a fight to further the killing power of such gamecock.

(c) Unlawful attendance of cockfighting is entering or remaining on the premises where the unlawful conduct of cockfighting is occurring, whether or not the person knows or has reason to know that cockfighting is occurring on the premises.

(d) (1) Unlawful conduct of cockfighting is a level 10, nonperson felony.

(2) Unlawful possession of cockfighting paraphernalia is a class A non-person misdemeanor.

(3) Unlawful attendance of cockfighting is a class B nonperson misdemeanor.

(e) As used in this section, "gamecock" means a domesticated fowl that is bred, reared or trained for the purpose of fighting with other fowl.

(f) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for cruelty to animals.

Sec. 287. K.S.A. 2010 Supp. 21-36a03 is hereby amended to read as follows: 21-36a03. (a) It shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

(b) Violation or attempted violation of subsection (a) is a drug severity level 1 felony. The provisions of subsection (d) of ~~K.S.A. 21-3304~~ *section 33 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance pursuant to this section.

(c) For persons arrested and charged under this section, bail shall be at

least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision, or the defendant agrees to participate in a licensed or certified drug treatment program.

(d) The sentence of a person who violates this section shall not be subject to statutory provisions for suspended sentence, community service work or probation.

(e) The sentence of a person who violates this section or K.S.A. 65-4159 prior to its repeal, shall not be reduced because these sections prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to such sections repeal, or K.S.A. 2010 Supp. 21-36a05, and amendments thereto.

Sec. 288. K.S.A. 8-254, 8-285, 8-1450, 9-2004, 19-101d, 19-27,139, 19-4808, 20-369, 22-2411, 22-2615, 22-2307, 22-2908, 22-3008, 22-3102, 22-3220, 22-3414, 22-3415, 22-3427, as amended by section 306 of chapter 136 of the 2010 Session Laws of Kansas, 22-3429, 22-3436, 22-3439, 22-3602, 22-3701, 22-3725, 22-4807a, 34-228, 34-249a, 36-602, 38-1132, 39-720, 39-785, 41-206, 44-1039, 46-920, 47-653c, 47-1715, 50-618, 50-648, 50-651, 50-653, 57-227, 58-2573, 60-523, 60-1620, 60-2610, 60-4111, 60-4402, 60-4404, 60-4405, 65-444, 65-1120, 65-2006, 65-2859, 65-28,108, 65-28a05, 65-4209, 65-6703, 65-6721, 68-422a, 74-7325, 74-7333, 75-4004, 75-5233 and 75-5269; K.S.A. 2010 Supp. 8-116a, 8-255, 8-262, 8-287, 8-2,144, 8-1013, 8-1102, 8-1567, 8-2106, 8-2117, 8-2410, 12-16,119, 12-4104, 12-4516, 12-4516a, 12-4517, 17-12a508, 20-2207, 20-2208, 20-3207, 21-3105, 21-3211, 21-3212, 21-3212a, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218, 21-3220, 21-3221, 21-3301, 21-3302, 21-3303, 21-3437, 21-3446, 21-3447, 21-3449, 21-3450, 21-3502, 21-3504, 21-3506, 21-3513, 21-3516, 21-3520, 21-3608a, 21-36a03, 21-3826, 21-4018, 21-4201, 21-4203, 21-4204, 21-4218, 21-4226, 21-4311, 21-4316, 21-4603d, 21-4610a, 21-4619, 21-4623, 21-4624, 21-4632, 21-4634, 21-4642, 21-4643, 21-4704, 21-4710, 21-4718, 22-2310, 22-3410, 22-2512, 22-2802, 22-2901, 22-2909, 22-3212, 22-3212a, 22-3303, 22-3426, 22-3716, 22-3717, 22-3717c, 22-3727, 22-3727a, 22-4614, 22-4616, 22-4617, 22-4902, 22-4906, 28-177, 32-1013, 32-1047, 32-1063, 36-604, 38-2202, 38-2255, 38-2255a, 38-2271, 38-2302, 38-2303, 38-2309, 38-2310, 38-2312, 38-2313, 38-2326, 38-2331, 38-2355, 38-2356, 38-2361, 38-2364, 38-2365, 38-2371, 38-2377, 39-970, 40-252, 40-2,118, 40-1702, 40-3213, 41-346, 41-2611, 41-2708, 41-2905, 41-2906, 44-5,125, 44-706, 44-719, 44-1131, 45-217, 45-221, 45-230, 47-1706, 47-1707, 58-3043, 58-3068, 58-4505, 59-2132, 59-2948, 59-29a02, 59-29a07, 59-29a14, 59-29b48, 60-312, 60-455, 60-1610, 60-1629, 60-3107, 60-31a06, 60-4104, 60-4105, 60-4113, 60-4119, 60-4403, 60-5001, 65-448, 65-516, 65-516b, 65-1436, 65-1627, 65-2434, 65-2836, 65-5117, 66-2304, 72-1397, 72-5445, 74-4924, 74-5602, 74-7301, 74-7305, 74-8702, 74-9101, 75-452, 75-453, 75-755,

75-7b01, 75-7b13, 75-7c03, 75-7c04, 75-7c05, 75-7c09, 75-7c17, 75-7c19, 75-7c26, 75-1508, 75-4362, 75-5133, 75-5218, 75-5291, 75-52,129, 75-52,144, 75-52,148 and 76-11a13; K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas, 21-3110, as amended by section 5 of chapter 101 of the 2010 Session Laws of Kansas, 21-3412a, as amended by section 6 of chapter 101 of the 2010 Session Laws of Kansas, 21-4603d, as amended by section 7 of chapter 101 of the 2010 Session Laws of Kansas, and 21-4704 as amended by section 6 of chapter 147 of the 2010 Session Laws of Kansas; and Sections 2, 11, 21, 22, 23, 24, 25, 26, 28, 33, 34, 35, 39, 47, 48, 49, 52, 53, 56, 57, 60, 61, 62, 64, 67, 68, 70, 74, 76, 78, 79, 88, 96, 98, 105, 136, 139, 141, 147, 158, 159, 164, 177, 183, 186, 187, 188, 189, 190, 192, 194, 198, 209, 212, 223, 225, 228, 230, 232, 242, 243, 244, 247, 248, 254, 257, 259, 260, 262, 266, 267, 268, 269, 271, 285, 291, 292, 294, 298, 299 and 302 of chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

Sec. 289. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 8, 2011.

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## CHAPTER 31

### HOUSE BILL No. 2028\*

AN ACT concerning trusts; relating to insurable interests of trustees.

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

Section 1. (a) In this section, “settlor” means a person that executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.

(b) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

(1) The insured is:

(A) A settlor of the trust; or

(B) an individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and

(2) the life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have:

(A) An insurable interest in the life of the insured; or

(B) a substantial interest engendered by love and affection in the continuation of the life of the insured and, if not already included under subparagraph (A), who are:

(i) Related within a third degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or law, to the insured; or

(ii) stepchildren of the insured, or children of the insured's stepchild, either by blood or law.

(c) This section shall be part of the supplemental to the Kansas uniform trust code.

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

Approved April 8, 2011.

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## CHAPTER 32

### HOUSE BILL No. 2082

AN ACT concerning the maintenance of previously installed medical gas piping systems in hospitals; amending K.S.A. 2010 Supp. 12-1509 and repealing the existing section.

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

Section 1. K.S.A. 2010 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 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 to any applicant therefor who presents such a certificate of competency. 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 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 certificate shall demonstrate 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 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) ~~On and after January 1, 2011,~~ 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

pipng 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. 2010 Supp. 12-1509 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 8, 2011.

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## CHAPTER 33

### HOUSE BILL No. 2060

AN ACT concerning disposal of decedents’ remains; amending K.S.A. 65-1734 and repealing the existing section.

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

Section 1. K.S.A. 65-1734 is hereby amended to read as follows: 65-1734. (a) The following persons, in order of priority stated, may order any lawful manner of final disposition of a decedent’s remains including burial, cremation, entombment or anatomical donation:

(1) The agent for health care decisions established by a durable power of attorney for health care decisions pursuant to K.S.A. 58-625, et seq., and amendments thereto, if such power of attorney conveys to the agent the authority to make decisions concerning disposition of the decedent’s remains;

(2) the spouse of the decedent;

(3) the decedent’s surviving adult children. If there is more than one adult child, any adult child who confirms in writing the notification of all other adult children, may direct the manner of disposition unless the funeral

establishment or crematory authority receives written objection to the manner of disposition from another adult child;

(4) the decedent's surviving parents;

(5) the persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may direct the manner of disposition;

(6) a guardian of the person of the decedent at the time of such person's death;

(7) the personal representative of the decedent; or

(8) in the case of indigents or any other individuals whose final disposition is the responsibility of the state or county, the public official charged with arranging the final disposition pursuant to K.S.A. 2002 Supp. 22a-215, and amendments thereto.

(b) *If the decedent died during active military service, as provided in 10 U.S.C. § 1481(a)(1) through (8), in any branch of the United States armed forces, United States reserve forces or national guard, the person authorized by the decedent to direct disposition pursuant to public law 109-163, § 564, as listed on the decedent's United States department of defense record of emergency data, DD Form 93, or its successor form, shall take priority over all other persons described in subsection (a).*

~~(b)~~ (c) A funeral director, funeral establishment or crematory shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons under subsection (a) if the funeral director reasonably believes such person is entitled to control final disposition.

Sec. 2. K.S.A. 65-1734 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 8, 2011.

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## CHAPTER 34

HOUSE BILL No. 2074  
(Amended by Chapter 113)

AN ACT concerning insurance rate filings; pertaining to the disclosure of certain information; amending K.S.A. 2010 Supp. 40-955 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 40-955 is hereby amended to read as follows: 40-955. (a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, every manual of classifications, rules and rates,

every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to public inspection after it is filed with the commissioner, *except that disclosure shall not be required for any information contained in a filing or in any supporting documentation for the filing when such information is either a trade secret or copyrighted. For the purposes of this section, the term "trade secret" shall have the meaning ascribed to it in K.S.A. 60-3320, and amendments thereto.* An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

(b) Certificate of insurance forms must be filed with the commissioner of insurance and approved prior to use. Notwithstanding the "large risk" filing exemption in subsection (j), a certificate of insurance cannot be used to modify, alter or amend the insurance policy it describes. The certificate of insurance shall contain the following or similar language: The certificate of insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the policies listed thereon. An industry standard setting organization may be authorized by the commissioner of insurance to file certificate of insurance forms on behalf of authorized insurers.

(c) Any rate filing for the basic coverage required by K.S.A. 40-3401 et seq. and amendments thereto, loss costs filings for workers compensation, and rates for assigned risk plans established by article 21 of chapter 40 of the Kansas Statutes Annotated or rules and regulations established by the commissioner shall require approval by the commissioner before its use by the insurer in this state. As soon as reasonably possible after such filing has been made, the commissioner shall in writing approve or disapprove the same, except that any filing shall be deemed approved unless disapproved within 30 days of receipt of the filing.

(d) Any other rate filing, except personal lines filings, shall become effective on filing or any prospective date selected by the insurer, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fails to meet the requirements of this act. Personal lines rate filings shall be on file for a waiting period of 30 days before becoming effective, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet requirements of this act. The term "personal lines" shall mean insurance for noncommercial automobile, homeowners, dwelling fire-and-renters insurance policies, as defined by the commissioner by rules and regulations. A

filing complies with this act unless it is disapproved by the commissioner within the waiting period or pursuant to subsection (f).

(e) In reviewing any rate filing the commissioner may require the insurer or rating organization to provide, at the insurer's or rating organization's expense, all information necessary to evaluate the reasonableness of the filing, to include payment of the cost of an actuary selected by the commissioner to review any rate filing, if the department of insurance does not have a staff actuary in its employ.

(f) (1) (A) If a filing is not accompanied by the information required by this act, the commissioner shall promptly inform the company or organization making the filing. The filing shall be deemed to be complete when the required information is received by the commissioner or the company or organization certifies to the commissioner the information requested is not maintained by the company or organization and cannot be obtained.

(B) If the commissioner finds a filing does not meet the requirements of this act, the commissioner shall send to the insurer or rating organization that made the filing, written notice of disapproval of the filing, specifying in what respects the filing fails to comply and stating the filing shall not become effective.

(C) If at any time after a filing becomes effective, the commissioner finds a filing does not comply with this act, the commissioner shall after a hearing held on not less than 10 days' written notice to every insurer and rating organization that made the filing issue an order specifying in what respects the filing failed to comply with the act, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. Copies of the order shall be sent to such insurer or rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(2) (A) In the event an insurer or organization has no legally effective rate because of an order disapproving rates, the commissioner shall specify an interim rate at the time the order is issued. The interim rate may be modified by the commissioner on the commissioner's own motion or upon motion of an insurer or organization.

(B) The interim rate or any modification thereof shall take effect prospectively in contracts of insurance written or renewed 15 days after the commissioner's decision setting interim rates.

(C) When the rates are finally determined, the commissioner shall order any overcharge in the interim rates to be distributed appropriately, except refunds to policyholders the commissioner determines are de minimis may not be required.

(3) (A) Any person or organization aggrieved with respect to any filing that is in effect may make written application to the commissioner for a hearing thereon, except that the insurer or rating organization that made the filing may not proceed under this subsection. The application shall specify the grounds to be relied on by the applicant.

(B) If the commissioner finds the application is made in good faith, that the applicant would be so aggrieved if the applicant's grounds are established, and that such grounds otherwise justify holding such a hearing, the commissioner shall, within 30 days after receipt of the application, hold a hearing on not less than 10 days' written notice to the applicant and every insurer and rating organization that made such filing.

(C) Every rating organization receiving a notice of hearing or copy of an order under this section, shall promptly notify all its members or subscribers affected by the hearing or order. Notice to a rating organization of a hearing or order shall be deemed notice to its members or subscribers.

(g) No insurer shall make or issue a contract or policy except in accordance with filings which have been filed or approved for such insurer as provided in this act.

(1) On an application for personal motor vehicle insurance where the applicant has applied for collision or comprehensive coverage, the applicant shall be allowed to identify a lienholder listed on the certificate of title for the motor vehicle described in the application.

(2) On an application for property insurance on real property, the applicant shall be allowed to identify a mortgagee listed on a mortgage for the real property described in the application.

(h) The commissioner may adopt rules and regulations to allow suspension or modification of the requirement of filing and approval of rates as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used.

(i) Except for workers compensation and employer's liability line, the following categories of commercial lines risks are considered special risks which are exempt from the filing requirements in this section: (1) Risks that are written on an excess or umbrella basis; (2) commercial risks, or portions thereof, that are not rated according to manuals, rating plans, or schedules including "a" rates; (3) large risks; and (4) special risks designated by the commissioner, including but not limited to risks insured under highly protected risks rating plans, commercial aviation, credit insurance, boiler and machinery, inland marine, fidelity, surety and guarantee bond insurance risks.

(j) For the purposes of this subsection, "large risk" means: (1) An insured that has total insured property values of \$5,000,000 or more; (2) an insured that has total annual gross revenues of \$10,000,000 or more; or (3) an insured that has in the preceding calendar year a total paid premium of \$50,000 or more for property insurance, \$50,000 or more for general liability insurance, or \$100,000 or more for multiple lines policies.

(k) The exemption for any large risk contained in subsection (h) shall not apply to workers compensation and employer's liability insurance, insurance purchasing groups, and the basic coverage required by K.S.A. 40-3401 et seq., and amendments thereto.

(l) Underwriting files, premium, loss and expense statistics, financial and other records pertaining to special risks written by any insurer shall be maintained by the insurer and shall be subject to examination by the commissioner.

Sec. 2. K.S.A. 2010 Supp. 40-955 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 8, 2011.

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## CHAPTER 35

Senate Substitute for HOUSE BILL No. 2132

AN ACT relating to motor vehicles; providing for the issuance of the families of the fallen license plate; amending K.S.A. 2010 Supp. 8-1,141 and 8-1,147 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, 2012, any owner or lessee of one or more passenger vehicles, trucks of a gross weight of 20,000 pounds or less or motorcycles, who is a resident of the state of Kansas, and who submits satisfactory proof to the director of vehicles, in accordance with rules and regulations adopted by the secretary of revenue, that such person is a department of defense-recognized next of kin of deceased military personnel, upon compliance with the provisions of this section, may be issued one distinctive license plate for each such passenger vehicle, truck or motorcycle, with the designation “families of the fallen.” 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.

(b) Any person who is a department of defense-recognized next of kin of deceased military personnel may make application for such distinctive license 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 distinctive license plates shall furnish the director with proof as the director shall require that the applicant is a department of defense-recognized next of kin of deceased military personnel pursuant to subsection (a). Application for the registration of a passenger vehicle, truck or motorcycle 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.

(c) No registration or distinctive license plates issued under the authority of this section shall be transferable to any other person.

(d) 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. If such form is not filed, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the distinctive license plates to the county treasurer of such person's residence.

(e) The families of the fallen license plate shall have a gold star design printed on the plate.

(f) As used in this section, "department of defense-recognized next of kin of deceased military personnel" means any person entitled to receive the gold star lapel button under 10 U.S.C. § 1126 or the lapel button for next of kin of deceased personnel.

Sec. 2. K.S.A. 2010 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. 2010 Supp. 8-177d ~~or~~, 8-1,163 *or section 1*, 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. 2010 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. 2010 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.

Sec. 3. K.S.A. 2010 Supp. 8-1,147 is hereby amended to read as follows: 8-1,147. In the event of the death of any person issued distinctive license plates under the provisions of K.S.A. 8-161, 8-177a, 8-177c, 8-1,139, 8-1,140, 8-1,145 or 8-1,146 or K.S.A. 2010 Supp. 8-177d ~~or~~, 8-1,163 *or section 1*, and amendments thereto, the surviving spouse or other family member, if there is no surviving spouse, shall be entitled to possession of any such distinctive license plates. Such license plates shall not be displayed on any vehicle unless otherwise authorized by statute.

Sec. 4. K.S.A. 2010 Supp. 8-1,141 and 8-1,147 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 8, 2011.

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## CHAPTER 36

HOUSE BILL No. 2056  
(Amended by Chapter 91)

AN ACT relating to the state bank commissioner; concerning the examination and annual assessment of certain financial institutions; amending K.S.A. 2010 Supp. 9-1703 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 9-1703 is hereby amended to read as follows: 9-1703. (a) The expense of every regular examination, together with the expense of administering the banking and savings and loan laws, including salaries, travel expenses, supplies and equipment, shall be paid by the banks and savings and loan associations of the state, and for this purpose the bank commissioner shall, prior to the beginning of each fiscal year, make an estimate of the expenses to be incurred by the department during such fiscal year. From this total amount the commissioner shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank and savings and loan association assessments. The commissioner shall allocate and assess the remainder to the banks and savings and loan associations in the state on the basis of their total assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 U.S.C. § 1817, and amendments thereto, or K.S.A. 17-5610, and amendments thereto, except that the annual assessment will not be less than \$1,000 for any bank or savings and loan association.

(b) The expense of every regular trust examination, together with the expense of administering trust laws, including salaries, travel expenses, supplies and equipment, shall be paid by the trust companies and trust departments of banks of this state, and for this purpose, the bank commissioner, prior to the beginning of each fiscal year, shall make an estimate of the trust expenses to be incurred by the department during such fiscal year. The commissioner shall allocate and assess the trust departments in the state on the basis of their total fiduciary assets, as reflected in the last ~~March~~ *December* 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 U.S.C. § 1817, and amendments thereto, or K.S.A. 17-5610, and amendments thereto, except that the annual assessment shall not be less than \$1,000 for any active trust department. The commissioner shall allocate and assess the trust companies in the state on the basis of their fiduciary assets as reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704, and amendments thereto, except that the annual assessment will not be less than \$1,000 for any active trust company. A trust department which has no fiduciary assets, as reflected in the last ~~March~~ *December* 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 U.S.C. § 1817, and amendments thereto, or K.S.A. 17-5610, and amend-

ments thereto, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for the inactive trust department. A trust company which has no fiduciary assets, as reflected in the last preceding year-end report filed with the commissioner, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for an inactive trust company. No inactive trust department or trust company shall accept any fiduciary assets or exercise any part of or all of its trust authority until such time as it has applied for and received prior written approval of the commissioner to reactivate its trust authority.

(c) A statement of each assessment made under the provisions of subsection (a) or (b) shall be sent by the commissioner on July 1 or the next business day thereafter, to each bank, savings and loan association, trust department and trust company that exists as a corporate entity with the secretary of state's office as of the close of business on June 30, and is authorized by the office of the state bank commissioner to conduct banking, savings and loan or trust business. The assessment may be collected by the state bank commissioner as needed and in such installment periods as the commissioner deems appropriate, but no more frequently than monthly. When the commissioner issues an invoice to collect the assessment, payment shall be due within 15 days of the date of the invoice. The commissioner may impose a penalty upon any bank, savings and loan association, trust department or trust company which fails to pay its annual assessment when it is 15 days or more past due. The penalty shall be assessed in the amount of \$50 for each day the assessment is past due.

The commissioner shall remit all moneys received from such examination 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. Twenty percent of each deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner 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 commissioner or by a person or persons designated by the commissioner.

(d) The amount of expenses incurred and the cost of service performed on account of any bank, trust department or trust company or other corporation which are outside the normal expenses of an examination required under the provisions of K.S.A. 9-1701 or 17-5612, and amendments thereto, shall be charged to and paid by the bank, trust department, trust company or corporation for which such expenses were incurred or cost of services performed.

(e) As used in this section, "savings and loan association" means a Kansas state-chartered savings and loan association.

(f) (1) In the event a bank, savings and loan association or trust company

is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company, between the preceding March 31 and June 30, for banks and savings and loan associations, or the preceding December 31 and June 30, for trust companies, the surviving or acquiring bank, savings and loan association or trust company is obligated to pay the assessment based on the value of the assets of all institutions involved with the merger, consolidation or assumption for the following fiscal year commencing July 1.

(2) In the event a bank, savings and loan association, or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company after July 1, the surviving entity shall be obligated to pay the unpaid portion of the assessment for the remainder of the fiscal year commencing July 1 which would have been due of the institution being merged, consolidated or assumed.

Sec. 2. K.S.A. 2010 Supp. 9-1703 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 8, 2011.

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## CHAPTER 37

SENATE Substitute for HOUSE BILL No. 2008  
(Amended by Chapters 91 and 100)

AN ACT concerning crimes, punishment and criminal procedure; relating to identity theft and identity fraud; amending section 285 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing section; also repealing K.S.A. 2009 Supp. 21-4704, as amended by section 6 of chapter 147 of the 2010 Session Laws of Kansas and K.S.A. 2010 Supp. 21-4704.

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

Section 1. Section 285 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 285. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Non-Record
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for nondrug crimes represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

(A) Prison sentence;

(B) maximum potential reduction to such sentence as a result of good time; and

(C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the:

(A) Prison sentence; and

(B) duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

(g) The sentence for a violation of ~~section 48, and amendments thereto, K.S.A. 21-3415, prior to its repeal~~, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of *subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(i) (1) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 of chapter 136 of the 2010 Session Laws of Kansas and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto; and

(ii) at the time of the conviction under paragraph subsection (j)(2)(A)(i) has at least one conviction for a sexually violent crime, as defined in K.S.A.

22-3717, and amendments thereto, in this state or comparable felony under the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(ii) at the time of the conviction under ~~paragraph~~ *subsection (j)(2)(B)(i)* has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in ~~paragraph~~ *subsection (j)(2)(B)*, the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) (1) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(2) As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities:

(A) The commission of one or more person felonies; or

(B) the commission of felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto; and

(C) its members have a common name or common identifying sign or symbol; and

(D) its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a)(1) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, *or any attempt or conspiracy, as defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit such offense*, when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal, subsection (a)(1) or (a)(2) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, or subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, *or any attempt or conspiracy to commit such offense*, shall be ~~presumed~~ *presumptive* imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or subsection (a)(2) of section 138 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. If an offense un-

der such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in section 89 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of property, as defined in section 89 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in section 87 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary as defined in subsection (a) of section 93 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in section 87 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary as defined in subsection (a) of section 93 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or the sentence for a felony violation of theft of property as defined in section 87 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary or *aggravated burglary* as defined in section 93 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of section 93 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary or *aggravated burglary* as defined in section 93 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the sentence for a violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period

of postrelease supervision. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) As used in this section, an “optional nonprison sentence” is a sentence which the court may impose, in lieu of the presumptive sentence, upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(r) The sentence for a violation of subsection (c)(2) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) *The sentence for a violation of section 76 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(t) (1) *If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months’ imprisonment.*

(2) *The sentence imposed pursuant to subsection (t)(1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(3) *As used in this subsection, “ballistic resistant material” means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.*

(u) *The sentence for a violation of section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or conspiracy, as defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-4018, prior to its repeal, or section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any attempt or*

*conspiracy to commit such offense, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.*

Sec. 2. K.S.A. 2009 Supp. 21-4704, as amended by section 6 of chapter 147 of the 2010 Session Laws of Kansas and K.S.A. 2010 Supp. 21-4704 and section 285 of chapter 136 of the 2010 Session Laws of Kansas 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 8, 2011.

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## CHAPTER 38

HOUSE BILL No. 2124

AN ACT concerning certified public accountants; relating to professional corporations practicing in partnership; amending K.S.A. 2010 Supp. 1-308 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 1-308 is hereby amended to read as follows: 1-308. (a) Unless exempt from registration pursuant to this section, a firm may engage in the practice of certified public accountancy in this state only if the firm registers with the board, complies with requirements established by rules and regulations adopted by the board for such registration, and meets the following requirements:

(1) At least one general partner, shareholder or member thereof must be a certified public accountant holding a valid permit to practice from this state or a practice privilege under subsection (a) of K.S.A. 1-322, and amendments thereto;

(2) each partner, shareholder or member who is a certified public accountant and whose principal place of business is in this state and who is personally engaged within this state in a practice of certified public accounting must be a certified public accountant of this state holding a valid permit to practice;

(3) each partner, shareholder or member who is a certified public accountant thereof must be a certified public accountant in some state in good standing;

(4) each resident manager in charge of an office of the firm in this state must be a certified public accountant of this state holding a valid permit to practice; and

(5) at least a simple majority of the ownership of the firm, in the terms of equity capital and voting rights of all partners, shareholders or members,

belongs to the holders of valid licenses to practice as certified public accountants in some state. All nonlicensee owners must be of good moral character and must be natural persons actively participating in the business of the firm or actively participating in the business of entities, such as partnerships, corporations or other business associations, that are affiliated with the firm. Although firms may include nonlicensee owners there shall be at least one certified public accountant who has ultimate responsibility for all the services provided by the firm and, the firm and its ownership must comply with rules and regulations promulgated by the board. Any firm which is denied registration pursuant to this section shall be entitled to notice and an opportunity to be heard pursuant to the Kansas administrative procedures act.

(b) Notwithstanding any other provision of Kansas law, the following must be registered by the board:

(1) Any firm with an office in this state which practices certified public accountancy; *and*

(2) any firm that does not have an office in this state but performs or offers to perform attest services described in subsection (d) of K.S.A. 1-321, and amendments thereto, for a client having its home office in this state;

(c) A firm which is not subject to subsection (b) may perform or offer to perform services described in subsection (s) of K.S.A. 1-321, and amendments thereto, and may use the “certified public accountant,” “CPA” or “CPA firm” without registering with the board only if:

(1) The individuals performing such services on behalf of the firm have the qualifications described in subsections (b) and (c) of K.S.A. 1-302b, and amendments thereto;

(2) it performs such services through an individual with practice privileges under K.S.A. 1-322, and amendments thereto; and

(3) it can lawfully perform such services in the state where such individuals with practice privileges have their principal place of business.

(d) An individual who has practice privileges under subsection (a) of K.S.A. 1-322, and amendments thereto, who performs or offers to perform services for which a firm registration is required under this section shall not be required to obtain a certificate or permit under K.S.A. 1-310, and amendments thereto.

(e) *Nothing in this section shall prohibit a professional corporation from practicing in partnership with one or more professional corporations or individuals shall not be and being registered with the board as a partnership unless such a partnership was registered prior to January 1, 2007 under this section.*

(f) The term “resident” as used in this section, shall include a person engaged in practice as a certified public accountant in this state, who spends all or the greater part of such person’s time during business hours in this state, but who resides in another state.

(g) Each firm required to register under this section shall register prior to engaging in the practice of certified public accountancy in this state and shall renew the firm's registration by December 31 of each year. Each firm shall designate a permit holder of this state, or in the case of a firm which must register pursuant to paragraph (2) of subsection (b) a licensee of another state who meets the requirements set out in subsection (a) of K.S.A. 1-322, and amendments thereto, who is responsible for the proper registration of the firm and shall identify that individual to the board by affidavit of a general partner, manager or officer of the firm. A fee may be charged for the registration of a firm.

(h) A firm that is not registered in accordance with this section or not exempt from registration under subsection (c) shall not use the words "certified public accountants" or the abbreviation CPA in connection with its name. Notification shall be given the board, within one month, after the admission or withdrawal of a partner, shareholder or member from any registered firm. Firms which fall out of compliance with the provisions of this section due to changes in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as determined by the board will result in the suspension or revocation of the firm permit.

(i) Any firm prohibited from practicing certified public accountancy in this state, as a result of having a firm registration revoked or suspended by the board, shall not practice under subsection (c) without first obtaining the approval of the board.

Sec. 2. K.S.A. 2010 Supp. 1-308 is hereby repealed.

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

Approved April 8, 2011.

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## CHAPTER 39

### HOUSE BILL No. 2227

AN ACT concerning crimes, criminal procedure and punishment; relating to warrants; amending K.S.A. 22-2304 and repealing the existing section.

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

Section 1. K.S.A. 22-2304 is hereby amended to read as follows: 22-2304. (†) (a) The warrant shall be signed by the magistrate and shall contain the name of the defendant, or, if ~~his~~ *such defendant's* name is unknown, any name or description by which ~~he~~ *such defendant* can be identified with

reasonable certainty. *A defendant may be identified with reasonable certainty by a description of the defendant's unique DNA profile, including, but not limited to, an analysis of short tandem repeats (STRs) amplified by the polymerase chain reaction (PCR) technique.* ~~¶~~ *The warrant shall describe the crime charged in the complaint. ¶ The warrant shall command that the defendant be arrested and brought before a magistrate, as provided by law. The amount of the appearance bond to be required shall be stated in the warrant.*

~~(2)~~ (b) The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place. The summons shall be signed by the magistrate or the clerk of ~~his~~ the court.

Sec. 2. K.S.A. 22-2304 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 8, 2011.

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## CHAPTER 40

### HOUSE BILL No. 2125

AN ACT concerning the Kansas professional regulated sports act; pertaining to violations; pertaining to civil penalties; pertaining to fees; pertaining to rules and regulations; amending K.S.A. 2010 Supp. 74-50,181, 74-50,182, 74-50,185, 74-50,186, 74-50,187, 74-50,189, 74-50,193 and 74-50,194 and repealing the existing sections.

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

New Section 1. (a) Any person who violates any provision of this act or any rule and regulation adopted hereunder may incur, in addition to any other penalty provided by law, a civil penalty in an amount fixed by the commission not to exceed \$10,000 for each violation. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation. In determining the amount of the civil penalty, the commission shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and any corrective actions taken.

(b) All civil penalties assessed under this section shall be due and payable at the time of the violation. All payment of civil penalties assessed shall be held in an escrow fund by the boxing commissioner for 30 days after service on the person upon whom the penalty is being imposed. If a person upon whom a civil penalty has been imposed appeals the assessment, such assessment shall be held in the escrow fund until the commission affirms, reverses or modifies imposing the civil penalty. Once the assess-

ment of the civil penalty becomes a final order, the commission shall deposit the amount of such assessment in the athletic fee fund. If the person who has been assessed a civil penalty does not appeal such assessment as provided in this section, the amount of the civil penalty assessed shall be deposited in the athletic fee fund.

(c) No civil penalty shall be imposed under this section except upon the written order of the commissioner to the person upon whom the penalty is to be imposed, stating the nature of the violation, the penalty imposed and the right of the person upon whom the penalty is imposed to appeal to the commission. Within 15 days after service of the order imposing the civil penalty, the person upon whom the civil penalty has been imposed may make written request to the commission for a hearing or informal conference hearing in accordance with the provisions of the Kansas administrative procedure act. The commission shall affirm, reverse or modify the order and shall specify the reasons therefor. The decision of the commission shall be final unless review is sought under subsection (d).

(d) Any person aggrieved by an order of the commission made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(e) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the athletic fee fund.

(f) This section shall be a part of and supplemental to the Kansas professional regulated sports act.

Sec. 2. K.S.A. 2010 Supp. 74-50,181 is hereby amended to read as follows: 74-50,181. K.S.A. 2010 Supp. 74-50,181 through 74-50,196 *and section 1*, and amendments thereto, shall be known and may be cited as the Kansas professional regulated sports act.

Sec. 3. K.S.A. 2010 Supp. 74-50,182 is hereby amended to read as follows: 74-50,182. As used in the Kansas professional regulated sports act:

(a) *Amateur mixed martial arts* means any form of martial arts or self-defense conducted on a full-contact basis in a contest without weapons and in which the contestants compete without valuable consideration.

~~(a)~~ (b) "Bout" means one match involving a regulated sport.

~~(b)~~ (c) "Commission" means the athletic commission or the commission's designee.

~~(c)~~ (d) "Contest" means a bout or a group of bouts involving licensed contestants competing in a regulated sport.

~~(d)~~ (e) "Contestant" means a person who ~~competes~~ is licensed by the commission to compete in a regulated sport.

~~(e)~~ (f) "Fund" means the athletic fee fund.

~~(f)~~ (g) ~~"Mandatory count of eight" means a required count of eight that is given by a referee to a contestant who has been knocked down.~~

*Grappling arts*” means any form of grappling including, but not limited to, Brazilian jujitsu, catch wrestling, judo, luta livre esportiva, sambo, shoot wrestling, shooto and shuai Jiao conducted on a full-contact basis in a bout or contest without weapons or striking and where contestants may compete for valuable consideration.

~~(g)~~ (h) “Noncompetitive ~~boxing sparring~~” means boxing, ~~or sparring~~ kickboxing or mixed martial arts where a decision is not rendered.

(i) “Pankration” means a martial art system which includes elements of karate, tae-kwon-do, jujitsu, kempo, kung-fu, wrestling, and submission grappling.

~~(h)~~ (j) “Professional boxing” means the sport of attack and defense which uses the fists and where contestants compete for valuable consideration.

~~(i)~~ (k) “Professional full-contact karate” means any form of full-contact martial arts including but not limited to full-contact kung fu, full-contact tae-kwon-do or any form of martial arts or self-defense conducted on a full-contact basis in a bout or contest ~~with or~~ without weapons and where contestants may compete for valuable consideration. ~~Such contests take place in a rope enclosed ring and are fought in timed rounds.~~

~~(j)~~ (l) “Professional kickboxing” means any form of ~~boxing~~ kickboxing in which blows are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot, and where contestants compete for valuable consideration. ~~Such contests take place in a rope enclosed ring and are fought in timed rounds.~~

~~(k)~~ (m) “Professional mixed martial arts” means any form of martial arts or self-defense conducted on a full-contact basis in a bout or contest ~~with or~~ without weapons and where contestants compete for valuable consideration. ~~Such contests take place in an enclosed ring and are fought in timed rounds.~~

~~(l)~~ (n) “Professional wrestling” means any performance of wrestling skills and techniques by two or more professional wrestlers, to which any admission is charged. Participating wrestlers may not be required to use their best efforts in order to win. The winner may have been selected before the performance commences and contestants compete for valuable consideration. ~~Such contests take place in a rope enclosed ring and are fought in timed rounds.~~

~~(m)~~ (o) “Regulated sports” means professional boxing, sparring, professional kickboxing, professional *and amateur* mixed martial arts, *grappling arts*, pankration, professional wrestling and professional full-contact karate.

~~(n)~~ (p) “Sparring” means boxing, kickboxing, professional *and amateur* mixed martial arts, *grappling arts*, pankration, or full-contact karate for practice or as an exhibition.

Sec. 4. K.S.A. 2010 Supp. 74-50,185 is hereby amended to read as

follows: 74-50,185. (a) In accordance with the provisions of the Kansas civil service act, the commission may appoint such *chief inspectors*, inspectors, agents, clerical and administrative personnel as may be necessary to assist in performing the powers, duties and functions of the commission and the boxing commissioner. ~~The boxing commissioner shall not perform duties of an inspector.~~

(b) *The boxing commissioner may contract with inspectors and such other persons as in the commissioner's judgment may be necessary to properly administer the provisions of this act. Such persons shall be under the direct supervision of the boxing commissioner. The boxing commissioner shall not perform duties of an inspector.*

(c) *The commission shall have the authority to adopt rules and regulations for the certification and payment of inspectors. The commission shall adopt such rules and regulations on or before July 1, 2012.*

Sec. 5. K.S.A. 2010 Supp. 74-50,186 is hereby amended to read as follows: 74-50,186. (a) The commission shall have general charge and supervision of all regulated sports ~~and professional wrestling performances~~ held in the state. The commission may enter into agreements with the federal bureau of investigation, the federal internal revenue service, the Kansas attorney general or any state, federal or local agency as necessary to carry out the duties of the commission under this act.

(b) The commission shall accept applications for and may issue licenses to any person, organization, corporation, partnership, limited liability company or association desiring to promote regulated sports contests if such person holds a promoter's license from an organization which has been in existence and has held meetings at regular intervals during the entire year immediately preceding the granting of the license. The commission shall accept applications and may issue licenses to referees, judges, physicians, managers, contestants, timekeepers, seconds, promoters, *announcers* and matchmakers for regulated sports contests. A license fee of not less than \$20 shall accompany any application for licensure. Unless revoked for cause, all licenses issued under this subsection and all renewals thereof shall expire on June 30 of the year succeeding the year in which they were issued. Licenses shall be renewable from year to year upon the filing of a renewal application prior to the expiration of each such license and payment of the fee therefor.

(c) The commission shall fix and collect a ~~tax imposed~~ *fee assessed* against the gross receipts of every regulated sports contest held. The ~~tax~~ *fee* shall be fixed in an amount which, together with all other revenues of the commission, is sufficient to pay the cost of administering and enforcing the provisions of this act, but not to exceed 5%.

(d) ~~The commission shall recommend a taxing and fee structure for all regulated sports and submit such recommendations to the legislature on or before January 1, 2005. The commission shall fix and collect a fee assessed~~

*upon the gross revenues received by a promoter and by any media network that televises a regulated sports contest held including, but not limited to, pay-per-view or internet broadcast. The fee shall be fixed in an amount which, together with all other revenues of the commission, is sufficient to pay the cost of administering and enforcing the provisions of this act, but not to exceed 2%.*

(e) The commission shall suspend or revoke any license issued by the commission for violations of this act or K.S.A. 21-1801, and amendments thereto, or rules and regulations adopted pursuant thereto.

(f) The commission shall assist promoters in developing marketing strategies for contests.

(g) For the purpose of ascertaining compliance with any of the provisions of this act or any rules and regulations adopted pursuant thereto, the commission may request a court to issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of any licensee or officer, member, employee or agent of any licensee, or to compel the appearance of any licensee or officer, member, employee or agent of any licensee, or of any person subject to the provisions of this act. Subpoenas issued pursuant to this subsection may be served upon individuals and corporations in the same manner provided in K.S.A. 60-304, and amendments thereto, for the service of process by any officer authorized to serve subpoenas in civil actions or by the commission or an agent or representative designated by the commission. In the case of the refusal of any person to comply with any such subpoena, the commission may make application to the district court of any county where such books, papers, records, memoranda or person is located for an order to comply.

Sec. 6. K.S.A. 2010 Supp. 74-50,187 is hereby amended to read as follows: 74-50,187. (a) The commission shall adopt any rules and regulations necessary to implement the provisions of this act *on or before July 1, 2012*. Such rules and regulations shall include, but not be limited to, provisions concerning:

(1) The conduct of regulated sports contests, the time and place of such contests and the prices charged for admission thereto.

(2) The issuance of a license under this section and to prescribe qualifications for licensees.

(3) Fees necessary to fund the expenses and operating costs incurred in the administration and enforcement of the provisions of this act.

(4) Standards of conduct, officials required, ring size and construction, age restrictions for contestants, limitations on the number of matches in which a contestant may participate, classification of weight divisions, protective gear, selection of judges and other matter concerning regulated sports deemed necessary by the commission.

(5) The acquisition of liability insurance, indemnity coverage and surety bonds in amounts determined by the commission.

(6) Procedures and conditions for limitation, suspension and revocation of licenses.

(7) *Procedures and requirements for testing for drugs and communicable diseases.*

(8) *The amount of any fees to be assessed upon the gross revenues received by any promoter, broadcaster, media network or distributor who electronically distributes or televises a regulated sports contest including, but not limited to, pay-per-view or internet broadcast.*

(9) *The requirements for full disclosure between any promoter, broadcaster, media network or distributor who electronically distributes or televises a regulated sports contest including, but not limited to, pay-per-view or internet broadcast.*

(10) *Any other rules and regulations deemed necessary by the commission for the administration of the televising, broadcasting or distributing of a regulated sports contest including, but not limited to, pay-per-view or internet broadcast.*

~~(7)~~ (11) Any other matter deemed necessary by the commission to implement and enforce the provisions of this act.

(b) The commission may adopt rules and regulations concerning professional wrestling ~~to the extent authorized by this subsection. Nothing in this subsection shall be construed as subjecting professional wrestling to full regulation by the commission.~~ Rules and regulations concerning professional wrestling ~~shall~~ may be limited to the following:

(1) Requirements that a physician or other emergency medical provider be present at the performance.

(2) Requirements that the promoter notify the commission regarding the location, date and time of a performance.

(3) The payment of fees.

(4) *The acquisition of liability insurance, indemnity coverage and surety bonds in amounts determined by the commission.*

(5) *Any other matter deemed necessary by the commission to implement and enforce the provisions of this act.*

Sec. 7. K.S.A. 2010 Supp. 74-50,189 is hereby amended to read as follows: 74-50,189. The commission shall not issue any license to hold regulated sports contests in the state of Kansas, unless:

(a) Such regulated sports contests are sponsored by a promoter licensed by the commission;

(b) ~~the governing body of the city in which such contests are to be held has adopted a resolution approving the holding of such contest; or if such contests are to be held in the unincorporated area of a county, the board of county commissioners of such county has adopted a resolution approving the holding of such contests~~ *If required by the governing body of the city,*

*the promoter shall obtain a resolution from the governing body to hold such contest; or if such contests are to be held in the unincorporated area of a county, if required the promoter shall obtain a resolution from the board of county commissioners of such county;*

(c) *such contests shall be of not more than 12 rounds of three minutes each duration for professional boxing, professional kickboxing and professional full-contact karate and not more than five rounds of five minutes each duration for professional mixed martial arts and not more than five rounds of four minutes each duration for amateur mixed martial arts; and*

(d) *a license fee, in an amount set by the commission, has been paid by the promoter.*

Sec. 8. K.S.A. 2010 Supp. 74-50,193 is hereby amended to read as follows: 74-50,193. (a) Any person wishing to make a complaint against a licensee under this act, shall file the written complaint with the commission setting forth supporting details on a form provided by the commission. If the commission determines that the complaint warrants a hearing to ascertain whether the licensee shall be disciplined, the commission shall file a complaint as provided in the Kansas administrative procedure act. Any person holding more than one license issued by the commission and disciplined under one license will be automatically disciplined under all licenses.

(b) The commission may refuse to issue any license for one or any combination of reasons specified by this section. The commission shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of such applicant's right to file a complaint or an appeal for administrative hearing as provided in the Kansas administrative procedure act.

~~(e) The commission may file a complaint as provided in the Kansas administrative procedure act, against any holder of any license issued pursuant to this chapter, or against any person who has failed to renew or has surrendered their license for any of the following:~~

~~(1) Use of an alcoholic beverage or any controlled substance before or during a bout.~~

~~(2) The person has been found guilty or has entered a plea of guilty or nolo contendere in a criminal prosecution under any state or federal law for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this act, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not a sentence is imposed.~~

~~(3) Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to this act.~~

~~(4) Providing false information on applications or medical forms.~~

~~(5) Incompetency, misconduct, gross negligence, fraud, misrepresenten-~~

~~tation or dishonesty in the performing of the functions or duties of any profession licensed or regulated by this act.~~

~~(6) Violating or enabling any person to violate any provision of this act or any rule and regulation adopted pursuant to this act.~~

~~(7) Impersonating any license holder or allowing any person to use the licensee's license.~~

~~(8) Failing to put forth the best effort during a bout.~~

~~(9) Disciplinary action against a holder of a license or other right to practice any profession regulated by this act and issued by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state.~~

~~(10) Adjudged mentally incompetent by a court of competent jurisdiction.~~

~~(11) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation primarily is directed.~~

~~(12) Disruptive conduct at regulated sports contests, including the use of foul or abusive language or mannerisms or threats of physical harm by any person associated with any bout or contest licensed pursuant to this act.~~

~~(13) Issuance of a license based upon a mistake of fact.~~

~~(14) Use of grease, ointments, strong smelling liniment, drugs which cause nausea or harmful reactions, liquids or powders or illegal substances is prohibited during a regulated sports contest.~~

~~(d) After the complaint is filed, the proceeding shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If the administrative law judge finds that a person has violated one or more of the grounds specified in this section, such judge may limit and condition the license for a period not to exceed five years, suspend the person's license for a period not to exceed three years or may revoke the person's license.~~

~~(e) The commission may refuse to issue a license to any person who has violated any of the grounds specified in this section.~~

*(c) The commission may deny, suspend, revoke or refuse renewal of any license issued under this act if the commission finds that the applicant or license holder has:*

*(1) Provided incorrect, misleading, incomplete or untrue information in the license application.*

*(2) Violated:*

*(A) Any provision of this act or any rule and regulation adopted thereunder; or*

*(B) any subpoena or order of the commission.*

*(3) Used any alcoholic beverage or any controlled substance before or during a bout.*

*(4) Has been found guilty or has entered a plea of guilty or nolo contendere in a criminal prosecution under any state or federal law for any offense reasonably related to the qualifications, functions or duties of any*

*profession licensed or regulated under this act, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not a sentence is imposed.*

*(5) Used fraud, deception, misrepresentation or bribery in securing any license issued pursuant to this act.*

*(6) Provided false information on applications or medical forms.*

*(7) Been incompetent or engaged in any misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performing of the functions or duties of any profession licensed or regulated by this act.*

*(8) Violated or enabled any person to violate any provision of this act or any rule and regulation adopted thereunder.*

*(9) Impersonated any license holder or allowed any person to use the licensee's license.*

*(10) Failed to put forth the best effort during a bout.*

*(11) Been disciplined by another state, territory, federal agency or country for any action against a holder of a license or other right to practice any profession regulated by this act upon grounds for which revocation or suspension is authorized in this state.*

*(12) Been adjudged mentally incompetent by a court of competent jurisdiction.*

*(13) Used any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation primarily is directed.*

*(14) Used disruptive conduct at regulated sports contests, including the use of foul or abusive language or mannerisms or threats of physical harm by any person associated with any bout or contest licensed pursuant to this act.*

*(15) Been issued a license based upon a mistake of fact.*

*(16) Used any grease, ointment, strong smelling liniment, drug which causes nausea or harmful reactions, liquid or powder or illegal substance during a regulated sports contest.*

*(d) Any action taken under this section which affects any license or imposes any administrative penalty shall be taken only after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedures act.*

*(e) None of the following actions shall deprive the commission of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such license, to render a decision suspending, revoking or refusing to renew such license, or to establish and make a record of the facts of any violation of law for any lawful purpose:*

*(1) The imposition of a civil penalty under this act;*

*(2) the lapse or suspension of any license issued under this act by operation of law;*

*(3) the licensee's failure to renew any license issued under this act; or*

*(4) the licensee's voluntary surrender of any license issued under this*

*act. No such disciplinary proceeding shall be instituted against any licensee after the expiration of two years from the termination of the license.*

Sec. 9. K.S.A. 2010 Supp. 74-50,194 is hereby amended to read as follows: 74-50,194. A regulated sports contestant may participate in a contest in Kansas after obtaining a license from the commission. If a contestant ~~participate~~ *participates* in more than one profession covered by this act, such contestant shall obtain a license for each profession in which such contestant participates.

Sec. 10. K.S.A. 2010 Supp. 74-50,181, 74-50,182, 74-50,185, 74-50,186, 74-50,187, 74-50,189, 74-50,193 and 74-50,194 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 8, 2011.

Published in the *Kansas Register* April 14, 2011.

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## CHAPTER 41

HOUSE BILL No. 2218  
(Amended by Chapter 91)

AN ACT concerning abortion; relating to restrictions on late term abortions;  
amending K.S.A. 65-445 and repealing the existing section.

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

New Section 1. The legislature hereby finds and declares that:

(a) Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than 16 weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks;

(b) by eight weeks after fertilization, the unborn child reacts to touch. By 20 weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling;

(c) in the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response;

(d) subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral and learning disabilities later in life;

(e) for the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli is applied without such anesthesia;

(f) the position, asserted by some medical experts, that the unborn child

is incapable of experiencing pain until a point later in pregnancy than 20 weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain;

(g) substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain;

(h) in adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does;

(i) substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the sub-cortical plate, to fulfill the role of pain processing;

(j) consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks after fertilization; and

(k) it is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

New Sec. 2. As used in sections 1 through 3, and amendments thereto:

(a) “Abortion” means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.

(b) “Bodily function” means physical function. The term “bodily function” does not include mental or emotional functions.

(c) “Department” means the department of health and environment.

(d) “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

(e) “Medical emergency” means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining gestational age to avert her death or for which a delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(f) “Pain-capable unborn child” means an unborn child having reached the gestational age of 22 weeks or more.

(g) “Physician” means a person licensed to practice medicine and surgery in this state.

(h) “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s body.

New Sec. 3. (a) No person shall perform or induce, or attempt to perform or induce an abortion upon a pain-capable unborn child unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing, or attempting to perform or induce the abortion and both physicians provide a written determination, based upon a medical judgment arrived at using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances and that would be made by a reasonably prudent physician, knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with respect to the conditions involved, that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(b) Except in the case of a medical emergency, a copy of the written documented referral and of the abortion-performing physician’s written determination shall be provided to the pregnant woman no less than 30 minutes prior to the initiation of the abortion. The written determination shall be time-stamped at the time it is delivered to the pregnant woman. The medical basis for the determination shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto. Such determination shall specify:

(1) If the abortion is necessary to preserve the life of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would cause the death of the pregnant woman; or

(2) if a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would constitute a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(c) (1) Except in the case of a medical emergency, prior to performing or inducing, or attempting to perform or induce an abortion upon a woman,

the physician shall determine the gestational age of the unborn child according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to gestational age. The physician shall document as part of the medical records of the woman the basis for the determination of gestational age. The physician shall report such determinations, the medical basis and the reasons for such determinations in writing to the medical care facility in which the abortion is performed or induced for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed or induced in a medical care facility, the physician who performs or induces the abortion shall report such determinations, the medical basis and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(2) If the physician determines the gestational age of the unborn child is 22 or more weeks, then no abortion of the pain-capable unborn child shall be performed or induced, or attempted to be performed or induced except as provided for in subsection (a). In such event, the physician who performs or induces the abortion shall report such determinations, the medical basis and the reasons for such determinations, including the specific medical diagnosis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the name of the referring physician required by subsection (a) in writing to the medical care facility in which the abortion is performed or induced for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed or induced in a medical care facility, the physician who performs or induces the abortion shall report such determinations, the medical basis and the reasons for such determinations, including the specific medical diagnosis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman and the name of the referring physician required by subsection (a) in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(3) The physician shall retain the medical records required to be kept under this subsection for not less than 10 years.

(d) The secretary of health and environment shall adopt rules and regulations to administer this section. Such rules and regulations shall include:

(1) A detailed list of the information that must be kept by a physician under this section;

(2) the contents of the written reports required under this section; and

(3) detailed specifications regarding information that must be provided by a physician in order to comply with the obligation to disclose the medical basis and specific medical diagnosis relied upon in determining gestational age and in determining that an abortion is necessary to preserve the life of the pregnant woman, or that a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

(e) A woman upon whom an abortion is performed or induced, or attempted to be performed or induced shall not be prosecuted under this section for a conspiracy to violate this section pursuant to section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(f) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

(g) (1) A woman upon whom an abortion is performed or induced in violation of this section, the father, if married to the woman at the time of the abortion, and the parents or custodial guardian of the woman, if the woman has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed or induced, the pregnancy resulted from the plaintiff's criminal conduct.

(2) Such relief shall include:

(A) Money damages for all injuries, psychological and physical, occasioned by the violation of this section;

(B) statutory damages equal to three times the cost of the abortion; and

(C) reasonable attorney fees.

(h) The prosecution of violations of this section may be brought by the attorney general or by the district attorney or county attorney for the county where any violation of this section is alleged to have occurred.

(i) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

(j) Upon a first conviction of a violation of this section, a person shall be guilty of a class A person misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, person felony.

Sec. 4. K.S.A. 65-445 is hereby amended to read as follows: 65-445. (a) Every medical care facility shall keep written records of all pregnancies which are lawfully terminated within such medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are lawfully terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated, information required to be reported under K.S.A. 65-6703 *and section 3*, and amendments thereto, if applicable to the pregnancy terminated, and such other information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated.

(c) Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility which submits a report to the secretary under this section, except that such information, including information identifying such persons and facilities may be disclosed to the state board of healing arts upon request of the board for disciplinary action conducted by the board and may be disclosed to the attorney general upon a showing that a reasonable cause exists to believe that a violation of this act has occurred. Any information disclosed to the state board of healing arts or the attorney general pursuant to this subsection shall be used solely for the purposes of a disciplinary action or criminal proceeding. Except as otherwise provided in this subsection, information obtained by the secretary under this section may be used only for statistical purposes and such information shall not be released in a manner which would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor.

(d) In addition to such criminal penalty under subsection (c), any person licensed to practice medicine and surgery or medical care facility whose identity is revealed in violation of this section may bring a civil action against the responsible person or persons for any damages to the person licensed to practice medicine and surgery or medical care facility caused by such violation.

(e) For the purpose of maintaining confidentiality as provided by subsections (c) and (d), reports of terminations of pregnancies required by this

section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

New Sec. 5. Nothing in this act shall be construed to repeal any statute dealing with abortion, but shall be considered supplemental to such other statutes.

Sec. 6. K.S.A. 65-445 is hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 8, 2011.

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## CHAPTER 42

### HOUSE BILL No. 2184

AN ACT concerning premises liability; relating to recreational purposes; relating to noncommercial aviation; amending K.S.A. 58-3202 and repealing the existing section.

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

Section 1. K.S.A. 58-3202 is hereby amended to read as follows: 58-3202. As used in this act: (a) “Land” means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty and includes agricultural and nonagricultural land.

(b) “Owner” means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

(c) “Recreational purpose” includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, *noncommercial aviation activities* and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(d) “Charge” means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

(e) “Agricultural land” means land suitable for use in farming and includes roads, water, watercourses and private ways located upon or within the boundaries of such agricultural land and buildings, structures and machinery or equipment when attached to such agricultural land.

(f) “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.

(g) “Nonagricultural land” means all land other than agricultural land.

Sec. 2. K.S.A. 58-3202 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 8, 2011.

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## CHAPTER 43

### House Substitute for SENATE BILL No. 101

AN ACT concerning cities and counties; relating to residential fire protection sprinkler systems; amending K.S.A. 2010 Supp. 12-16,219 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 12-16,219 is hereby amended to read as follows: 12-16,219. (a) As used in this section:

(1) “Municipality” means any city or county.

(2) “Residential structure” means any improvement to real property to be used or occupied as a single-family dwelling or multi-family dwelling of two attached living units or less or any manufactured home.

(b) ~~On and after July 1, 2010,~~ No municipality shall adopt or enforce any ordinance, order, code, standard or rule requiring the installation of a multi-purpose residential fire protection sprinkler system or any other fire sprinkler protection system in any residential structure. Nothing in this section shall prohibit any person from voluntarily installing a multi-purpose residential fire protection sprinkler system or any other fire sprinkler protection system in a residential structure.

(c) ~~The provisions of this section shall expire on July 1, 2011~~ *No municipality shall require the installation of a multi-purpose residential fire protection sprinkler system in any residential structure as a condition for consideration or approval of any building permit or plat.*

Sec. 2. K.S.A. 2010 Supp. 12-16,219 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 8, 2011.

Published in the *Kansas Register* April 14, 2011.

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## CHAPTER 44

HOUSE BILL No. 2035  
(Amended by Chapter 91)

AN ACT concerning abortion; regarding certain prohibitions on late-term and partial birth abortion; amending K.S.A. 65-445, 65-6701, 65-6703, 65-6705 and 65-6721 and K.S.A. 2010 Supp. 38-2223, 65-6709 and 65-6710 and repealing the existing sections; also repealing K.S.A. 65-6713.

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

Section 1. K.S.A. 2010 Supp. 38-2223 is hereby amended to read as follows: 38-2223. (a) *Persons making reports.* (1) When any of the following persons has reason to suspect that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsections (b) and (c);

(A) The following persons providing medical care or treatment: Persons licensed to practice the healing arts, dentistry and optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed professional or practical nurses; and chief administrative officers of medical care facilities;

(B) the following persons licensed by the state to provide mental health services: Licensed psychologists, licensed masters level psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors;

(C) teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; ~~and~~

(D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers and community corrections officers, case managers appointed under K.S.A. 23-1001 et seq., and amendments thereto, and mediators appointed under K.S.A. 23-602, and amendments thereto; *and*

(E) *any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers, including, but not limited to, counseling, adoption services and pregnancy education and maintenance.*

(2) In addition to the reports required under subsection (a)(1), any person who has reason to suspect that a child may be a child in need of care may report the matter as provided in subsection (b) and (c).

(b) *Form of report.* (1) The report may be made orally and shall be followed by a written report if requested. Every report shall contain, if known: The names and addresses of the child and the child's parents or other persons responsible for the child's care; the location of the child if

not at the child's residence; the child's gender, race and age; the reasons why the reporter suspects the child may be a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the harm to the child, including any evidence of previous harm; and any other information that the reporter believes might be helpful in establishing the cause of the harm and the identity of the persons responsible for the harm.

(2) When reporting a suspicion that a child may be in need of care, the reporter shall disclose protected health information freely and cooperate fully with the secretary and law enforcement throughout the investigation and any subsequent legal process.

(c) *To whom made.* Reports made pursuant to this section shall be made to the secretary, except as follows:

(1) When the department of social and rehabilitation services is not open for business, reports shall be made to the appropriate law enforcement agency. On the next day that the department is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to K.S.A. 2010 Supp. 38-2226, and amendments thereto. The reports may be made orally or, on request of the secretary, in writing.

(2) Reports of child abuse or neglect occurring in an institution operated by the secretary of social and rehabilitation services or the commissioner of juvenile justice shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the department of social and rehabilitation services shall be made to the appropriate law enforcement agency.

(d) *Death of child.* Any person who is required by this section to report a suspicion that a child is in need of care and who knows of information relating to the death of a child shall immediately notify the coroner as provided by K.S.A. 22a-242, and amendments thereto.

(e) *Violations.* (1) Willful and knowing failure to make a report required by this section is a class B misdemeanor. It is not a defense that another mandatory reporter made a report.

(2) Intentionally preventing or interfering with the making of a report required by this section is a class B misdemeanor.

(3) Any person who willfully and knowingly makes a false report pursuant to this section or makes a report that such person knows lacks factual foundation is guilty of a class B misdemeanor.

(f) *Immunity from liability.* Anyone who, without malice, participates in the making of a report to the secretary or a law enforcement agency relating to a suspicion a child may be a child in need of care or who participates in any activity or investigation relating to the report or who participates in any judicial proceeding resulting from the report shall have immunity from any civil liability that might otherwise be incurred or imposed.

Sec. 2. K.S.A. 65-445 is hereby amended to read as follows: 65-445. (a) Every medical care facility shall keep written records of all pregnancies which are lawfully terminated within such medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are lawfully terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated, information required to be reported under *subsections (b) and (c) of K.S.A. 65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A. 65-6721*, and amendments thereto, if applicable to the pregnancy terminated, and such other information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated. *Each report required by subsections (b) and (c) of K.S.A. 65-6703, subsection (j) of K.S.A. 65-6705 and subsection (c) of K.S.A. 65-6721, and amendments thereto, shall specify the medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function or the medical diagnosis and condition which necessitated performance of an abortion to preserve the life of the pregnant woman. Each report required by K.S.A. 65-6703, and amendments thereto, shall include a sworn statement by the physician performing the abortion and the referring physician that such physicians are not legally or financially affiliated.*

(c) Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility which submits a report to the secretary under this section, except that such information, including information identifying such persons and facilities may be disclosed to the state board of healing arts upon request of the board for disciplinary action conducted by the board and may be disclosed to the attorney general or any district or county attorney in this state upon a showing that a reasonable cause exists to believe that a violation of this act has occurred. Any information disclosed to the state board of healing arts, ~~or~~ the attorney general or any district or county attorney pursuant to this subsection shall be used solely for the purposes of a disciplinary action or criminal proceeding. Except as otherwise provided in this subsection, information obtained by the secretary under this section may be used only for statistical purposes and such information shall not be released in a manner which would identify

any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor.

(d) In addition to such criminal penalty under subsection (c), any person licensed to practice medicine and surgery or medical care facility whose identity is revealed in violation of this section may bring a civil action against the responsible person or persons for any damages to the person licensed to practice medicine and surgery or medical care facility caused by such violation.

(e) For the purpose of maintaining confidentiality as provided by subsections (c) and (d), reports of terminations of pregnancies required by this section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

(f) *The annual public report on abortions performed in Kansas issued by the secretary of health and environment shall contain the information required to be reported by this section to the extent such information is not deemed confidential pursuant to this section. The secretary of health and environment shall adopt rules and regulations to implement this section. Such rules and regulations shall prescribe, in detail, the information required to be kept by the physicians and hospitals and the information required in the reports which must be submitted to the secretary.*

(g) *The department of social and rehabilitation services shall prepare and publish an annual report on the number of reports of child sexual abuse received by the department from abortion providers. Such report shall be categorized by the age of the victim and the month the report was submitted to the department. The name of the victim and any other identifying information shall be kept confidential by the department and shall not be released as part of the public report.*

Sec. 3. K.S.A. 65-6701 is hereby amended to read as follows: 65-6701. As used in this act:

(a) ~~“Abortion” means the use of any means to intentionally terminate a pregnancy except for the purpose of causing a live birth. Abortion does not include: (1) The use of any drug or device that inhibits or prevents ovulation, fertilization or the implantation of an embryo; or (2) disposition of the product of fertilization prior to implantation.~~ *the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.*

(b) “Counselor” means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) registered to practice professional counseling; (5) licensed as a social worker; (6) the holder of a master’s or doctor’s degree from an accredited graduate school of social work; (7) registered to practice marriage and family therapy; (8) a licensed physician assistant; or (9) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(c) “Department” means the department of health and environment.

(d) “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

(e) “Medical emergency” means that condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(f) “Minor” means a person less than 18 years of age.

(g) “Physician” means a person licensed to practice medicine and surgery in this state.

(h) “Pregnant” or “pregnancy” means that female reproductive condition of having ~~a fetus~~ *an unborn child* in the mother’s body.

(i) “Qualified person” means an agent of the physician who is a psychologist, licensed social worker, registered professional counselor, registered nurse or physician.

(j) “Unemancipated minor” means any minor who has never been: (1) Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor’s parents.

(k) “Viable” means ~~that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means; that stage of fetal development when it is the physician’s judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother’s womb with natural or artificial life-supportive measures.~~

Sec. 4. K.S.A. 65-6703 is hereby amended to read as follows: 65-6703.

(a) No person shall perform or induce an abortion when the ~~fetus~~ *unborn child* is viable unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians ~~determine~~ *provide a written determination, based upon a medical judgment ar-*

rived at using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances and that would be made by a reasonably prudent physician, knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with respect to the conditions involved, that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) *Except in the case of a medical emergency, a copy of the written documented referral and of the abortion-performing physician's written determination shall be provided to the pregnant woman no less than 30 minutes prior to the initiation of the abortion. The written determination shall be time-stamped at the time it is delivered to the pregnant woman. The medical basis for the determination shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto. Such determination shall specify:*

(1) *If the unborn child was determined to be nonviable and the medical basis of such determination;*

(2) *if the abortion is necessary to preserve the life of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would cause the death of the pregnant woman; or*

(3) *if a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would constitute a substantial and irreversible impairment of a major bodily function of the pregnant woman.*

(b) (c) (1) Except in the case of a medical emergency, prior to performing an abortion upon a woman, the physician shall determine the gestational age of the ~~fetus~~ unborn child according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination. *The medical basis for the determination of the gestational age of the unborn child shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.*

(2) If the physician determines the gestational age of the ~~fetus~~ unborn child is 22 or more weeks, prior to performing an abortion upon the woman the physician shall determine if the ~~fetus~~ unborn child is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or

similar circumstances. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the ~~fetus~~ *unborn child* and shall enter such findings and determinations of viability in the medical record of the woman.

(3) If the physician determines the gestational age of ~~a fetus~~ *an unborn child* is 22 or more weeks, and determines that the ~~fetus~~ *unborn child* is not viable and performs an abortion on the woman, the physician shall report such determinations, *the medical basis* and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report such determinations, *the medical basis* and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(4) If the physician who is to perform the abortion determines the gestational age of ~~a fetus~~ *an unborn child* is 22 or more weeks, and determines that the ~~fetus~~ *unborn child* is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, *the medical basis* and the reasons for such determinations ~~and the basis~~, *including the specific medical diagnosis* for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman *and the name of the referring physician required by subsection (a)* in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, *the medical basis* and the reasons for such determinations ~~and the basis~~, *including the specific medical diagnosis* for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman *and the name of the referring physician required by subsection (a)* in writing to the secretary of health and environment as part of the written report made by the physician to the

secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10 years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10 years.

(d) *The secretary of health and environment shall adopt rules and regulations to administer this section. Such rules and regulations shall include:*

(1) *A detailed list of the information that must be kept by a physician under paragraphs (1) and (2) of subsection (c);*

(2) *the contents of the written reports required under paragraphs (3) and (4) of subsection (c); and*

(3) *detailed specifications regarding information that must be provided by a physician in order to comply with the obligation to disclose the medical basis and specific medical diagnosis relied upon in determining that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.*

~~(e)~~ (e) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.

~~(f)~~ (f) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

(g) (1) *A woman upon whom an abortion is performed in violation of this section, the father, if married to the woman at the time of the abortion, and the parents or custodial guardian of the woman, if the woman has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct.*

(2) *Such relief shall include:*

(A) *Money damages for all injuries, psychological and physical, occasioned by the violation of this section;*

(B) *statutory damages equal to three times the cost of the abortion; and*

(C) *reasonable attorney fees.*

(h) *The prosecution of violations of this section may be brought by the attorney general or by the district attorney or county attorney for the county where any violation of this section is alleged to have occurred.*

(i) *Nothing in this section shall be construed to restrict the authority of the board of healing arts to engage in a disciplinary action.*

~~(e)~~ ~~As used in this section, "viable" means that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the~~

~~life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.~~

~~(f)~~ (j) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

~~(g)~~ (k) Upon a first conviction of a violation of this section, a person shall be guilty of a class A nonperson misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, nonperson felony.

Sec. 5. K.S.A. 65-6705 is hereby amended to read as follows: 65-6705.

~~(a) Before a person performs an abortion upon an unemancipated minor, the person or the person's agent must give actual notice of the intent to perform such abortion to one of the minor's parents or the minor's legal guardian or must have written documentation that such notice has been given unless, after receiving counseling as provided by subsection (a) of K.S.A. 65-6704, the minor objects to such notice being given. If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the notice requirement of this subsection. If the minor so desires, the counselor who counseled the minor as required by K.S.A. 65-6704 shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the application. Except in the case of a medical emergency or as otherwise provided in this section, no person shall perform an abortion upon an unemancipated minor, unless the person first obtains the notarized written consent of the minor and both parents or the legal guardian of the minor.~~

~~(1) If the minor's parents are divorced or otherwise unmarried and living separate and apart, then the written consent of the parent with primary custody, care and control of such minor shall be sufficient.~~

~~(2) If the minor's parents are married and one parent is not available to the person performing the abortion in a reasonable time and manner, then the written consent of the parent who is available shall be sufficient.~~

~~(3) If the minor's pregnancy was caused by sexual intercourse with the minor's natural father, adoptive father, stepfather or legal guardian, then the written consent of the minor's mother shall be sufficient. Notice of such circumstances shall be reported to the proper authorities as provided in K.S.A. 2010 Supp. 38-2223, and amendments thereto.~~

~~(b) After receiving counseling as provided by subsection (a) of K.S.A. 65-6704, and amendments thereto, the minor may object to the written consent requirement set forth in subsection (a). If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the written consent requirement. If the minor so desires, the counselor who counseled the minor~~

*as required by K.S.A. 65-6704, and amendments thereto, shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the petition. The minor may participate in proceedings in the court on the minor's own behalf or through the adult petitioning on the minor's behalf. The court shall provide a court-appointed counsel to represent the minor at no cost to the minor.*

(c) Court proceedings under this section shall be anonymous and the court shall ensure that the minor's identity is kept confidential. The court shall order that a confidential record of the evidence in the proceeding be maintained. All persons shall be excluded from hearings under this section except the minor, her attorney and such other persons whose presence is specifically requested by the applicant or her attorney.

(d) ~~Notice~~ *Consent* shall be waived if the court finds by a ~~preponderance of the clear and convincing~~ evidence that either: (1) The minor is mature and well-informed enough to make the abortion decision on her own; or (2) ~~notification of a person~~ *the consent of the individuals* specified in subsection (a) would not be in the best interest of the minor.

(e) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision as follows:

(1) Granting the minor's application for waiver of ~~notice~~ *consent* pursuant to this section, if the court finds that the minor is mature and well-enough informed to make the abortion decision without ~~notice to a person~~ *the consent of the individuals* specified in subsection (a);

(2) granting the minor's application for waiver of *consent* if the court finds that the minor is immature but that ~~notification of a person~~ *consent of the individuals* specified in subsection (a) would not be in the minor's best interest; or

(3) denying the application if the court finds that the minor is immature and that waiver of ~~notification of a person~~ *the consent of the individuals* specified in subsection (a) would not be in the minor's best interest.

(f) The court shall give proceedings under this section such precedence over other pending matters as necessary to ensure that the court may reach a decision promptly. The court shall issue a written order which shall be issued immediately to the minor, or her attorney or other individual designated by the minor to receive the order. If the court fails to rule within 48 hours, excluding Saturdays and Sundays, of the time of the filing of the minor's application, the application shall be deemed granted.

(g) An expedited anonymous appeal shall be available to any minor. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice to appeal.

(h) The supreme court shall promulgate any rules it finds are necessary to ensure that proceedings under this act are handled in an expeditious and anonymous manner.

(i) No fees shall be required of any minor who avails herself of the procedures provided by this section.

(j) (1) No ~~notice consent~~ shall be required under this section if:

~~(A) The pregnant minor declares that the father of the fetus is one of the persons to whom notice may be given under this section;~~

~~(B) in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion; or~~

~~(C) the person or persons who are entitled to notice have signed a written, notarized waiver of notice which is placed in the minor's medical record.~~

~~(2) A physician who does not comply with the provisions of this section by reason of the exception of subsection (j)(1)(A) must inform the minor that the physician is required by law to report the sexual abuse to the department of social and rehabilitation services. A physician who does not comply with the requirements of this section by reason of the exception of subsection (j)(1)(B) A physician acting pursuant to this subsection shall state in the medical record of the abortion the medical indications on which the physician's judgment was based. The medical basis for the determination shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.~~

(k) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally and knowingly fails to conform to any requirement of this section, is guilty of a class A person misdemeanor.

(l) Except as necessary for the conduct of a proceeding pursuant to this section, it is a class B person misdemeanor for any individual or entity to willfully or knowingly: (1) Disclose the identity of a minor petitioning the court pursuant to this section or to disclose any court record relating to such proceeding; or (2) permit or encourage disclosure of such minor's identity or such record.

*(m) Prior to conducting proceedings under this section, the court may require the minor to participate in an evaluation session with a psychiatrist, licensed psychologist or licensed clinical social worker. Such evaluation session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for this purpose. Persons conducting such sessions may employ the information and materials referred to in K.S.A. 65-6708 et seq., and amendments thereto, in examining how well the minor is informed about pregnancy, fetal development, abortion risks and consequences and abortion alternatives, and should also endeavor to verify that the minor is seeking*

*an abortion of her own free will and is not acting under intimidation, threats, abuse, undue pressure or extortion by any other persons. The results of such evaluation shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to or at the proceedings initiated pursuant to this section.*

*(n) In determining if a minor is mature and well-enough informed to make the abortion decision without parental consent, the court shall take into account the minor's experience level, perspective and judgment. In assessing the minor's experience level, the court shall consider, along with any other relevant factors, the minor's age, experience working outside the home, living away from home, traveling on her own, handling personal finances and making other significant decisions. In assessing the minor's perspective, the court shall consider, along with any other relevant factors, what steps the minor has taken to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the minor's judgment, the court shall consider, along with any other relevant factors, her conduct since learning of her pregnancy and her intellectual ability to understand her options and to make informed decisions.*

*(o) The judicial record of any court proceedings initiated pursuant to this section shall upon final determination by the court be compiled by the court. One copy of the judicial record shall be given to the minor or an adult chosen by the minor to bring the initial petition under this section. A second copy of the judicial record shall be sent by the court to the abortion provider who performed or will perform the abortion for inclusion in the minor's medical records and shall be maintained by the abortion provider for at least 10 years.*

*(p) The chief judge of each judicial district shall send annual reports to the department of health and environment disclosing in a nonidentifying manner:*

*(1) The number of minors seeking a bypass of the parental consent requirements through court proceedings under this section;*

*(2) the number of petitions granted;*

*(3) the reasons for granting such petitions;*

*(4) any subsequent actions taken to protect the minor from domestic or predator abuse;*

*(5) each minor's state of residence, age and disability status; and*

*(6) the gestational age of the unborn child if the petition is granted.*

*(o) (1) A custodial parent or legal guardian of the minor may pursue civil remedies against individuals, including the physician and abortion clinic staff, who violate the rights of parents, legal guardian or the minor as set forth in this section.*

*(2) Such relief shall include:*

(A) *Money damages for all injuries, psychological and physical, occasioned by the violation of this section;*

(B) *the cost of any subsequent medical treatment such minor might require because of the abortion performed without parental consent or knowledge, or without a court order, in violation of this section;*

(C) *statutory damages equal to three times the cost of the abortion; and*

(D) *reasonable attorney fees.*

(q) *In the course of a judicial hearing to waive parental consent, if the court has reason to suspect that a minor has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the court shall report the matter promptly as provided in subsection (c) of K.S.A. 2010 Supp. 38-2223, and amendments thereto. In the course of reporting suspected child abuse or neglect to the appropriate state authorities, nothing in this section shall abridge or otherwise modify the anonymity or confidentiality provisions of the judicial waiver proceeding as specified in this section.*

(r) *Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.*

Sec. 6. K.S.A. 2010 Supp. 65-6709 is hereby amended to read as follows: 65-6709. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing of:

(1) The name of the physician who will perform the abortion;

(2) a description of the proposed abortion method;

(3) a description of risks related to the proposed abortion method, including risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(4) the probable gestational age of the ~~fetus~~ *unborn child* at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the ~~fetus~~ *unborn child* is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) ~~that~~ a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman." If the child is born alive, the attending physician has the legal obligation to

take all reasonable steps necessary to maintain the life and health of the child;

(5) the probable anatomical and physiological characteristics of the ~~fe-~~  
~~tus~~ *unborn child* at the time the abortion is to be performed;

(6) the contact information for free counseling assistance for medically challenging pregnancies and the contact information for free perinatal hospice services;

(7) the medical risks associated with carrying a ~~fetus~~ *an unborn child* to term; and

(8) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

(b) At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman in writing that:

(1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 65-6710, and amendments thereto;

(2) the informational materials in K.S.A. 65-6710, and amendments thereto, are available in printed form and online, and describe the ~~fetus~~  
*unborn child*, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;

(3) the father of the ~~fetus~~ *unborn child* is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted; ~~and~~

(4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled; *and*

(5) *the abortion will terminate the life of a whole, separate, unique, living human being.*

(c) At least 30 minutes prior to the abortion procedure, prior to physical preparation for the abortion and prior to the administration of medication for the abortion, the woman shall meet privately with the physician who is to perform the abortion and such person's staff to ensure that she has an adequate opportunity to ask questions of and obtain information from the physician concerning the abortion.

(d) At least 24 hours before the abortion, the woman is given a copy of the informational materials described in K.S.A. 65-6710, and amendments thereto. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided

under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The department shall make the number of certifications received available on an annual basis.

(f) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by subsection (e) of this section.

(g) The woman is not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired.

(h) A physician who will use ultrasound equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:

(1) Informs the woman that she has the right to view the ultrasound image of her unborn child, at no additional expense to her;

(2) informs the woman that she has the right to receive a physical picture of the ultrasound image, at no additional expense to her;

(3) offers the woman the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image;

(4) certifies in writing that the woman was offered the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image at least 30 minutes prior to the performance of the abortion; and

(5) obtains the woman's signed acceptance or rejection of the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image.

If the woman accepts the offer and requests to view the ultrasound image, receive a physical picture of the ultrasound image or both, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image was offered.

(i) A physician who will use heart monitor equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:

(1) Informs the woman that she has the right to listen to the heartbeat of her unborn child, at no additional expense to her;

(2) offers the woman the opportunity to listen to the heartbeat of her unborn child;

(3) certifies in writing that the woman was offered the opportunity to listen to the heartbeat of her unborn child at least 30 minutes prior to the performance of the abortion; and

(4) obtains the woman's signed acceptance or rejection of the opportunity to listen to the heartbeat of her unborn child.

If the woman accepts the offer and requests to listen to the heartbeat of

her unborn child, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to listen to the heartbeat of her unborn child was offered.

(j) The physician's certification required by subsections (h) and (i) together with the pregnant woman's signed acceptance or rejection of such offer shall be placed in the woman's medical file in the physician's office and kept for 10 years. However, in the case of a minor, the physician shall keep a copy of the certification and the signed acceptance or rejection in the minor's medical file for five years past the minor's majority, but in no event less than 10 years.

(k) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed shall conspicuously post a sign in a location so as to be clearly visible to patients. The sign required pursuant to this subsection shall be printed with lettering that is legible and shall be at least three quarters of an inch boldfaced type which reads:

Notice: It is against the law for anyone, regardless of their relationship to you, to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence. You have the right to change your mind at any time prior to the actual abortion and request that the abortion procedure cease.

The provisions of this subsection shall not apply to any private office, freestanding surgical outpatient clinic or other facility or clinic which performs abortions only when necessary to prevent the death of the pregnant woman.

(l) For purposes of this section,:

(1) The term "human being" means an individual living member of the species of *homo sapiens*, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.

(2) The term "medically challenging pregnancy" means a pregnancy where the fetus unborn child is diagnosed as having: (A) A severe anomaly; or (B) an illness, disease or defect which is invariably fatal.

Sec. 7. K.S.A. 2010 Supp. 65-6710 is hereby amended to read as follows: 65-6710. (a) The department shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible informational materials:

(1) Geographically indexed printed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including but not limited to, a list of providers of free ultrasound serv-

ices and adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude or discourage the use of any agency or service described in this section. The materials shall also contain a toll-free ~~24-hour-a-day~~ 24-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages. Kansas law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care. The materials shall include the following statement:

“Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek their assistance to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on abortion services, alternatives to abortion, including adoption, and resources available to post-partum mothers. The law requires that your physician or the physician’s agent provide the enclosed information.”

(2) Printed materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the ~~fetus~~ *unborn child* at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of ~~a fetus~~ *an unborn child* at two-week gestational increments, and any relevant information on the possibility of the ~~fetus~~<sup>2</sup> *unborn child’s* survival. Any such pictures or drawings shall contain the dimensions of the ~~fetus~~ *unborn child* and shall be realistic. *The material shall include the statement that abortion terminates the life of a whole, separate, unique, living human being.* The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the ~~fetus~~ *unborn child* at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure and the medical risks associated with carrying ~~a fetus~~ *an unborn child* to term.

(3) A certification form to be used by physicians or their agents under subsection (e) of K.S.A. 65-6709, and amendments thereto, which will list all the items of information which are to be given to women by physicians or their agents under the woman’s-right-to-know act.

(4) A standardized video containing all of the information described in paragraphs (1) and (2). In addition, the video shall show ultrasound images,

using the best available ultrasound technology, of ~~a fetus~~ *an unborn child* at two week gestational increments.

(b) The print materials required under this section shall be printed in a typeface large enough to be clearly legible. The informational video shall be published in digital video disc format. All materials required to be published under this section shall also be published online on the department's website. All materials shall be made available in both English and Spanish language versions.

(c) The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

Sec. 8. K.S.A. 65-6721 is hereby amended to read as follows: 65-6721.

(a) No person shall perform or induce a partial birth abortion on ~~a viable fetus an unborn child~~ unless ~~such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major physical or mental function of the pregnant woman. such person is a physician and has a documented referral from another physician who is licensed to practice in this state, and who is not legally or financially affiliated with the physician performing or inducing the abortion and both physicians provide a written determination, based upon a medical judgment that would be made by a reasonably prudent physician, knowledgeable in the field and knowledgeable about the case and the treatment possibilities with respect to the conditions involved, that the partial birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.~~

(b) As used in this section,

(1) ~~“partial birth abortion” means an abortion procedure which includes the deliberate and intentional evacuation of all or a part of the intracranial contents of a viable fetus prior to removal of such otherwise intact fetus from the body of the pregnant woman.~~

(2) ~~“Partial birth abortion” shall not include the: (A) Suction curettage abortion procedure; (B) suction aspiration abortion procedure; or (C) dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the body of the pregnant woman. in which the person performing the abortion deliberately and intentionally vaginally delivers a living unborn child until, in the case of a head-first presentation, the entire head of the unborn child is outside the body of the mother, or, in the case of a breech presentation, any part of the trunk of the unborn child past the navel is outside the body of the mother, for the purpose of~~

*performing an overt act that the person knows will kill the partially delivered living unborn child, and performs the overt act, other than completion of delivery, that kills the partially delivered living unborn child.*

(c) (1) If a physician determines in accordance with the provisions of subsection (a) that a partial birth abortion is necessary and performs a partial birth abortion on the woman, the physician shall report such determination, *the medical basis, including the specific medical diagnosis* and the reasons for such determination in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report ~~the reasons for~~ such determination, *the medical basis, including the specific medical diagnosis, and the reasons for such determination* in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto. The physician shall retain a copy of the written reports required under this subsection for not less than ~~five~~ 10 years.

(2) *The secretary of health and environment shall adopt rules and regulations to administer this section. Such rules and regulations shall include:*

(A) *A detailed list of the contents of the written reports required under paragraph (1) of this subsection; and*

(B) *detailed information that must be provided by a physician to insure that the specific medical basis and clinical diagnosis regarding the woman is reported.*

(d) (1) *The father, if married to the woman at the time of the abortion, and, if the woman has not attained the age of 18 years at the time of the abortion, the parents or custodial guardian of the woman, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.*

(2) *Such relief shall include:*

(A) *Money damages for all injuries, psychological and physical, occasioned by the violation of this section;*

(B) *statutory damages equal to three times the cost of the abortion; and*

(C) *reasonable attorney fees.*

~~(d)~~ (e) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.

~~(e)~~ (f) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

~~(f)~~ (g) Upon conviction of a violation of this section, a person shall be guilty of a severity level ~~40~~ 8 person felony.

Sec. 9. K.S.A. 65-445, 65-6701, 65-6703, 65-6705, 65-6713 and 65-6721 and K.S.A. 2010 Supp. 38-2223, 65-6709 and 65-6710 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 12, 2011.

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## CHAPTER 45

HOUSE BILL No. 2192  
(Amended by Chapter 91)

AN ACT concerning vehicles; relating to the regulation and registration thereof; amending K.S.A. 8-1508 and 8-1516 and K.S.A. 2010 Supp. 8-116a, 8-173, 8-1558, 8-1560c, 8-1560d, 8-2204, 8-2503 and 8-2504 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 8-116a is hereby amended to read as follows: 8-116a. (a) Except as provided in K.S.A. 8-170, and amendments thereto, when an application is made for a vehicle which has been assembled, reconstructed, reconstituted or restored from one or more vehicles, or the proper identification number of a vehicle is in doubt, the procedure in this section shall be followed. The owner of the vehicle shall request the Kansas highway patrol to check the vehicle and the highway patrol shall within a reasonable period of time perform such vehicle check. At the time of such check the owner shall supply the highway patrol with information concerning the history of the various parts of the vehicle. Such information shall be supplied by affidavit of the owner, if so requested by the highway patrol. If the highway patrol is satisfied that the vehicle contains no stolen parts, it shall assign an existing or new identification number to the vehicle and direct the places and manner in which the identification number is to be located and affixed or implanted. A charge of ~~\$10~~ \$15 per hour or part thereof, with a minimum charge of ~~\$10~~ \$15, and on and after July 1, 2012, a charge of \$20 per hour or part thereof, with a minimum charge of \$20, shall be made to the owner of a vehicle requesting check under this subsection, and such charge shall be paid prior to the check under this section. When a check has been made under subsection (b), not more than 60 days prior to a check of the same vehicle identification number, requested by the owner of the vehicle to obtain a regular certificate of title in lieu of a nonhighway certificate of title or to obtain a rebuilt salvage title in lieu of a salvage title, no charge shall be made for such second check.

(b) Any person making application for any original Kansas title for a used vehicle which, at the time of making application, is titled in another jurisdiction, as a condition precedent to obtaining any Kansas title, shall have such vehicle checked by the Kansas highway patrol for verification

that the vehicle identification number shown on the foreign title is genuine and agrees with the identification number on the vehicle. Checks under this section may include inspection for possible violation of K.S.A. 21-3757, and amendments thereto, or other evidence of possible fraud. The verification shall be made upon forms prescribed by the division of vehicles which shall contain such information as the secretary of revenue shall require by rules and regulations. A charge of ~~\$10~~ \$15 per hour or part thereof, with a minimum charge of ~~\$10~~ \$15, *and on and after July 1, 2012, a charge of \$20 per hour or part thereof, with a minimum charge of \$20*, shall be made for checks under this subsection. When a vehicle is registered in another state, but is financed by a Kansas financial institution and is repossessed in another state and such vehicle will not be returned to Kansas, the check required by this subsection ~~(b)~~ shall not be required to obtain a valid Kansas title or registration.

(c) As used in this act, “identification number” or “vehicle identification number” means an identifying number, serial number, engine number, transmission number or other distinguishing number or mark, placed on a vehicle, engine, transmission or other essential part by its manufacturer or by authority of the division of vehicles or the Kansas highway patrol or in accordance with the laws of another state or country.

(d) The checks made under subsection (b) may be made by:

(1) A designee of the superintendent of the Kansas highway patrol; or  
(2) an employee of a new vehicle dealer, as defined in subsection (b) of K.S.A. 8-2401, and amendments thereto, for the purposes provided for in subsection (f). For checks made by a designee *or new vehicle dealer*, ~~\$10~~ 10% of each charge shall be remitted to the Kansas highway patrol and the balance of such charges shall be retained by such designee *or new vehicle dealer*. *If the designee is a city or county law enforcement agency, then the balance shall be paid to the law enforcement agency that conducted the inspection.* When a check is made under either subsection (a) or (b) by personnel of the Kansas highway patrol ~~or when a check is made under subsection (b) by an employee of a new vehicle dealer~~, the entire amount of the charge therefor shall be paid to the highway patrol.

(e) There is hereby created the vehicle identification number fee fund. The Kansas highway patrol shall remit all moneys received by the Kansas highway patrol from fees collected under subsection (d) 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 vehicle identification number fee fund. All expenditures from the vehicle identification number fee 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 superintendent of the Kansas highway patrol or by a person or persons designated by the superintendent.

(f) An employee of a new vehicle dealer, who has received initial train-

ing and certification from the highway patrol, and has met continuing certification requirements, in accordance with rules and regulations adopted by the superintendent of the highway patrol, may provide the checks under subsection (b), in accordance with rules and regulations adopted by the superintendent of the highway patrol, on motor vehicles *that a new vehicle dealer purchases through a manufacturer's sponsored auction or on motor vehicles* repurchased or reacquired by a manufacturer, distributor or financing subsidiary of such manufacturer and which are purchased by the new vehicle dealer. At any time, after a hearing in accordance with the provisions of the Kansas administrative procedure act, the superintendent of the highway patrol may revoke, suspend, decline to renew or decline to issue certification for failure to comply with the provisions of this subsection, including any rules and regulations.

Sec. 2. K.S.A. 2010 Supp. 8-173 is hereby amended to read as follows: 8-173. (a) An application for registration of a vehicle as provided in article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, shall not be accepted unless the person making such application shall exhibit:

(1) A receipt showing that such person has paid all personal property taxes levied against such person for the preceding year, including taxes upon such vehicle, except that if such application is made before May 11, such receipt need show payment of only one-half the preceding year's tax; or

(2) evidence that such vehicle was assessed for taxation purposes by a state agency, or was assessed as stock in trade of a merchant or manufacturer or was exempt from taxation under the laws of this state.

(b) An application for registration of a vehicle as provided in article 1 of chapter 8 of the Kansas Statutes Annotated shall not be accepted if the records of the county treasurer show that the applicant is delinquent and owes personal property taxes levied against the applicant for any preceding year.

(c) An *original* application for registration ~~or renewal of registration~~ of a motor vehicle shall not be accepted until the applicant signs a certification, provided by the director of motor vehicles, certifying that the applicant has and will maintain, during the period of registration, the required insurance, self-insurance or other financial security required pursuant to K.S.A. 40-3104, and amendments thereto.

(d) An application for registration or renewal of registration of a vehicle shall not be accepted if the applicant is unable to provide proof of the insurance, self-insurance or other financial security required by article 31 of chapter 40 of the Kansas Statutes Annotated. Proof of insurance shall be verified by examination of the insurance card or other documentation issued by an insurance company, a certificate of self-insurance issued by the commissioner, a binder of insurance, a certificate of insurance, a motor carrier

identification number issued by the state corporation commission, proof of insurance for vehicles covered under a fleet policy, a commercial policy covering more than one vehicle or a policy of insurance required by K.S.A. 40-3104, and amendments thereto, and for vehicles used as part of a drivers education program, a dealership contract and a copy of a motor vehicle liability insurance policy issued to a school district or accredited nonpublic school. Examination of a photocopy or facsimile of any of these documents shall suffice for verification of registration or renewal. Proof of insurance may also be verified on-line or electronically and the commissioner of insurance may require, by duly adopted rules and regulations, any motor vehicle liability insurance company authorized to do business in this state to provide verification of insurance in that manner. Any motor vehicle liability insurance company which is providing verification of insurance on-line or electronically on the day preceding the effective date of this act may continue to do so in the same manner and shall be deemed to be in compliance with this section.

Sec. 3. K.S.A. 8-1508 is hereby amended to read as follows: 8-1508. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) *Green indication.* (1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left, unless a sign at such place prohibits either such turn; but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(2) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may enter the intersection cautiously only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian-control signal, as provided in K.S.A. 8-1509, and amendments thereto, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) *Steady yellow indication.* (1) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(2) Pedestrians facing a steady circular yellow or yellow arrow signal,

unless otherwise directed by a pedestrian-control signal as provided in K.S.A. 8-1509, and amendments thereto, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway.

(c) *Steady red indication.* (1) Vehicular traffic facing a steady circular red or red arrow signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain standing until an indication to proceed is shown, except as provided in paragraphs (2) ~~and~~, (3) *and* (4) of this subsection. Any turn provided for in ~~said~~ paragraphs (2) ~~and~~, (3) *and* (4) shall be governed by the applicable provisions of K.S.A. 8-1545, and amendments thereto.

(2) Unless a sign is in place prohibiting a turn, vehicular traffic facing a steady red signal may cautiously enter the intersection to make a right turn after stopping as required by paragraph (1) of this subsection. After stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless a sign is in place prohibiting a turn, vehicular traffic upon a roadway restricted to one-way traffic facing a steady red signal at the intersection of such roadway with another roadway restricted to one-way traffic which is proceeding to the left of such vehicular traffic, may cautiously enter the intersection to make a left turn after stopping as required by paragraph (1) of this subsection. After stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(4) *The driver of a motorcycle or a person riding a bicycle facing any steady red signal, which fails to change to a green light within a reasonable period of time because of a signal malfunction or because the signal has failed to detect the arrival of the motorcycle or bicycle because of its size or weight, shall have the right to proceed subject to the rules stated herein. After stopping, the driver or rider shall yield the right-of-way to any vehicle in or near the intersection or approaching on a roadway so closely as to constitute an immediate hazard during the time such driver or rider is moving across or within the intersection or junction of roadways. Such motorcycle or bicycle traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.*

(4) (5) Unless otherwise directed by a pedestrian-control signal as provided in K.S.A. 8-1509, and amendments thereto, pedestrians facing a steady circular red or red arrow signal alone shall not enter the roadway.

(d) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

Sec. 4. K.S.A. 8-1516 is hereby amended to read as follows: 8-1516. The following rules shall govern the overtaking and passing of vehicles *and bicycles* proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(c) (1) *The driver of a vehicle overtaking a bicycle proceeding in the same direction shall pass to the left thereof at a distance of not less than three feet and shall not again drive to the right side of the roadway until safely clear of the overtaken bicycle.*

(2) *The driver of a vehicle may pass a bicycle proceeding in the same direction in a no-passing zone with the duty to execute the pass only when it is safe to do so.*

Sec. 5. K.S.A. 2010 Supp. 8-1558 is hereby amended to read as follows: 8-1558. (a) Except as provided in subsection (b) and except when a special hazard exists that requires lower speed for compliance with K.S.A. 8-1557, and amendments thereto, the limits specified in this subsection or established as authorized by law shall be maximum lawful speeds, and no person shall operate a vehicle at a speed in excess of such maximum limits:

(1) In any urban district, 30 miles per hour;

(2) on any separated multilane highway, as designated and posted by the secretary of transportation, ~~70~~ 75 miles per hour;

(3) on any county or township highway, 55 miles per hour; and

(4) on all other highways, 65 miles per hour.

(b) No person shall drive a school bus to or from school, or interschool or intraschool functions or activities, at a speed in excess of the maximum speed limits provided in subsection (a), except that the board of education of any school district may establish by board policy lower maximum speed limits for the operation of such district's school buses. The provisions of

this subsection relating to school buses shall apply to buses used for the transportation of students enrolled in community colleges or area vocational schools, when such buses are transporting students to or from school, or functions or activities.

(c) The maximum speed limits in this section may be altered as authorized in K.S.A. 8-1559 and 8-1560, and amendments thereto.

Sec. 6. K.S.A. 2010 Supp. 8-1560c is hereby amended to read as follows: 8-1560c. (a) Any conviction or forfeiture of bail or bond for violating a maximum posted or authorized speed limit of 30 miles per hour or more but not exceeding 54 miles per hour on any highway, by not more than six miles per hour, shall not be construed as a moving traffic violation for the purpose of K.S.A. 8-255, and amendments thereto.

(b) Any conviction or forfeiture of bail or bond for violating the maximum posted or authorized speed limit of 55 miles per hour or more but not exceeding ~~70~~ 75 miles per hour on any highway, by not more than 10 miles per hour, shall not be construed as a moving traffic violation for the purpose of K.S.A. 8-255, and amendments thereto.

Sec. 7. K.S.A. 2010 Supp. 8-1560d is hereby amended to read as follows: 8-1560d. Convictions for violating a maximum posted speed limit of 55 miles per hour or more but not exceeding ~~70~~ 75 miles per hour, by not more than 10 miles per hour in excess of such maximum speed limit, or a maximum posted speed limit of 30 miles per hour or more but not exceeding 54 miles per hour, by not more than six miles per hour in excess of such maximum speed limit, shall not be reported by the division and shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (4)(c)(7) of K.S.A. 40-277, and amendments thereto.

Sec. 8. K.S.A. 8-2204 is hereby amended to read as follows: 8-2204. This act shall be known and may be cited as the uniform act regulating traffic on highways. The uniform act regulating traffic on highways includes K.S.A. 8-1560a through 8-1560d; all sections located in articles 10, ~~and~~ 14 through 22 *and* 25 of chapter 8 of *the* Kansas Statutes Annotated; K.S.A. 8-1,129, 8-1,130a, 8-1428a, 8-1742a, 8-2118 and K.S.A. 8-1599, and amendments thereto.

Sec. 9. K.S.A. 2010 Supp. 8-2503 is hereby amended to read as follows: 8-2503. (a) Except as provided in ~~K.S.A. 8-1344 and 8-1345, and amendments thereto, and in subsection (b) or (c) subsection (b);~~

(1) Each occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208, who is 18 years of age or older, shall have a safety belt properly fastened about such person's body at all times when the passenger car is in motion ~~;~~ *and*

~~(b)(2)~~ each occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208, who is

at least 14 years of age but less than 18 years of age, shall have a safety belt properly fastened about such person's body at all times when the passenger car is in motion.

~~(e)~~(b) This section does not apply to:

(1) An occupant of a passenger car who possesses a written statement from a licensed physician that such person is unable for medical reasons to wear a safety belt system;

(2) carriers of United States mail while actually engaged in delivery and collection of mail along their specified routes; *or*

(3) newspaper delivery persons while actually engaged in delivery of newspapers along their specified routes; ~~or.~~

~~(4) an occupant of a passenger car required to be protected by a safety restraining system under the child passenger safety act.~~

~~(d)~~(c) The secretary of transportation shall initiate an educational program designed to encourage compliance with the safety belt usage provisions of this act.

~~(e)~~(d) The secretary shall evaluate the effectiveness of this act and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits under 23 U.S.C. § 402.

~~(f)~~(e) Law enforcement officers shall not stop drivers for violations of subsection (a)(1) by a back seat occupant in the absence of another violation of law. A citation for violation of subsection (a)(1) by a back seat occupant shall not be issued without citing the violation that initially caused the officer to effect the enforcement stop.

Sec. 10. K.S.A. 2010 Supp. 8-2504 is hereby amended to read as follows: 8-2504. (a) (1) ~~From and after the effective date of this act and prior to June 30, 2010, a law enforcement officer shall issue a warning citation to anyone violating subsection (a) of K.S.A. 8-2503, and amendments thereto;~~

~~(2) from and after June 30, 2010, until July 1, 2011, Persons violating subsection (a)(1) of K.S.A. 8-2503, and amendments thereto, shall be fined \$5 including and no court costs;~~

~~(3) and, from and after July 1, 2011, persons violating subsection (a)(1) of K.S.A. 8-2503, and amendments thereto, shall be fined \$10 including and no court costs; and~~

~~(4)(2) persons violating subsection (b)(a)(2) of K.S.A. 8-2503, and amendments thereto, shall be fined \$60 including and no court costs.~~

(b) No court shall report violation of this act to the department of revenue.

(c) Evidence of failure of any person to use a safety belt shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages.

(d) *The provisions of this section shall be applicable and uniform throughout the state and no city, county, subdivision or local authority shall*

*enact or enforce any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions of this section.*

Sec. 11. K.S.A. 8-1508 and 8-1516 and K.S.A. 2010 Supp. 8-116a, 8-173, 8-1558, 8-1560c, 8-1560d, 8-2204, 8-2503 and 8-2504 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 13, 2011.

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## CHAPTER 46

HOUSE BILL No. 2118  
(Amended by Chapters 91 and 100)

AN ACT concerning crimes, criminal procedure and punishment; relating to supervision fees for appearance bonds; amending K.S.A. 2010 Supp. 21-4603d and 22-2802 and section 244 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (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;

(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 conditions 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. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502, 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, as defined in K.S.A. 21-3809, and amendments thereto, or aggravated escape, as defined in K.S.A. 21-3810, 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 under K.S.A. 21-3718 or 21-3719, 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 provision of specified in* subsection (i) of K.S.A. 21-4704, and amendments thereto, assign the defendant to a 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;

(12) *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;*

~~(12)~~ (13) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), ~~and~~ (11) and (12); or

~~(13)~~ (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. 21-4018, 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 non-compliance 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 administrative 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 (4) of K.S.A. 21-4502, 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 imposing a fine the court may authorize the payment thereof in installments. 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. 21-4608, 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. 2010 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. 21-4608, 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. 21-4729, 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. 21-4729, 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 gridblocks 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. 21-4729, 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. 21-4611, 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. 21-4705, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2010 Supp. 21-36a06, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 21-4729, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2010 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. 21-4705, and amendments thereto. For those offenders who are convicted on or after the effective date of this act, 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. 2010 Supp. 21-36a06, 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 provided 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" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

Sec. 2. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate. *The magistrate may order the person to pay for any costs associated with the supervision provided by the court services department in an amount not to exceed \$15 per week of such supervision. The magistrate may also order the person to pay for all other costs associated with the supervision and conditions for compliance in addition to the \$15 per week.*

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug *and alcohol* abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug *or alcohol* abuser or *is* incapacitated by drugs *or alcohol*, to submit to treatment for such drug *or alcohol* abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond pursuant to paragraph (3). Except as provided in paragraph (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to paragraph (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

- (A) Is a resident of the state of Kansas;
- (B) has a criminal history score category of G, H or I;
- (C) has no prior history of failure to appear for any court appearances;
- (D) has no detainer or hold from any other jurisdiction;
- (E) has not been extradited from, and is not awaiting extradition to, another state; and
- (F) has not been detained for an alleged violation of probation.

(6) In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

(7) The court shall not impose any administrative fee.

(8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(9) The appearance bond shall set forth all of the conditions of release.

(10) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(11) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (10) shall apply.

(12) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(13) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(14) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-

way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

(15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$15 per week of such supervision. *As a condition of sentencing under section 244 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the court may impose the full amount of any such costs in addition to the \$15 per week, including, but not limited to, costs for treatment and evaluation under subsection (2).*

Sec. 3. On and after July 1, 2011, section 244 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 244. (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;

(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 conditions 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 section

249 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 242 of chapter 136 of the 2010 Session Laws of Kansas, 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 or aggravated escape, as defined in section 136 of chapter 136 of the 2010 Session Laws of Kansas, 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 under section 98 of chapter 136 of the 2010 Session Laws of Kansas, 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) 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;

~~(11)~~ (12) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9), ~~and~~ (10) and (11); or

~~(12)~~ (13) 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 section 177 of chapter 136 of the 2010 Session Laws of Kansas, 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 doc-

uments 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 non-compliance 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 administrative 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 section 242 of chapter 136 of the 2010 Session Laws of Kansas, 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 imposing a fine the court may authorize the payment thereof in installments. 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 section 246 of chapter 136 of the 2010 Session Laws of Kansas, 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. ~~2009~~ 2010 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 section 246 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 305 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classi-

fied 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 section 305 of *chapter 136 of the 2010 Session Laws of Kansas*, 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 section 305 of *chapter 136 of the 2010 Session Laws of Kansas*, 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 section 286 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and amendments thereto, the court shall require the defendant who meets the requirements established in section 305 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. ~~2009~~ 2010 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 section 305 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. For those offenders who are convicted on or after the effective date of this act, 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. ~~2009~~ 2010 Supp. 21-36a06, 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 provided 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" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

Sec. 4. K.S.A. 2010 Supp. 21-4603d and 22-2802 are hereby repealed.

Sec. 5. On and after July 1, 2011, section 244 of chapter 136 of the 2010 Session Laws of Kansas is hereby repealed.

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

Approved April 13, 2011.

Published in the *Kansas Register* April 28, 2011.

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## CHAPTER 47

SENATE BILL No. 125  
(Amended by Chapter 112)

AN ACT concerning elections; relating to candidate filing deadlines; amending K.S.A. 2-624 and 25-4004 and K.S.A. 2010 Supp. 25-205 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 25-205 is hereby amended to read as follows: 25-205. (a) Except as otherwise provided in this section, the names of candidates for national, state, county and township offices shall be printed upon the official primary ballot when each shall have qualified to become a candidate by one of the following methods and none other: (1) They shall have had filed in their behalf, not later than ~~12:00~~ 12 noon, June ~~10~~ 1, prior to such primary election, or if such date falls on Saturday, Sunday or a holiday, then before ~~12:00~~ 12 noon of the next following day that is not a Saturday, Sunday or a holiday, nomination petitions, as provided for in this act, ~~except that in 1998, candidates for judge or district magistrate judge of the district court for positions created in 1998 in those judicial districts that have not approved the proposition of nonpartisan se-~~

~~lection of judges of the district court shall have filed in their behalf, not later than 12:00 noon, July 1, 1998, nomination petitions, as provided for in this act; or (2) they shall have filed not later than the time for filing nomination petitions, as above provided, with the proper officer a declaration of intention to become a candidate, accompanied by the fee required by law. Such declaration shall be prescribed by the secretary of state.~~

(b) Nomination petitions shall be in substantially the following form:

I, the undersigned, an elector of the county of \_\_\_\_\_, and state of Kansas, and a duly registered voter, and a member of \_\_\_\_\_ party, hereby nominate \_\_\_\_\_, who resides in the township of \_\_\_\_\_ (or at number \_\_\_\_\_ on \_\_\_\_\_ street, city of \_\_\_\_\_), in the county of \_\_\_\_\_ and state of Kansas, as a candidate for the office of (here specify the office) \_\_\_\_\_, to be voted for at the primary election to be held on the first Tuesday in August in \_\_\_\_\_, as representing the principles of such party; and I further declare that I intend to support the candidate herein named and that I have not signed and will not sign any nomination petition for any other person, for such office at such primary election.

(HEADING)

Name of Signers.	Street Number or Rural Route (as registered).	Name of City.	Date of Signing.
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All nomination petitions shall have substantially the foregoing form, written or printed at the top thereof. No signature shall be counted unless it is upon a sheet having such written or printed form at the top thereof.

(c) Each signer of a nomination petition shall sign but one such petition for the same office, and shall declare that such person intends to support the candidate therein named, and shall add to such person's signature and residence, if in a city, by street and number (if any); or, otherwise by post-office address. No signature shall be counted unless the place of residence of the signer is clearly indicated and the date of signing given as herein required and if ditto marks are used to indicate address they shall be continuous and clearly made. Such sheets shall not be cut or pasted together.

(d) All signers of each separate nomination petition shall reside in the same county and election district of the office sought. The affidavit described in this paragraph of a petition circulator who is a resident of the state of Kansas and has the qualifications of an elector in the state of Kansas or of the candidate shall be appended to each petition and shall contain, at the end of each set of documents carried by each circulator, a verification, signed by the circulator or the candidate, to the effect that such circulator or the candidate personally witnessed the signing of the petition by each person whose name appears thereon.

(e) Except as otherwise provided in subsection (g), nomination petitions shall be signed:

(1) If for a state officer elected on a statewide basis or for the office of United States senator, by voters equal in number to not less than 1% of the

total of the current voter registration of the party designated in the state as compiled by the office of the secretary of state;

(2) If for a state or national officer elected on less than a statewide basis, by voters equal in number to not less than 2% of the total of the current voter registration of the party designated in such district as compiled by the office of the secretary of state, except that for the office of district magistrate judge, by not less than 2% of the total of the current voter registration of the party designated in the county in which such office is to be filled as certified to the secretary of state in accordance with K.S.A. 25-3302, and amendments thereto;

(3) If for a county office, by voters equal in number to not less than 3% of the total of the current voter registration of the party designated in such district or county as compiled by the county election officer and certified to the secretary of state in accordance with K.S.A. 25-3302, and amendments thereto; and

(4) If for a township office, by voters equal in number to not less than 3% of the total of the current voter registration of the party designated in such township as compiled by the county election officer and certified to the secretary of state in accordance with K.S.A. 25-3302, and amendments thereto.

(f) Subject to the requirements of K.S.A. 25-202, and amendments thereto, any political organization filing nomination petitions for a majority of the state or county offices, as provided in this act, shall have a separate primary election ballot as a political party and, upon receipt of such nomination petitions, the respective officers shall prepare a separate state and county ballot for such new party in their respective counties or districts thereof in the same manner as is provided for existing parties.

(g) In any year in which districts are reapportioned for the offices of representative in the United States congress, senator and representative in the legislature of the state of Kansas or member of the state board of education:

(1) If new boundary lines are defined and districts established in the manner prescribed by law on or before May 10, nomination petitions for nomination to such offices shall be signed by voters equal in number to not less than 1% of the total of the current voter registration of the party designated in the district as compiled by the office of the secretary of state.

(2) If new boundary lines are defined and districts established in the manner prescribed by law on or after May 11, nomination petitions for nomination to the following offices shall be signed by registered voters of the party designated in the district equal in number to not less than the following:

- (A) For the office of representative in the United States congress ..... 1,000 registered voters;
- (B) for the office of member of the state board of education ..... 300 registered voters;
- (C) for the office of state senator ..... 75 registered voters; and
- (D) for the office of state representative ..... 25 registered voters.

(h) In any year in which districts are reapportioned for the offices of representative in the United States congress, senator and representative in the legislature of the state of Kansas or member of the state board of education:

(1) If new boundary lines are defined and districts established in the manner prescribed by law on or before June 10, the deadline for filing nomination petitions and declarations of intention to become a candidate for such office, accompanied by the fee required by law, shall be ~~12:00~~ 12 noon on June 24, or if such date falls on a Saturday, Sunday or a holiday, then before ~~12:00~~ 12 noon of the next following day that is not a Saturday, Sunday or holiday.

(2) If new boundary lines are defined and districts established in the manner prescribed by law on or after June 11, the deadline for filing nomination petitions and declarations of intention to become a candidate for such office, accompanied by the fee required by law, shall be ~~12:00~~ 12 noon on July 12, or if such date falls on a Saturday, Sunday or holiday, then before ~~12:00~~ 12 noon of the next day that is not a Saturday, Sunday or holiday.

Sec. 2. K.S.A. 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 ~~12:00~~ 12 noon of the Wednesday next following the Tuesday, ~~five~~ 10 weeks preceding the first Tuesday in April

in odd-numbered years, each person desiring to be a candidate for membership on the governing body, in any election, shall file a declaration of candidacy 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 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.

~~(e)~~(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.

~~(f)~~(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. 3. K.S.A. 25-4004 is hereby amended to read as follows: 25-4004. The provisions of K.S.A. 25-205, and amendments thereto, shall not apply to the offices of governor and lieutenant governor. The names of candidates for governor and lieutenant governor shall be printed upon the official primary ballot when each pair thereof shall have qualified to become candidates in one or the other of the following methods and none other: *First*, they shall have had filed in their behalf, not later than ~~twelve o'clock~~ 12 noon, June ~~10~~ 1, prior to such primary election, or if such date falls on Saturday, Sunday or a legal holiday, then before ~~twelve o'clock~~ 12 noon the following business day, nomination papers, commonly called nomination petitions, as provided for in K.S.A. 25-4005, and amendments thereto; or, *second*, they shall have filed not later than the time for filing nomination papers, as above provided, with the secretary of state, as hereinafter prescribed, a declaration of intention to become candidates, accompanied by a fee as provided in K.S.A. 25-4006, and amendments thereto.

Sec. 4. K.S.A. 2-624 and 25-4004 and K.S.A. 2010 Supp. 25-205 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 13, 2011.

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## CHAPTER 48

### SENATE BILL No. 9

AN ACT concerning the code of civil procedure; amending K.S.A. 20-3017 and 60-2003 and K.S.A. 2010 Supp. 38-2305, 60-203, 60-206, 60-209, 60-211, 60-214, 60-226, 60-228a, 60-235, 60-249, 60-260, 60-270, 60-304, 60-310, 60-460 and 65-4902 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 38-2305a.

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

Section 1. K.S.A. 20-3017 is hereby amended to read as follows: 20-3017. Within ~~twenty (20)~~ 30 days after the date the notice of appeal has been served on the appellee in any case appealed to the court of appeals, any party to such case may file a motion with the clerk of the court of appeals, requesting that such case be transferred to the supreme court for review and final determination by such court. Such motion shall be made in the manner and form prescribed by rules of the supreme court, and it shall allege the existence of one ~~(1)~~ or more of the conditions described in subsection (a) of K.S.A. 20-3016, *and amendments thereto*. The clerk of the court of appeals promptly shall submit any motion made pursuant to this section to the supreme court. The supreme court shall consider such motion and may accept the case for review and final determination or may decline jurisdiction and order that the case be determined by the court of appeals. A party's failure to file a motion in accordance with this section shall be deemed a waiver of any objection by such party to the jurisdiction of the court of appeals.

Sec. 2. K.S.A. 2010 Supp. 38-2305 is hereby amended to read as follows: 38-2305. (a) Venue for proceedings in any case involving a juvenile shall be in any county where any act of the alleged offense was committed.

(b) Except as provided in subsection (c), venue for sentencing proceedings shall be in the county of the juvenile offender's residence or, if the juvenile offender is not a resident of this state, in the county where the adjudication occurred. When the sentencing hearing is to be held in a county other than where the adjudication occurred, upon adjudication, the judge shall contact the sentencing court and advise the judge of the transfer. The adjudicating court shall send immediately to the sentencing court a facsimile or electronic copy of the complaint, the adjudication journal entry or judge's minutes, if available, and any recommendations in regard to sentencing. The adjudicating court shall also send to the sentencing court a complete

copy of the official and social files in the case by mail or electronic means within ~~five working~~ seven days of the adjudication.

(c) If the juvenile offender is adjudicated in a county other than the county of the juvenile offender's residence, the sentencing hearing may be held in the county in which the adjudication was made or, if there are not any ongoing proceedings under the Kansas code for care of children, in the county of the residence of the custodial parent, parents, guardian or conservator if the adjudicating judge, upon motion, finds that it is in the interest of justice. If there are ongoing proceedings under the revised Kansas code for care of children, then the sentencing hearing shall be held in the county in which the proceedings under the revised Kansas code for care of children are being held.

Sec. 3. K.S.A. 2010 Supp. 60-203 is hereby amended to read as follows: 60-203. (a) *Time of commencement.* A civil action is commenced at the time of: (1) Filing a petition with the court, if service of process is obtained or the first publication is made for service by publication within 90 days after the petition is filed, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff; or (2) service of process or first publication, if service of process or first publication is not made within the time specified by paragraph (1).

(b) *Curing invalid service.* If service of process or first publication purports to have been made but is later adjudicated to have been invalid due to an irregularity in form or procedure or a defect in making service, the action is considered to have been commenced at the applicable time under subsection (a) if valid service is obtained or first publication is made within 90 days after that adjudication, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff.

(c) *Entry of appearance.* The filing of an entry of appearance has the same effect as service. Written contact with the court by a defendant, or an attorney for the defendant invoking protection for the defendant under the servicemembers civil relief act (50 U.S.C. § 501 et seq.), and amendments thereto, is not an entry of appearance.

(d) *Electronic filing.* As used in this section, filing a petition with the court includes receipt by the court of a petition by electronic means complying with supreme court rules.

Sec. 4. K.S.A. 2010 Supp. 60-206 is hereby amended to read as follows: 60-206. (a) *Computing time.* The following provisions apply in computing any time period specified in this chapter, in any local rule or court order or in any statute or administrative rule or regulation that does not specify a method of computing time.

(1) *Period stated in days or a longer unit.* When the period is stated in days or a longer unit of time:

(A) Exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

(2) *Period stated in hours.* When the period is stated in hours:

(A) Begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays and legal holidays; and

(C) if the period would end on a Saturday, Sunday or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday or legal holiday.

(3) *Inaccessibility of the clerk's office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) On the last day for filing under subsection (a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

(B) during the last hour for filing under subsection (a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday or legal holiday.

(4) *"Last day" defined.* Unless a different time is set by a statute, local rule or court order, the last day ends:

(A) For electronic or telefacsimile filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next day" defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal holiday" defined.* "Legal holiday" means any day declared a holiday by the president of the United States, the congress of the United States or the legislature of this state, or any day observed as a holiday by order of the Kansas supreme court. A half holiday is considered as other days and not as a holiday.

(b) *Extending time.* (1) *In general.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) With or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions.* A court must not extend the time to act under subsection (b) of K.S.A. 60-250, subsection (b) of K.S.A. 60-252, subsections (b), (e) and (f) of K.S.A. 60-259 and subsection (b) of K.S.A. 60-260, and amendments thereto.

(c) *Motions, notices of hearing and affidavits or declarations.* (1) *In general.* A written motion and notice of the hearing must be served at least seven days before that time specified for the hearing with the following exceptions:

- (A) When the motion may be heard *ex parte*;
- (B) when these rules set a different time; or
- (C) when a court order, which a party may, for good cause, apply for *ex parte*, sets a different time.

(2) *Supporting affidavit or declaration.* Any affidavit or declaration pursuant to K.S.A. 53-601, and amendments thereto, supporting a motion must be served with the motion. Except as otherwise provided in subsection (d) of K.S.A. 60-259, and amendments thereto, any opposing affidavit or declaration must be served at least one day before the hearing, unless the court permits service at another time.

(d) *Additional time after certain kinds of service by mail.* When a party may or must act within a specified time after service and service is ~~by mail~~ made under subsections (b)(2)(C), (D), (E) or (F) of K.S.A. 60-205, and amendments thereto, three days are added after the period would otherwise expire under subsection (a).

Sec. 5. K.S.A. 2010 Supp. 60-209 is hereby amended to read as follows: 60-209. (a) *Capacity or authority to sue; legal existence.* (1) *In general.* A pleading need not allege:

- (A) A party's capacity to sue or be sued;
  - (B) a party's authority to sue or be sued in a representative capacity;
- or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising those issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) *Fraud or mistake; conditions of the mind.* In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge and other conditions of a person's mind may be alleged generally.

(c) *Conditions precedent.* In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or have been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) *Official document or act.* In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) *Judgment.* In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it

suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) *Time and place.* An allegation of time or place is material when testing the sufficiency of a pleading.

(g) *Special damages.* If an item of special damage is claimed, it must be specifically stated. If the court allows an amended petition pursuant to K.S.A. 60-3703, and amendments thereto, to include a claim for exemplary or punitive damages the amended petition must state only whether the amount sought as damages is or is not in excess of \$75,000.

(h) *Pleading a written instrument.* A claim, defense or counterclaim founded on a written instrument may be pleaded by:

(1) Reasonably identifying the written instrument and stating its substance;

(2) reciting the contents of the written instrument in the pleading; or

(3) attaching a copy to the pleading as an exhibit.

(i) *Tender of money.* When a tender of money is made in a pleading, the money need not be deposited in court prior to trial, unless the court orders otherwise.

(j) *Libel and slander.* In an action for libel or slander, it suffices to allege generally that defamatory matter was published or spoken concerning the plaintiff, and if that allegation is not denied in the answer, it need not be proved at trial. The defendant's answer may allege both the truth of the matter charged as defamatory and any mitigating circumstances that reduce the amount of damages. Whether the defendant proves justification, the defendant may introduce evidence of any mitigating circumstances.

Sec. 6. K.S.A. 2010 Supp. 60-211 is hereby amended to read as follows: 60-211. (a) *Signature.* Every pleading, written motion and other paper must be signed by at least one attorney of record in the attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, ~~and~~ telephone number *and fax number*. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) *Representations to the court.* By presenting to the court a pleading, written motion or other paper, whether by signing, filing, submitting or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation;

(2) the claims, defenses and other legal contentions are warranted by

existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) *Sanctions*. If, after notice and a reasonable opportunity to respond, the court determines that subsection (b) has been violated, the court may impose an appropriate sanction on any attorney, law firm or party that violated the statute or is responsible for a violation committed by its partner, associate or employee. The sanction may include an order to pay to the other party or parties that reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper. A motion for sanctions under this section may be served and filed at any time during pendency of the action, but must be filed not later than 14 days after the entry of judgment.

(d) *Inapplicability to discovery*. Subsections (a) through (c) do not apply to disclosures and discovery requests, responses, objections and motions that are subject to the provisions of K.S.A. 60-226 through 60-237, and amendments thereto.

(e) *Applicability to the state*. The state of Kansas, including an agency or political subdivision thereof, is subject to this section.

(f) *Monetary sanctions against inmate*. If the court imposes monetary sanctions on an inmate in the custody of the secretary of corrections, the secretary is authorized to disburse any money in the inmate's account to pay the sanctions.

Sec. 7. K.S.A. 2010 Supp. 60-214 is hereby amended to read as follows: 60-214. (a) *When defending party may bring in a ~~third-party~~ third party*. (1) *Timing of the summons and complaint*. A defending party may, as a third-party plaintiff, serve a summons and petition on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) *Third-party defendant's claims and defenses*. The person served with the summons and third-party petition, the "third-party defendant":

(A) Must assert any defenses against the third-party plaintiff's claim under K.S.A. 60-212, and amendments thereto;

(B) must assert any counterclaim against the third-party plaintiff under subsection (a) of K.S.A. 60-213, and amendments thereto, or any crossclaim against another third-party defendant under subsection (f) of K.S.A. 60-213, and amendments thereto, and may assert any counterclaim against the third-party plaintiff under subsection (b) of K.S.A. 60-213, and amend-

ments thereto, or any crossclaims against another third-party defendant under subsection (g) of K.S.A. 60-213, and amendments thereto;

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) *Plaintiff's claims against a third-party defendant.* The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under K.S.A. 60-212, and amendments thereto, and any counterclaim under subsection (a) of K.S.A. 60-213, and amendments thereto, or crossclaim under subsection (f) of K.S.A. 60-213, and amendments thereto, and may assert any counterclaim under subsection (b) of K.S.A. 60-213, and amendments thereto, or any crossclaim under subsection (g) of K.S.A. 60-213, and amendments thereto.

(4) *Motion to strike, sever or try separately.* Any party may move to strike the third-party claim, to sever it or to try it separately.

(5) *Third-party defendant's claim against a nonparty.* A third-party defendant may proceed under this section against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) *When a plaintiff may bring in a third-party.* When a claim is asserted against a plaintiff, the plaintiff may bring in a third-party if this section would allow a defendant to do so.

(c) *Execution by third-party plaintiff; limitation.* Where a third-party defendant is liable to the plaintiff, or to anyone holding a similar position under subsections (a) and (b), on the claim on which a third-party plaintiff has been sued, execution by the third-party plaintiff on a judgment against such third-party defendant shall be permitted only to the extent that the third-party plaintiff has paid any judgment obtained against the third-party plaintiff by the obligee.

Sec. 8. K.S.A. 2010 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, con-

clusions, 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) *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) *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) *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); and

(ii) for discovery under subsection (b)(5)(B), 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.* A party must disclose to other parties the identity of any witness it may use at trial to present expert testimony.

(B) *Required disclosures.* 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 must 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 discoverable 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 of 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. 9. K.S.A. 2010 Supp. 60-228a is hereby amended to read as follows: 60-228a. (a) *Citation of section.* This section may be cited as the uniform interstate depositions and discovery act.

(b) *Definitions.* In this section:

(1) "Foreign jurisdiction" means a state other than this state or a foreign country.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or political subdivision, agency or instrumentality or any other legal or commercial entity.

(4) "State" means a state of the United States, the district of Columbia, Puerto Rico, the United States Virgin islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) Attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information or tangible things in the possession, custody or control of the person; or

(C) permit inspection of premises under the control of the person.

(c) *Issuance of subpoena.* (1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state and pay the docket fee as required by K.S.A. 60-2001, and amendments thereto. A request for the issuance of a subpoena in this state under this section act does not constitute an appearance in the courts of this state.

(2) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, must:

(A) Promptly issue a subpoena for service on the person to which the foreign subpoena is directed; and

(B) assign the subpoena a case file number and enter it on the docket as a civil action pursuant to K.S.A. 60-2601, and amendments thereto.

(3) A subpoena under subsection (c)(2) must:

(A) Incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) *Service of subpoena.* A subpoena issued by a clerk of court under subsection (c) must be served in compliance with K.S.A. 60-303, and amendments thereto.

(e) *Deposition, production and inspection.* K.S.A. 60-245 and 60-245a, and amendments thereto, apply applies to subpoenas issued under subsection (c).

(f) *Application to court.* An application to the court for a protective order or to enforce, quash or modify a subpoena issued by a clerk of court under subsection (c) must comply with the statutes of this state and be submitted to the court in the county in which discovery is to be conducted.

(g) *Uniformity of application and construction.* In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(h) *Application to pending action.* This section applies to requests for discovery in cases pending on the effective date of this section.

Sec. 10. K.S.A. 2010 Supp. 60-235 is hereby amended to read as follows: 60-235. (a) *Order for an examination.* (1) *In general.* The court where the action is pending may order a party whose mental or physical condition, including blood group, is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and notice; contents of the order.* The order:

(A) May be made only on motion for good cause and on notice to all parties and the person to be examined;

(B) must specify the time, place, manner, conditions and scope of the examination, as well as the person or persons who will perform it; and

(C) must direct the moving party to advance the expenses that will necessarily be incurred by the party or person to be examined.

(b) *Examiner's report.* (1) *Request by the party or person examined.* The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents.* The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions and the results of any tests.

(3) *Scope.* This subsection applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subsection does not preclude obtaining an examiner's report or deposing an examiner under other law.

(c) ~~Report~~ *Reports of other examinations.* Any party may request, and is entitled to receive, from another party like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them. Reports provided under this subsection must contain the information specified in subsection (b)(2).

(d) *Failure to deliver a report.* The court on motion may order, on just terms, that a party deliver a report of an examination under subsection (b) or (c). If the report is not provided, the court may exclude the examiner's testimony at trial.

Sec. 11. K.S.A. 2010 Supp. 60-249 is hereby amended to read as follows: 60-249. (a) *Special verdict.* (1) *In general.* The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) Submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) *Instructions.* The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) *Issues not submitted.* A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the

jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) *General verdict with answers to written questions.* (1) *In general.* The court may on written request, submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) *Verdict and answers consistent.* When the general verdict and the answers are consistent, the court must approve an appropriate judgment on the verdict and answers.

(3) ~~Answer~~ *Answers inconsistent with the verdict.* When the answers are consistent with each other, but one or more is inconsistent with the general verdict, the court may:

(A) Approve an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) *Answers inconsistent with each other and the verdict.* When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

Sec. 12. K.S.A. 2010 Supp. 60-260 is hereby amended to read as follows: 60-260. (a) *Corrections based on clerical mistakes; ~~oversight~~ oversights and omissions.* The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order or other part of the record. The court may do so on motion, or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) *Grounds for relief from a final judgment, order or proceeding.* On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under subsection (b) of K.S.A. 60-259, and amendments thereto;

(3) fraud, whether previously called intrinsic or extrinsic, misrepresentation or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based

on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) *Timing and effect of the motion.* (1) *Timing.* A motion under subsection (b) must be made within a reasonable time, and for reasons under paragraphs (b)(1), (2) and (3) no more than one year after the entry of the judgment or order, or the date of the proceeding.

(2) *Effect on finality.* The motion does not affect the judgment's finality or suspend its operation.

(d) *Other powers to grant relief.* This section does not limit a court's power to:

(1) Entertain an independent action to relieve a party from a judgment, order or proceeding;

(2) grant relief under K.S.A. 60-309, and amendments thereto, to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) *Bills and writs abolished.* The following bills are abolished: Bills of review; bills in the nature of bills of review; and writs of coram nobis, coram vobis and audita querela.

Sec. 13. K.S.A. 2010 Supp. 60-270 is hereby amended to read as follows: 60-270. (a) *Retention of original discovery documents.* A party or attorney possessing original deposition transcripts, original responses to interrogatories, original requests for admissions, original requests for production or other original matters produced during discovery must retain those documents until the case is closed.

(b) *Destruction or disposition of original discovery documents.* Except as provided in subsection (c), when the case has been closed the party or attorney possessing the original documents specified in subsection (a) may destroy or dispose of them.

(c) *Original discovery documents subject to order, rule, statute or agreement.* Original discovery documents subject to or covered by a protective order, court rule, statute or written agreement of the parties must be retained, returned, destroyed or disposed of in accordance with the terms of the order, rule, statute or agreement.

(d) *Definition of "closed."* As used in this section, "closed" means when an order terminating the action or proceeding has been filed and all appeals have been terminated, the time for appeal has expired or when the judgment is either satisfied or barred under K.S.A. 60-2403, and amendments thereto.

Sec. 14. K.S.A. 2010 Supp. 60-304 is hereby amended to read as follows: 60-304. As used in this section, "serving" means making service by any of the methods described in K.S.A. 60-303, and amendments thereto, unless a specific method of making service is prescribed in this section.

Except for service by publication under K.S.A. 60-307, and amendments thereto, service of process under this article must be made as follows:

(a) *Individual*. On an individual other than a minor or a disabled person, by serving the individual or by serving an agent authorized by appointment or by law to receive service of process. If the agent is one designated by statute to receive service, such further notice as the statute requires must be given. Service by return receipt delivery must be addressed to an individual at the individual's dwelling or usual place of abode and to an authorized agent at the agent's usual or designated address. If the sheriff, party or party's attorney files a return of service stating that the return receipt delivery to the individual at the individual's dwelling or usual place of abode was refused or unclaimed and that a business address is known for the individual, the sheriff, party or party's attorney may complete service by return receipt delivery, addressed to the individual at the individual's business address.

(b) *Minor*. On a minor, by serving:

(1) The minor; and

(2) either:

(A) The minor's guardian or conservator, if the minor has one within this state;

(B) the minor's father, mother or other person having the minor's care or control or with whom the minor resides; or

(C) if service cannot be made as specified in paragraphs (A) or (B), as provided by order of the court.

Service by return receipt delivery must be addressed to an individual at the individual's dwelling or usual place of abode and to a corporate guardian or conservator at the guardian's or conservator's usual place of business.

(c) *Disabled person*. On a disabled person, as defined in K.S.A. 77-201, and amendments thereto, by:

(1) Serving:

(A) The person's guardian, conservator or a competent adult member of the person's family with whom the person resides;

(B) if the person resides in an institution, the director or chief executive officer of the institution; or

(C) if service cannot be made as specified in paragraphs (A) or (B), as provided by order of the court; and

(2) unless the court otherwise orders, serving the disabled person.

Service by return receipt delivery must be addressed to the director or chief executive officer of an institution at the institution, to any other individual at the individual's dwelling or usual place of abode, and to a corporate guardian or conservator at the guardian's or conservator's usual place of business.

(d) *Governmental bodies*. On:

(1) A county, by serving one of the county commissioners, the county clerk or the county treasurer;

- (2) a township, by serving the clerk or a trustee;
- (3) a city, by serving the clerk or the mayor;
- (4) any other public corporation, body politic, district or authority, by serving the clerk or secretary or, if the clerk or secretary is not found, any officer, director or manager thereof; and
- (5) the state or any governmental agency of the state, when subject to suit, by serving the attorney general or an assistant attorney general.

Service by return receipt delivery must be addressed to the appropriate official at the official's governmental office. Income withholding orders for support and orders of garnishment of earnings of state officers and employees must be served on the state or governmental agency of the state in the manner provided by K.S.A. 60-723, and amendments thereto.

(e) *Corporations, domestic or foreign limited liability companies, domestic or foreign limited partnerships, domestic or foreign limited liability partnerships and partnerships.* On a domestic or foreign corporation, domestic or foreign limited liability company, domestic or foreign limited partnership, domestic or foreign limited liability partnership or a partnership or other unincorporated association that is subject to suit in a common name, by:

- (1) Serving an officer, manager, partner or a resident, managing or general agent;
- (2) leaving a copy of the summons and petition or other document at any of its business offices with the person having charge thereof; or
- (3) serving any agent authorized by appointment or by law to receive service of process, *and* if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Service by return receipt delivery on an officer, partner or agent must be addressed to the person at the person's usual place of business.

(f) *Resident agent for a corporation, limited liability company, limited partnership or limited liability partnership.* A domestic corporation, domestic limited liability company or domestic limited partnership, and, if it is authorized to transact business or transacts business without authority in this state, a foreign corporation, foreign limited liability company or foreign limited partnership irrevocably authorizes the secretary of state as its agent to accept on its behalf service of process, or any notice or demand required or permitted by law to be served on it, when: (1) It fails to appoint or maintain in this state a resident agent on whom service may be had; or (2) its resident agent cannot with reasonable diligence be found at the registered office in this state. Service on the secretary of state of any process, notice or demand must be made by delivering to the secretary of state, by personal service or by return receipt delivery, the original and two copies of the process and two copies of the petition, notice or demand. When any process, notice or demand is served on the secretary of state, the secretary must promptly forward a copy of it by return receipt delivery, addressed to the corporation, limited liability company or limited partnership at its principal

office as it appears in the records of the secretary of state, or at the registered or principal office of the corporation, limited liability company or limited partnership in the state of its incorporation or formation. The secretary of state must keep a record of all processes, notices and demands served on the secretary under this subsection, and must record the time of the service and the action taken by the secretary. A fee of \$40 must be paid to the secretary of state by the party requesting the service of process, to cover the cost of serving process, except the secretary of state may waive the fee for state agencies. The fee must not be included in or paid from any deposit as security for costs or the docket fee required by K.S.A. 60-2001 or 61-4001, and amendments thereto.

(g) *Insurance companies or associations.* Service of summons or other process on any insurance company or association, organized under the laws of this state, may also be made by serving the commissioner of insurance in the same manner as provided for service on foreign insurance companies or associations.

(h) *Service on an employee.* If a party or a party's agent or attorney files an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, that to the best of the affiant's or declarant's knowledge and belief the person to be served is employed in this state, and is a nonresident or that the place of residence of the person is unknown, the affiant or declarant may request that the sheriff or other duly authorized person direct an officer, partner, managing or general agent or the individual having charge of the place at which the person to be served is employed, to make the person available to permit the sheriff or other duly authorized person to serve the summons or other process.

Sec. 15. K.S.A. 2010 Supp. 60-310 is hereby amended to read as follows: 60-310. (a) *Generally.* In an action against two or more defendants, when one or more, but not all have been served, the plaintiff may proceed as follows:

(1) If the action is against defendants jointly indebted on a contract, the plaintiff may proceed against the defendants served, unless the court orders otherwise; and if the plaintiff recovers judgment, it may be entered against all the defendants jointly indebted and may be enforced only against the joint property of all defendants, and the separate property of the defendants served;

(2) if the action is against defendants severally liable, the plaintiff may, without prejudice to the plaintiff's rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

(b) ~~Actions~~ *Action against defendant not served.* Nothing in this section makes a judgment against one or more defendants jointly or severally liable a bar to another action against those not served.

Sec. 16. K.S.A. 2010 Supp. 60-460 is hereby amended to read as fol-

laws: 60-460. Evidence of a statement which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated, is hearsay evidence and inadmissible except:

(a) *Previous statements of persons present.* A statement previously made by a person who is present at the hearing and available for cross-examination with respect to the statement and its subject matter, provided the statement would be admissible if made by declarant while testifying as a witness.

(b) *Affidavits.* Affidavits, to the extent admissible by the statutes of this state.

(c) *Depositions and prior testimony.* Subject to the same limitations and objections as though the declarant were testifying in person, (1) testimony in the form of a deposition taken in compliance with the law of this state for use as testimony in the trial of the action in which offered or (2) if the judge finds that the declarant is unavailable as a witness at the hearing, testimony given as a witness in another action or in a preliminary hearing or former trial in the same action, or in a deposition taken in compliance with law for use as testimony in the trial of another action, when (A) the testimony is offered against a party who offered it in the party's own behalf on the former occasion or against the successor in interest of such party or (B) the issue is such that the adverse party on the former occasion had the right and opportunity for cross-examination with an interest and motive similar to that which the adverse party has in the action in which the testimony is offered, but the provisions of this subsection (c) shall not apply in criminal actions if it denies to the accused the right to meet the witness face to face.

(d) *Contemporaneous statements and statements admissible on ground of necessity generally.* A statement which the judge finds was made (1) while the declarant was perceiving the event or condition which the statement narrates, describes or explains, (2) while the declarant was under the stress of a nervous excitement caused by such perception or (3) if the declarant is unavailable as a witness, by the declarant at a time when the matter had been recently perceived by the declarant and while the declarant's recollection was clear and was made in good faith prior to the commencement of the action and with no incentive to falsify or to distort.

(e) *Dying declarations.* A statement by a person unavailable as a witness because of the person's death if the judge finds that it was made (1) voluntarily and in good faith and (2) while the declarant was conscious of the declarant's impending death and believed that there was no hope of recovery.

(f) *Confessions.* In a criminal proceeding as against the accused, a previous statement by the accused relative to the offense charged, but only if the judge finds that the accused (1) when making the statement was conscious and was capable of understanding what the accused said and did and (2) was not induced to make the statement (A) under compulsion or by

infliction or threats of infliction of suffering upon the accused or another, or by prolonged interrogation under such circumstances as to render the statement involuntary or (B) by threats or promises concerning action to be taken by a public official with reference to the crime, likely to cause the accused to make such a statement falsely, and made by a person whom the accused reasonably believed to have the power or authority to execute the same.

(g) *Admissions by parties.* As against a party, a statement by the person who is the party to the action in the person's individual or a representative capacity and, if the latter, who was acting in such representative capacity in making the statement.

(h) *Authorized and adoptive admissions.* As against a party, a statement (1) by a person authorized by the party to make a statement or statements for the party concerning the subject of the statement or (2) of which the party with knowledge of the content thereof has, by words or other conduct, manifested the party's adoption or belief in its truth.

(i) *Vicarious admissions.* As against a party, a statement which would be admissible if made by the declarant at the hearing if (1) the statement concerned a matter within the scope of an agency or employment of the declarant for the party and was made before the termination of such relationship, (2) the party and the declarant were participating in a plan to commit a crime or a civil wrong and the statement was relevant to the plan or its subject matter and was made while the plan was in existence and before its complete execution or other termination or (3) one of the issues between the party and the proponent of the evidence of the statement is a legal liability of the declarant, and the statement tends to establish that liability.

(j) *Declarations against interest.* Subject to the limitations of exception (f), a statement which the judge finds was at the time of the assertion so far contrary to the declarant's pecuniary or proprietary interest or so far subjected the declarant to civil or criminal liability or so far rendered invalid a claim by the declarant against another or created such risk of making the declarant an object of hatred, ridicule or social disapproval in the community that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true.

(k) *Voter's statements.* A statement by a voter concerning the voter's qualifications to vote or the fact or content of the voter's vote.

(l) *Statements of physical or mental condition of declarant.* Unless the judge finds it was made in bad faith, a statement of the declarant's (1) then existing state of mind, emotion or physical sensation, including statements of intent, plan, motive, design, mental feeling, pain and bodily health, but not including memory or belief to prove the fact remembered or believed, when such a mental or physical condition is in issue or is relevant to prove or explain acts or conduct of the declarant or (2) previous symptoms, pain or physical sensation, made to a physician consulted for treatment or for

diagnosis with a view to treatment, and relevant to an issue of declarant's bodily condition.

(m) *Business entries and the like.* Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the judge finds that (1) they were made in the regular course of a business at or about the time of the act, condition or event recorded and (2) the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness.

If the procedure specified by subsection (b) of K.S.A. 60-245a for providing business records has been complied with and no party has required the personal attendance of a custodian of the records or the production of the original records, the affidavit *or declaration* of the custodian shall be prima facie evidence that the records satisfy the requirements of this subsection.

(n) *Absence of entry in business records.* Evidence of the absence of a memorandum or record from the memoranda or records of a business of an asserted act, event or condition, to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if the judge finds that it was the regular course of that business to make such memoranda of all such acts, events or conditions at the time thereof or within a reasonable time thereafter and to preserve them.

(o) *Content of official record.* Subject to K.S.A. 60-461 and amendments thereto, (1) if meeting the requirements of authentication under K.S.A. 60-465 and amendments thereto, to prove the content of the record, a writing purporting to be a copy of an official record or of an entry therein or (2) to prove the absence of a record in a specified office, a writing made by the official custodian of the official records of the office, reciting diligent search and failure to find such record.

(p) *Certificate of marriage.* Subject to K.S.A. 60-461 and amendments thereto, certificates that the maker thereof performed marriage ceremonies, to prove the truth of the recitals thereof, if the judge finds that (1) the maker of the certificates, at the time and place certified as the times and places of the marriages, was authorized by law to perform marriage ceremonies and (2) the certificate was issued at that time or within a reasonable time thereafter.

(q) *Records of documents affecting an interest in property.* Subject to K.S.A. 60-461 and amendments thereto, the official record of a document purporting to establish or affect an interest in property, to prove the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the judge finds that (1) the record is in fact a record of an office of a state or nation or of any governmental subdivision thereof and (2) an applicable statute authorized such a document to be recorded in that office.

(r) *Judgment of previous conviction.* Evidence of a final judgment ad-

judging a person guilty of a felony, to prove any fact essential to sustain the judgment.

(s) *Judgment against persons entitled to indemnity.* To prove the wrong of the adverse party and the amount of damages sustained by the judgment creditor, evidence of a final judgment if offered by a judgment debtor in an action in which the debtor seeks to recover partial or total indemnity or exoneration for money paid or liability incurred by the debtor because of the judgment, provided the judge finds that the judgment was rendered for damages sustained by the judgment creditor as a result of the wrong of the adverse party to the present action.

(t) *Judgment determining public interest in land.* To prove any fact which was essential to the judgment, evidence of a final judgment determining the interest or lack of interest of the public or of a state or nation or governmental division thereof in land, if offered by a party in an action in which any such fact or such interest or lack of interest is a material matter.

(u) *Statement concerning one's own family history.* A statement of a matter concerning a declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, race-ancestry or other similar fact of the declarant's family history, even though the declarant had no means of acquiring personal knowledge of the matter declared, if the judge finds that the declarant is unavailable.

(v) *Statement concerning family history of another.* A statement concerning the birth, marriage, divorce, death, legitimacy, race-ancestry, relationship by blood or marriage or other similar fact of the family history of a person other than the declarant if the judge finds that the declarant (1) was related to the other by blood or marriage, or was otherwise so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared, and made the statement as upon information received from the other or from a person related by blood or marriage to the other or as upon repute in the other's family and (2) is unavailable as a witness.

(w) *Statement concerning family history based on statement of another declarant.* A statement of a declarant that a statement admissible under exceptions (u) or (v) was made by another declarant, offered as tending to prove the truth of the matter declared by both declarants, if the judge finds that both declarants are unavailable as witnesses.

(x) *Reputation in family concerning family history.* Evidence of reputation among members of a family, if the reputation concerns the birth, marriage, divorce, death, legitimacy, race-ancestry or other fact of the family history of a member of the family by blood or marriage.

(y) *Reputation—boundaries, general history, family history.* Evidence of reputation in a community as tending to prove the truth of the matter reputed, if the reputation concerns (1) boundaries of or customs affecting, land in the community and the judge finds that the reputation, if any, arose

before controversy, (2) an event of general history of the community or of the state or nation of which the community is a part and the judge finds that the event was of importance to the community or (3) the birth, marriage, divorce, death, legitimacy, relationship by blood or marriage, or race-ancestry of a person resident in the community at the time of the reputation, or some other similar fact of the person's family history or of the person's personal status or condition which the judge finds likely to have been the subject of a reliable reputation in that community.

(z) *Reputation as to character.* If a trait of a person's character at a specified time is material, evidence of the person's reputation with reference thereto at a relevant time in the community in which the person then resided or in a group with which the person then habitually associated, to prove the truth of the matter reputed.

(aa) *Recitals in documents affecting property.* Evidence of a statement relevant to a material matter, contained in a deed of conveyance or a will or other document purporting to affect an interest in property, offered as tending to prove the truth of the matter stated, if the judge finds that (1) the matter stated would be relevant upon an issue as to an interest in the property and (2) the dealings with the property since the statement was made have not been inconsistent with the truth of the statement.

(bb) *Commercial lists and the like.* Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical or other published compilation, to prove the truth of any relevant matter so stated, if the judge finds that the compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them.

(cc) *Learned treatises.* A published treatise, periodical or pamphlet on a subject of history, science or art, to prove the truth of a matter stated therein, if the judge takes judicial notice, or a witness expert in the subject testifies, that the treatise, periodical or pamphlet is a reliable authority in the subject.

(dd) *Actions involving children.* In a criminal proceeding or a proceeding pursuant to the revised Kansas juvenile justice code or in a proceeding to determine if a child is a child in need of care under the revised Kansas code for care of children, a statement made by a child, to prove the crime or that a child is a juvenile offender or a child in need of care, if:

(1) The child is alleged to be a victim of the crime or offense or a child in need of care; and

(2) the trial judge finds, after a hearing on the matter, that the child is disqualified or unavailable as a witness, the statement is apparently reliable and the child was not induced to make the statement falsely by use of threats or promises.

If a statement is admitted pursuant to this subsection in a trial to a jury, the trial judge shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement and that, in making the deter-

mination, it shall consider the age and maturity of the child, the nature of the statement, the circumstances under which the statement was made, any possible threats or promises that might have been made to the child to obtain the statement and any other relevant factor.

(ee) *Certified motor vehicle certificate of title history.* Subject to K.S.A. 60-461, and amendments thereto, a certified motor vehicle certificate of title history prepared by the division of vehicles of the Kansas department of revenue.

Sec. 17. K.S.A. 60-2003 is hereby amended to read as follows: 60-2003. Items which may be included in the taxation of costs are:

(1) The docket fee as provided for by K.S.A. 60-2001, and amendments thereto.

(2) The mileage, fees, and other allowable expenses of the sheriff, other officer or private process server incurred in the service of process or in effecting any of the provisional remedies authorized by this chapter.

(3) Publisher's charges in effecting any publication of notices authorized by law.

(4) Statutory fees and mileage of witnesses attending court or the taking of depositions used as evidence.

(5) Reporter's or stenographic charges for the taking of depositions used as evidence.

(6) The postage fees incurred pursuant to K.S.A. 60-303 ~~or subsection (e) of K.S.A. 60-308~~, and amendments thereto.

(7) Alternative dispute resolution fees shall include fees, expenses and other costs arising from mediation, conciliation, arbitration, settlement conferences or other alternative dispute resolution means, whether or not such means were successful in resolving the matter or matters in dispute, which the court shall have ordered or to which the parties have agreed.

(8) Such other charges as are by statute authorized to be taxed as costs.

Sec. 18. K.S.A. 2010 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 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 ~~20~~ 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 ~~10~~ 14 days after the individual designations have been made. If the parties are unable to jointly select a health care provider within such ~~10~~ 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. 19. K.S.A. 20-3017 and 60-2003 and K.S.A. 2010 Supp. 38-2305, 38-2305a, 60-203, 60-206, 60-209, 60-211, 60-214, 60-226, 60-228a, 60-

235, 60-249, 60-260, 60-270, 60-304, 60-310, 60-460 and 65-4902 are hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 13, 2011.

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## CHAPTER 49

SENATE BILL No. 112  
(Amended by Chapter 91)

AN ACT concerning land surveyors; amending K.S.A. 19-1407, 19-1411, 19-1412, 19-1413, 19-1416, 19-1417, 19-1420, 19-1422, 19-1423, 19-1426, 19-1430, 24-106, 24-802, 25-101, 42-358, 58-2001, 58-2002, 58-2003, 58-2004, 58-2005, 58-2011, 58-3102, 68-104, 68-131, 68-1407 and 79-409 and K.S.A. 2010 Supp. 68-1402 and repealing the existing sections; also repealing K.S.A. 19-1403, 19-1421, 19-1432 and 68-108.

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

New Section 1. (a) The board of county commissioners of each county may appoint a land surveyor, whose official title shall be county surveyor. The county surveyor may appoint deputy county surveyors, and each deputy may perform the duties devolved upon the county surveyor by law. The county surveyor shall be a land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto. The county surveyor may be a full-time or part-time county employee, or a contract employee, as determined appropriate by the board of county commissioners. A land surveyor may be a county surveyor in more than one county.

(b) For purposes of this section and article 14 of chapter 19 of the Kansas Statutes Annotated, and amendments thereto, the term ‘land surveyor’ shall have the same meaning ascribed thereto in K.S.A. 74-7003, and amendments thereto.

New Sec. 2. (a) Whenever a land surveyor performs a survey that results in a new legal description or creates a new tract of land, a survey plat shall be recorded with the register of deeds in the county where the survey was located within 90 days after completion of the survey. The survey plat shall be certified with the seal and signature of a land surveyor. The land surveyor who signed and sealed the survey plat shall be responsible for recording the survey.

(b) Except for subdivision plats, the board of county commissioners may, by resolution, designate an alternative county office for the filing of survey plats for archival purposes. If a county office other than the register of deeds is designated for the filing of survey plats, then that office shall maintain an index of all surveys by section, township and range, and surveys of platted lots shall be indexed by subdivision. The cost of filing the survey

plat at the alternate county office shall not exceed the cost of recording the same or similar documents at the register of deeds.

Sec. 3. K.S.A. 19-1407 is hereby amended to read as follows: 19-1407. The county surveyor shall keep records to show the following:

~~(1) All surveys;~~

~~(2) (a) A plat of each boundary survey showing all course lengths and angles of deflection, to a scale of not less than four (4) inches to the mile, and showing a directional arrow, a location legend and such other data as will properly identify the plat made by the county surveyor, which shall be in accordance with Kansas law in effect at the time such survey is made;~~

~~(3) (b) a full set of field notes, setting forth the chainage distance and direction of all courses, and recording the stations of all permanent fences and boundaries and of such existing landmarks as will allow a complete study of the property, from such record;~~

~~(4) (c) a description of all corners found or set with a tie-in to at least three (3) permanent markers or witnesses also described, together with their direction and distance from a stone or corner. reference reports prepared by the county surveyor, such surveyor's deputies and other land surveyors pursuant to K.S.A. 58-2011, and amendments thereto.~~

Sec. 4. K.S.A. 19-1411 is hereby amended to read as follows: 19-1411. In establishing the center corner of all sections closing on a parallel or base line, the ~~county land~~ surveyor ~~or his deputy~~ shall commence at the quarter-section corner on the south boundary of the section, and run a line north, parallel to the east boundary of ~~said such~~ section; and at ~~forty 40~~ chains from the quarter-section corner on the south boundary, ~~or place of commencement, said county such land~~ surveyor ~~or his deputy~~ shall permanently establish the center corner of the section; and at the point where the said north line produced intersects the parallel or base line, which must be just ~~forty 40~~ chains west of northeast corner of the section, ~~said county such land~~ surveyor ~~or his deputy~~ must permanently establish the quarter-section corner on the north boundary of the section.

Sec. 5. K.S.A. 19-1412 is hereby amended to read as follows: 19-1412. In re-establishing missing corners, where no bearing or witness tree or trees can be found, the ~~county land~~ surveyor ~~or his deputy~~ shall establish ~~said the~~ missing corners in accordance with the government surveys. Where government surveys cannot be accurately followed, missing corners shall be established by proportionate measurement or existing landmarks supplemented with other location data, monuments, ~~chainage, distances~~ and the ~~stone of monuments for~~ the corners shall be replaced according to the best calculations of the ~~county land~~ surveyor, taking into account all the data, and, if necessary, replacing the proportionate measurement requirement.

Sec. 6. K.S.A. 19-1413 is hereby amended to read as follows: 19-1413. (a) If any county surveyor or ~~his such~~ surveyor's deputy shall be molested,

or prevented from doing or performing any of ~~his or their~~ *such surveyor's* official duties, by means of threats or improper interference of any person or persons, such surveyor shall call on the sheriff of the county, who shall accompany ~~him~~ *such surveyor* and remove all force;

(b) ~~and the person or persons thus~~ Threatening or improperly interfering with any county surveyor or ~~his~~ *such surveyor's* deputy, ~~while performing his or their~~ *during the performance of such surveyor's* official duties, shall be a class A nonperson misdemeanor, and on conviction thereof be ~~fin~~ *ed* in a sum not exceeding one hundred dollars, and moreover shall be liable for all damages to any person by the hindrance of the *county* surveyor or ~~his~~ *such surveyor's* deputy, and also for all the expenses that may accrue in consequence of the attendance of the sheriff.

Sec. 7. K.S.A. 19-1416 is hereby amended to read as follows: 19-1416. ~~That~~ It shall not be necessary for the county surveyor to take an oath or affirmation before commencing ~~his~~ *such surveyor's* duties to survey roads, except as is provided by law, when ~~he takes his~~ *such surveyor takes* oath of office, ~~as is provided in Laws of 1913, chapter 157, section 1.~~

Sec. 8. K.S.A. 19-1417 is hereby amended to read as follows: 19-1417. It shall be the duty of each county surveyor to employ disinterested persons to act as ~~chainmen; and he may appoint markers, flagmen and rodmen; and such surveyor's assistants.~~ The expenses of ~~the chainmen, markers, flagmen and rodmen~~ *such assistants* shall be paid in advance, if required by the county surveyor ~~or his deputy~~, by the party on whose application the survey may be made, and the money so advanced shall be accounted for by the *county* surveyor and the amount expended to be taxed on the bill of cost. Any ~~chainman, marker or flagman appointed as aforesaid~~ *appointed assistant* shall receive, for each day that ~~he~~ *such assistant* may be actually *be* employed in performing the work, the prevailing wages for like services within the area, as determined by the board of county commissioners.

Sec. 9. K.S.A. 19-1420 is hereby amended to read as follows: 19-1420. Upon the establishment of any road, the county surveyor shall enter the plat and field notes thereof upon the official road record of the county. ~~He~~ *The county surveyor* shall, when ordered by the board of county commissioners, make out a complete description of all or any part of the real estate of ~~his~~ *such* county, to be made out and entered in proper rolls furnished by the county clerk for such purpose. ~~The county surveyor shall, when ordered by the county commissioners, make complete surveys, plans, specifications and estimates for all bridges, culverts, roads, ditches, or other public works to be constructed under the authority of the board of county commissioners, and shall report the same with his recommendations thereon, and when so ordered he shall superintend the construction of such work, and make reports on the progress of the same to the board of county commissioners as often as they may require. Provided, That the board of county commissioners may employ a civil engineer or architect to act alone or in con-~~

~~junction with the county surveyor in making plans, specifications and estimates for any bridge, culvert, road, ditch or other public work to be constructed by the county, and in superintending the construction of the same.~~

Sec. 10. K.S.A. 19-1422 is hereby amended to read as follows: 19-1422. In the resurvey of land surveyed under the authority of the United States, the ~~county~~ *land* surveyor shall observe the following rules ~~to wit:~~

*First*, Section and quarter-section corners, and all other corners established by the government survey, must stand as the true corners.

*Second*, They must be re-established at the identical spot where the original corner was located by the government surveyor, when this can be determined.

*Third*, When this cannot be done, then said corners must be re-established in accordance with the provisions of ~~section K.S.A. 19-1412 of the General Statutes of 1949, as amended,~~ *and amendments thereto.*

Sec. 11. K.S.A. 19-1423 is hereby amended to read as follows: 19-1423. (a) Whenever the owner or owners of one or more tracts of land shall desire to permanently establish the corners and boundaries thereof, such owner or owners shall notify the county surveyor to make a survey thereof and establish such corners and boundaries, and shall furnish to the county surveyor the name or names and address or addresses of all persons residing in the county and elsewhere, so far as known, who may be affected by such survey. The county surveyor shall cause a notice in writing to be served on each person who may be affected by the survey, or their agent or agents residing in such county, stating the time when the *county* surveyor will begin the survey, and the lines or corners to be established, which notice shall be delivered to the person or left at their usual place of residence, at least six days prior to the day set for the survey.

(b) *Notice may be served* upon the landowners who may be affected by the survey, and who do not reside in the county, ~~notice may be served~~ by publication in a newspaper published in the county, if there is one, once in each week for three consecutive weeks, the last publication to be made at least three days prior to the day set for beginning the survey, and in case no newspaper is published in the county, then in some newspaper published in the state which has general circulation in the county, or such notice may be served by mailing, by registered mail, postage prepaid, with return receipt requested, addressed to such person at their usual place of residence with proper post-office address. In all cases where all the landowners interested shall consent in writing, the county surveyor may, at such time as may be agreed upon, proceed to establish such corners and boundaries without serving notice as required by this section. Proof of service of notice as herein provided shall be made and entered of record in the office of the county surveyor, *and retained for a period of one year.*

(c) All costs incurred by the county surveyor in conducting such survey

and proceedings for establishing the corners and boundaries of any tract or tracts of land requested by the owner of such property shall be paid by the party or parties requesting such survey. All costs incurred by the county surveyor in conducting surveys and proceedings for establishing the corners and boundaries of tracts of land which are authorized and directed by the board of county commissioners shall be paid from funds of the county available for such purpose.

Sec. 12. K.S.A. 19-1426 is hereby amended to read as follows: 19-1426. (a) Upon the filing of the report of each survey, any person interested in ~~the same~~ *such report* can at any time within 30 days thereafter appeal to the district court, by filing with the county surveyor a notice of such person's intention to appeal and by giving a bond, to be approved by the judge of the district court, conditioned for the payment of costs of the appeal if the report of the county surveyor is affirmed by the court. Upon the filing of such notice and bond the county surveyor shall certify the appeal to the clerk of the district court, and shall file with the clerk a certified copy of the report appealed from, including the affidavits, if any, filed therewith. The court shall hear and determine the appeal, and enter an order of judgment approving or rejecting the report, or modifying or amending the report, or may refer the report back to the *county* surveyor to correct the survey and report in conformity with the decree of the court, or may, for good cause shown, set aside the report and appoint one or more *land* surveyors, who shall proceed at the time mentioned in the order of the court, to survey and determine the corners and boundaries of the land in question, and shall report the same to the court for further action.

(b) The corners and boundaries established in any survey made in pursuance of an agreement, or in any survey where no appeal is taken from the *county* surveyor's report, and such corners and boundaries as are established by the decree of the court, shall be held and considered as permanently established, and shall not thereafter be changed. When any report of a survey made in pursuance of an agreement, or of legal notice, or by the order of court, becomes final, it shall be the duty of the county surveyor to record the report in the records of permanent surveys. The county surveyor shall also make a certified record of such survey on paper of the same size as the record of permanent surveys, suitable for binding, and shall file the record in the office of register of deeds.

Sec. 13. K.S.A. 19-1430 is hereby amended to read as follows: 19-1430. ~~When he shall find or be notified that, by reason of the wearing, washing or blowing of the land below its usual surface, a cornerstone or monument is in danger~~ *a United States public land survey corner or section center corner monument located in a street or road:*

(a) ~~Is at risk of being displaced or destroyed, it shall be the duty of the township trustee on township roads, the county surveyor on county roads, and of persons, firms or corporations on their property, to at once fill in~~

~~around such cornerstone or monument in such manner as to make it secure; and further, when a cornerstone or monument;~~

~~(b) projects above the usual grade of a roadbed enough to be in danger of being displaced by travel, by road graders, or by other means, or if by reason of intended cuts or fills the cornerstone or monument is likely to be displaced or destroyed or covered to a depth exceeding two (2) feet or covered with;~~

~~(c) is at risk of coverage by concrete, asphalt or other permanent type surfacing, and such cornerstone or monument has not at least two (2) duly recorded witness monuments, the county surveyor shall be given notice, served in person or by certified mail, of such fact, together with the location of such cornerstone or monument.; or~~

~~(d) is at risk that fill will cover the corner monument more than two feet, the agency responsible for maintaining the road shall preserve the corner monument by employing a land surveyor to comply with the provisions of K.S.A. 58-2011, and amendments thereto.~~

~~The cost of the preservation or reestablishment of the corner monument shall be paid by the agency responsible for maintaining the road, or if such corner monument is located on private property, by the landowner.~~

Sec. 14. K.S.A. 24-106 is hereby amended to read as follows: 24-106. ~~Owners of land~~ Landowners may drain ~~the same~~ their land in the general course of natural drainage, by constructing open or covered drains, into any natural depression, draw; or ravine, on ~~his~~ such landowner's own land, whereby the water will be carried by ~~said~~ such depression, draw; or ravine into some natural watercourse, or into any drain upon a public highway, for the purpose of securing proper drainage to such land; ~~and he.~~ Such landowner shall not be liable in damages therefor to any person or persons or corporation. ~~Provided, That owners of land,~~ provided that in constructing an outlet to a drain upon any public road, the landowner shall leave the road in as good a condition as it was before the drain was constructed;. The question as to such condition ~~to~~ shall be determined by the board of county commissioners and the county engineer ~~in counties having a county engineer, and in other counties the county surveyor.~~

Sec. 15. K.S.A. 24-802 is hereby amended to read as follows: 24-802. Whenever a petition is presented to the board of county commissioners of the county in which a levee is proposed to be constructed, signed by the owners of a majority of the acreage on which such levee or any portion of it is proposed to be constructed, or which will be benefited by the construction of such levee, specifying substantially the place of beginning, the general course and termination of such levee, accompanied by a bond, with surety approved by the clerk of such board, payable to the state of Kansas, conditioned that the petitioners will pay all costs and expenses accruing in the proceedings in case said levee be not finally located and allowed, the board of county commissioners shall with such assistance as may be re-

quired of the county ~~surveyor or~~ engineer, determine whether or not to institute proceedings and exercise the power of eminent domain in accordance with K.S.A. 26-501 to 26-516, inclusive, *and amendments thereto*.

Sec. 16. K.S.A. 25-101 is hereby amended to read as follows: 25-101. (a) On the Tuesday succeeding the first Monday in November of each even-numbered year, there shall be held a general election to elect officers as follows:

(1) At each alternate election, prior to the year in which the term of office of the president and vice-president of the United States will expire, there shall be elected the electors of president and vice-president of the United States to which the state may be entitled at the time of such election;

(2) at each such election, when the term of a United States senator for this state shall expire during the next year, there shall be elected a United States senator;

(3) at each such election there shall be elected the representatives in congress to which the state may be entitled at the time of such election;

(4) at each alternate election, prior to the year in which their regular terms of office will expire, there shall be elected a governor, lieutenant governor, secretary of state, attorney general, state treasurer and state commissioner of insurance;

(5) at each such election there shall be elected such members of the state board of education as provided by law;

(6) at each such election, when, in a judicial district in which judges of the district court are elected, the term of any district judge expires during the next year, or a vacancy in a district judgeship has been filled by appointment more than 30 days prior to the election, there shall be elected a district judge of such judicial district;

(7) at each such election, when, in a judicial district in which judges of the district court are elected, the term of any district magistrate judge expires during the next year, or a vacancy in a district magistrate judgeship has been filled by appointment more than 30 days prior to the election, there shall be elected a district magistrate judge of such judicial district;

(8) at each alternate election, prior to the year in which the regular term of office of state senators shall expire, there shall be elected a state senator in each state senatorial district;

(9) at each election there shall be elected a representative from each state representative district;

(10) at each alternate election there shall be elected, in each county, a county clerk, county treasurer, register of deeds, county or district attorney, sheriff and such other officers as provided by law; *and*

~~at each alternate election, in counties that may by law be entitled to elect such officer, there shall be elected a county surveyor;~~

(11) at each election, when the term of county commissioner in any

district in any county shall expire during the next year, there shall be elected from such district a county commissioner.

(b) This section shall apply to the filling of vacancies only so far as is consistent with the provisions of law relating thereto.

Sec. 17. K.S.A. 42-358 is hereby amended to read as follows: 42-358.

(a) Whenever the ~~owners of land~~ *landowners* within any proposed irrigation district, who shall be residents of the county in which ~~said such~~ proposed irrigation district is located, shall desire the erection of such district as provided for in K.S.A. 42-357, *and amendments thereto*, ~~they such~~ *landowners* shall cause to be presented to the board of county commissioners of such county a petition signed by not less than ~~three-fourths~~ <sup>3/4</sup> of the ~~owners of land~~ *landowners* within ~~said such~~ proposed district who are residents of such county, which petition shall define the boundaries of ~~said such~~ irrigation district, and shall ask for the erection of such district. Such petition shall be accompanied by an outlined map or plat showing the tracts of territory to be erected into such district, together with the numbers of sections and parts of the sections of land to compose such irrigation district; and ~~said such~~ map or plat shall contain a drawing and profile of the proposed main ditch to the source of supply, and of all other ditches and laterals proposed to be constructed or purchased for the purpose of irrigating said described lands in ~~said such~~ proposed district.

(b) ~~And said~~ Such petition shall be accompanied by an estimate, to be made by the county engineer of such county, ~~if such engineer be then in the employ of such county, and if not, by the county surveyor,~~ of the probable cost of ~~the building of said~~ *the* main ditch, ditches and laterals and all other works necessary to be built in order to furnish a sufficient supply of water to irrigate the lands in ~~said such~~ proposed district; or the costs of reconstruction and repair of such ditches, laterals and other works in case it is proposed to purchase the same; and at any time after the filing of such petition the county commissioners may, on the written application of any ~~ten~~ *10* of such petitioners, order such county engineer ~~or surveyor~~ to make the estimates herein provided for, and ~~he such county engineer~~ shall receive ~~for his work and labor~~ such reasonable compensation as such board of commissioners shall allow *for such work performed*.

Sec. 18. K.S.A. 58-2001 is hereby amended to read as follows: 58-2001. (a) All *exterior* corners in the boundary of a subdivision of land shall be monumented prior to recording of the plat submitted for recording after the effective date of this section. ~~This monument~~ *The monuments* shall be a metallic bar or ~~tube set rigidly in a concrete base.~~ *pipe which is in accordance with Kansas law at the time the survey is made.*

(b) *As used in article 20 of chapter 58 of the Kansas Statutes Annotated, and amendments thereto:*

(1) *“Condominium plat” means a type of subdivision plat for condominiums as required by K.S.A. 58-3115, and amendments thereto.*

(2) “Subdivision plat” means a type of survey plat that creates lots, tracts, units or other parcels of land, that is acknowledged by the landowner and which requires acceptance by a city or county governing body.

(3) “Survey plat” means a drawing prepared by a land surveyor that graphically depicts the details of a survey and the location of the monuments.

(4) “Townhouse plat” means a type of subdivision plat for townhouses as required by K.S.A. 58-3707, and amendments thereto.

Sec. 19. K.S.A. 58-2002 is hereby amended to read as follows: 58-2002. Where any ~~section corner, quarter section corner~~ United States public land survey corner or section center is involved in the control establishing the location of a subdivision boundary or other property boundary, ~~said point~~ such corners shall be clearly monumented and labeled before it is being used in the ~~subdivision~~ control of the survey.

Sec. 20. K.S.A. 58-2003 is hereby amended to read as follows: 58-2003. When any ~~section corner, quarter section corner~~ United States public land survey corner or section center is ~~set or reset~~ monumented or remonumented by a land surveyor, and when any such corner is located by a land surveyor in the course of carrying out a public survey, there shall be recorded, in the manner provided by K.S.A. 58-2011, and amendments thereto, reference measurements from permanent, visible objects to the location of the ~~point corner~~ as ~~set, reset~~ monumented, remonumented or located. These reference objects shall be described clearly. ~~In lieu of reference measurements from visible objects, such reference measurements may be made from triangulation stations maintained by the national ocean service/national geodetic survey or by utilizing the state plane coordinate system prescribed by K.S.A. 58-20a01 et seq., and amendments thereto.~~

Sec. 21. K.S.A. 58-2004 is hereby amended to read as follows: 58-2004. The following information shall be submitted to the county surveyor with all survey plats ~~for subdivisions of land; that are required to be reviewed by the county surveyor:~~

(a) ~~Exterior boundary~~ Survey plat showing: (1) Theory of location used for the exterior boundary; (2) locations of the monuments, ~~(2);~~ and (3) bearings and distances between the monuments, ~~(3) closure calculations.~~

(b) ~~All horizontal lot calculations and street calculations.~~ Closure calculations of the exterior boundary and interior lots and parcels, or equivalent electronic data files acceptable to the county surveyor.

(c) Corner reference reports prepared by the land surveyor as required by K.S.A. 58-2003 and 58-2011, and amendments thereto, less than one year prior to the date such reports are submitted to the county surveyor.

Sec. 22. K.S.A. 58-2005 is hereby amended to read as follows: 58-2005. (a) Before a subdivision plat, or survey plat ~~of survey may~~ required to be recorded pursuant to section 2, and amendments thereto, can be recorded, it shall be reviewed by the county surveyor or a land surveyor

~~designated by the county. If the county does not have a designated county surveyor, the county engineer shall review the plat if the county engineer also is a registered land surveyor. In the absence of both a county surveyor and a county engineer who is a registered land surveyor the plat shall be reviewed by a registered land surveyor designated by the county. All cost for plat review and approval shall be charged back to the applicant for plat approval. The county shall be responsible for the enforcement of this act. The county surveyor or county engineer other land surveyor designated by the county shall certify that such plat meets all the requirements of this act. If any such plat is required to be submitted to any planning commission for review and approval or disapproval, such review and approval duly certified upon the face of such plat shall not constitute full compliance with the review required in this section unless reviewed by the county surveyor or county engineer.~~

*(b) (1) The survey plat shall be reviewed for: (A) Closure of the exterior boundary; (B) monumentation of the exterior boundary and United States public land survey corners; (C) legal description; and (D) compliance with K.S.A. 58-2011, and amendments thereto.*

*(2) A townhouse plat shall be reviewed in accordance with paragraph (1), and shall also be reviewed for compliance with K.S.A. 58-3707, and amendments thereto.*

*(3) A condominium plat shall be reviewed in accordance with paragraph (1), and shall also be reviewed for compliance with K.S.A. 58-3115, and amendments thereto.*

*(4) The board of county commissioners may, by resolution, adopt additional review requirements, including, but not limited to, review of proposed new tracts for compliance with zoning ordinances and regulations.*

*(c) Costs for the plat review and approval may be charged to the applicant for plat approval. All costs charged pursuant to this section shall be based on actual costs of the review and approval as approved by the board of county commissioners. There shall be no charge to the applicant for the completion of a deficiency correction verification. If new deficiencies are identified on an amended plat, and were not present on the initial plat, then the cost of the additional review may be charged to the applicant, provided, such charge does not exceed the charge for the initial review.*

*(d) If a survey plat is required to be reviewed, the register of deeds for such county may:*

*(1) Accept a survey plat for recordation only after the county surveyor, or such surveyor's designee, signs the face of the plat; or*

*(2) accept the survey plat, filing fee and review fee prior to review, then deliver the plat along with the review fee to the county surveyor or such surveyor's designee. The county surveyor, or such surveyor's designee, shall return the plat to the register of deeds, or to the submitting land surveyor, if necessary, upon completion of the review.*

*(e) The county surveyor, or such surveyor's designee, shall complete*

*any initial plat review and deliver such plat to the submitting land surveyor or the register of deeds, as the case may be, no later than eight business days after such plat was submitted for review. During the initial review of a plat, the county surveyor, or such surveyor's designee, shall identify deficiencies related to those items described in subsection (b), if applicable. The county surveyor, or such surveyor's designee, shall complete any amended plat review and deliver such amended plat and the deficiency correction verification to the submitting land surveyor or the register of deeds, as the case may be, no later than three business days after such amended plat was submitted for review.*

*(f) Except for subdivision plats, townhouse plats and condominium plats, the board of county commissioners may, by resolution, waive the requirement for review of survey plats prior to recording with the register of deeds.*

Sec. 23. K.S.A. 58-2011 is hereby amended to read as follows: 58-2011. (a) Whenever a survey originates from a United States public land survey corner or any related accessory, the land surveyor shall file a ~~copy of the report of the completed survey and references to the~~ *reference report for each corner or accessory with the secretary of the state historical society and with the county surveyor for the county or counties in which the survey corner exists. If there is no county surveyor of such county, such reference report shall be filed with the county engineer. If there is no county engineer, such report shall be filed in the office of the county road department. Reports filed with the secretary of the state historical society may be filed and retrieved using electronic technologies if authorized by the secretary. Such report shall be filed within 30 days of the date the references are made. At the time of filing such report with the secretary of the state historical society, the land surveyor shall pay a filing fee in an amount fixed by rules and regulations of the secretary of the state historical society. Fees charged for filing and retrieval of such reports may be billed and paid periodically.*

(b) Any person engaged in an activity in which a United States public land survey corner or any related accessory is likely to be altered, removed, damaged or destroyed, shall have a person qualified to practice land surveying establish such reference points as necessary for the restoration, reestablishment or replacement of the corner or accessory. The land surveyor shall file a reference report with the secretary of the state historical society and with the county surveyor for the county or counties in which the survey corner exists. Such report shall be filed within 30 days of the date the references are made. At the time of filing such report with the secretary of the state historical society, the land surveyor shall pay a filing fee in an amount fixed by rules and regulations of the secretary of the state historical society.

(c) Upon completion of the activity likely to alter, remove, damage or destroy the public land survey corner or related accessory, the land surveyor

shall review the survey corner and its accessories. If the survey corner or any accessory has been altered, removed, damaged or destroyed, the land surveyor shall replace the corner or accessory with a survey monument and file a restoration report with the secretary of the state historical society and the county surveyor in the county or counties in which it existed. If the survey corner and accessories are not damaged during the activity, a restoration report so stating shall be filed with the secretary of the state historical society and county surveyor's office. Such report shall be filed within 30 days after the activity is completed. At the time of filing such report with the office of the secretary of the state historical society the land surveyor shall pay a filing fee in an amount fixed by rules and regulations of the secretary of the state historical society.

(d) Failure to comply with the filing requirements of this section shall be grounds for the suspension or revocation of the land surveyor's license.

(e) The secretary of the state historical society may produce, reproduce and sell maps, plats, reports, studies and records relating to land surveys. The secretary of the state historical society shall charge a fee in an amount to be fixed by rules and regulations of the secretary for the furnishing of information retrieved from records filed pursuant to this section and for reproductions or copies of maps, plats, reports, studies and records filed in such office.

(f) All moneys collected by the secretary of the state historical society under 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. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the land survey fee fund, which is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants approved by the secretary of the state historical society or a person designated by the secretary of the state historical society and shall be used only for the purpose of paying the costs incurred in administering the provisions of this act. After the effective date of this act, any reference to the secretary of state in regard to appropriations to the land survey fee fund shall be deemed to refer to the secretary of the state historical society.

(g) The failure of any person to have a land surveyor establish reference points as required by subsection (b) shall be a class C misdemeanor.

Sec. 24. K.S.A. 58-3102 is hereby amended to read as follows: 58-3102. As used in this act and the act of which this section is amendatory, unless the context otherwise requires:

(a) "Apartment" or "condominium unit" means a part of the property intended for any type of independent use whether residence, office, the operation of any industry or business or other use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts

thereof) in a building, and with a direct exit to a public street or highway or to a common area leading to such street or highway. To the extent that ~~walls~~ walls, floors, and ceilings are designated as the boundaries of a condominium unit or apartment by the declaration, all doors and windows therein, and all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the furnished surfaces thereof, shall be deemed a part of such unit, while all other portions of such walls, floors and ceilings shall be deemed a part of the common areas and facilities. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common areas and facilities. All space, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit. Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common area and facility appertaining to that unit exclusively.

(b) “Apartment owner” means the person or persons owning an apartment or condominium unit in fee simple absolute and an undivided interest in the fee simple estate of the common areas and facilities as specified and established in the declaration.

(c) “Apartment number” means the number, letter, or combination thereof designating the apartment or condominium unit in the declaration.

(d) “Association of apartment owners” means all of the apartment or condominium unit owners acting as a group in accordance with the bylaws and declaration.

(e) “Building” means a building, containing one or more apartments or condominium units, or two or more buildings, each containing one or more apartments or condominium units and comprising a part of the property.

(f) “Condominium” means “property” as hereinafter defined.

(g) “Common areas and facilities,” unless otherwise provided in the declaration or lawful amendments thereto means and includes:

- (1) The land on which the building is located;
- (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;
- (3) the basements, yards, gardens, parking areas and storage spaces;
- (4) the premises for the lodging of janitors or persons in charge of the property;
- (5) installations of central services such as power, lights, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(7) such community and commercial facilities as may be provided for in the declaration; and

(8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(h) “Convertible land” shall mean a building site for one or more proposed additional condominium units within the submitted land which may be created in accordance with the declaration and this act.

(i) “Common expenses” means and include:

(1) All sums lawfully assessed against the apartment owners by the association of apartment owners;

(2) expenses of administration, maintenance, repair or replacement of the common areas and facilities;

(3) expenses agreed upon as common expenses by the association of apartment owners; *and*

(4) expenses declared common expenses by provisions of this act, or by the declaration or the bylaws.

(j) “Common profits” means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(k) “Declaration” means the instrument by which the property is submitted to the provisions of this act as hereinafter provided, and such declaration as from time to time may be lawfully amended.

(l) “Expandable condominium” shall mean a condominium to which additional real property may be added in accordance with the provisions of the declaration and of this act.

(m) “Limited common areas and facilities” means and includes those common areas and facilities designated in the declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(n) “Majority” or “majority of apartment owners” means the apartment owners with ~~fifty one percent (51%)~~ 51% or more of the votes in accordance with the percentages assigned in the declaration to the apartments for voting purposes.

(o) “Par value” shall mean a number of dollars or points assigned to each condominium unit by the declaration. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control value for taxation, fair market value, or for any purpose.

(p) “Person” means individual, corporation, partnership, association, trustee or other legal entity.

(q) “Property” means and includes the land, the building, all improvements and structures thereon, all owned in fee simple absolute and all easements, rights and appurtenances belonging thereto, and all articles of per-

sonal property intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this act.

(r) "Recording officer" means the register of deeds of the county in which the property is located.

(s) "Size" shall mean the approximate square feet of floor space of each condominium unit computed by reference to the declaration and floor plans and rounded off to a whole number. Certain spaces may be excluded or estimated in determining size if the same basis of calculation is used for all units of the condominium and is described in the declaration or floor plans.

(t) "Submitted land" shall mean real property, and any incidents thereto or interests therein, lawfully submitted to the provisions of this act as hereinafter provided.

Sec. 25. K.S.A. 68-104 is hereby amended to read as follows: 68-104. (a) Upon presentation of any petition for a road, or for the alteration or vacation of any road, to the county commissioners, at any regular session of their board, it shall be the duty of ~~said~~ such commissioners, if they find the petition to be a legal one, and that the proper bond has been filed, to appoint three disinterested householders of the county as viewers with ~~said~~ such commissioners, who may act as viewers of ~~said~~ such road, and the county clerk shall give notice by advertisement set up in the county clerk's office and in every municipal township through which any part of ~~said~~ such road is designed to be laid out, altered, or vacated, for at least ~~twenty~~ 20 days, and by publication for two consecutive weeks in a newspaper of general circulation in the county, setting forth that such petition has been presented, giving the substance thereof, and that the commissioners or the viewers, on the day designated, which shall not be more than ~~twenty~~ 20 days after the date of the second publication in the newspaper of the notice herein required, will proceed to view the ~~said~~ such road, and give all parties a hearing.

(b) They shall also cause a record of such notice to be entered on their journal by the county clerk. They shall issue an order directing the county surveyor to meet with them at the time and place named in ~~said~~ such notice to survey such road. In case of failure to meet on the day designated, they may meet on the following day, without further notice; and in case of failure to meet within the time herein specified, new notice shall be given as hereinbefore provided; that in all applications for the location, change and relocation of any road to be located upon or along any section line, and the petition shall so state, and shall specify the section lines to be followed, the place of beginning and the place of ending, the survey may be dispensed with, and in case the owners of the lands taken agree in writing to the proposed location, relocation, or change, and the commissioners are satisfied that the location, relocation or change prayed for is practicable, and can be made without unreasonable expense, they may dispense with the

viewing of such location, relocation or change of road, and shall order the same to be surveyed, platted and opened, and shall also direct the county ~~engineer~~ *surveyor* to note such location, relocation or change of roads upon the road records of ~~his~~ *such county surveyor's* office.

Sec. 26. K.S.A. 68-131 is hereby amended to read as follows: 68-131.

(a) It shall be lawful for the township board of any township to establish and maintain a sidewalk not more than five ~~(5)~~ feet in width in and along the outer edge of any highway or across the same whenever a petition for such sidewalk or crossing is signed by the resident owners representing ~~fifty-one percent~~ *51%* or more of the property abutting upon the improvement sought to be made, and when ~~said~~ *such* petition is filed with the clerk of the township board, the township board shall cause such improvement to be made and shall contract therefor and shall levy a tax for the actual cost of such improvement against the lots, parcels or pieces of land abutting upon such improvement on the front-foot basis, and the clerk of the township board shall certify the amount so levied against each lot, parcel or piece of land for such improvement to the county clerk, who shall place the same upon the assessment rolls and ~~said~~ *such* tax shall be collected in the same manner as other taxes: ~~Provided, That~~. The owner of any lot, parcel or piece of land liable to any such special assessment may redeem ~~his~~ *such owner's* property from such liability by paying the entire amount chargeable against ~~his~~ *such owner's* property at the time the amount of such tax is ascertained or after the issuance of the sidewalk scrip by paying the full amount of such special assessment represented by such scrip, together with the accrued interest.

(b) The owners shall designate in their petitions the width and kind of sidewalks, and the board shall determine the plans and specifications and material for such improvement in accordance with such petitions, and shall issue scrip to contractors for the payment of the same for five ~~(5)~~ years with interest at the rate of not to exceed ~~five (5) percent~~ *5%*, ~~one fifth (1/5)~~ *1/5* of such scrip and interest payable each year. ~~It shall be the duty of the county surveyor to establish the grades for all such improvements.~~ Resident owners in this act shall be considered residents of the township wherein the improvement is sought to be made.

Sec. 27. K.S.A. 2010 Supp. 68-1402 is hereby amended to read as follows: 68-1402. (a) The reconstruction, improvement, removal and relocation of bridges or approaches thereto provided for in this act shall be by written contract separately made and awarded as to each bridge, to the lowest responsible bidder, upon sealed proposals, based upon plans and specifications therefor on file in the office of the county clerk of the county. The county ~~surveyor of the county~~ *engineer*, when so directed to do by the board of county commissioners, shall make all necessary surveys and investigations and prepare plans and specifications for the reconstruction, improvement, removal or relocation of any bridge or the approaches thereto,

and grade separation structures connected therewith, together with an estimate under oath of the cost thereof, and file such plans, specifications and estimate in the office of the county clerk of the county. No contract shall be awarded for any such improvement at a price in excess of ~~said~~ the estimated cost.

(b) The board of county commissioners shall have power, if they deem it necessary, to employ engineers to assist the county ~~surveyor~~ *engineer* in preparing plans and specifications or superintending the construction of such improvements, and to pay such engineers out of the proceeds of bonds issued on account of the cost thereof. After considering and approving plans and specifications, prepared and filed as aforesaid, the board of county commissioners shall advertise for three consecutive weeks in the official county paper for sealed proposals for the construction of such improvements or works, in accordance with the plans and specifications therefor. The board of county commissioners shall require any contractor to whom any such contract is awarded to enter into a written contract, and to secure the performance thereof by a bond signed by a surety company. All bids for the construction of any such improvement or work shall be presented simultaneously to the board of county commissioners and opened forthwith by them, in the presence of the public and all bidders present.

Sec. 28. K.S.A. 68-1407 is hereby amended to read as follows: 68-1407. (a) The county ~~surveyor of said county~~ *engineer*, when ~~so~~ directed ~~to do~~ by the board of county commissioners, shall make all necessary surveys and investigations and prepare plans and specifications for the construction of ~~such~~ a bridge and the approaches thereto, together with an estimate, ~~under oath~~, of the cost thereof, and file such plans, specifications and estimate in the office of the county clerk of ~~said~~ *such* county. ~~Said~~ *Such* bridge shall be constructed under written contract made and awarded to the lowest responsible bidder, upon sealed proposals therefor based upon the plans and specifications so prepared and filed in the office of the county clerk of ~~said~~ *such* county. No contract shall be awarded therefor at a price in excess of ~~said~~ the estimated cost.

(b) The plans and specifications prepared and filed as above provided shall be considered and approved by the board of county commissioners and thereafter ~~said~~ *the* board shall advertise for three consecutive weeks in the official county paper for sealed proposals for the construction of ~~said~~ *such* bridge, and the contract therefor shall be awarded to the lowest responsible bidder, and any contractor to whom any such contract is awarded, shall enter into a written contract therefor and to secure the faithful performance thereof shall file in the office of the county clerk of ~~said~~ *such* county a bond duly executed by one or more surety companies duly authorized to do business in this state to be approved by ~~said~~ *the* board of county commissioners.

Sec. 29. K.S.A. 79-409 is hereby amended to read as follows: 79-409.

If the owner or occupant of any lot or tract of land shall neglect or refuse to furnish the description required by K.S.A. 79-408, *and amendments thereto*, when demanded by the county clerk, ~~the county~~ a land surveyor shall ascertain the boundaries and quantity of such property, and such description shall be held to be valid for all purposes of taxation; and the expense of such survey shall be returned to the county clerk of the county in which such property is located; and, by such county clerk, shall be added to the tax upon such property and made a part thereof, and when collected the county treasurer shall be required upon warrants drawn by the county clerk on the orders of the board of county commissioners to pay the expenses of said survey.

Sec. 30. K.S.A. 19-1403, 19-1407, 19-1411, 19-1412, 19-1413, 19-1416, 19-1417, 19-1420, 19-1421, 19-1422, 19-1423, 19-1426, 19-1430, 19-1432, 24-106, 24-802, 25-101, 42-358, 58-2001, 58-2002, 58-2003, 58-2004, 58-2005, 58-2011, 58-3102, 68-104, 68-108, 68-131, 68-1407 and 79-409 and K.S.A. 2010 Supp. 68-1402 are hereby repealed.

Sec. 31. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 13, 2011.

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## CHAPTER 50

### SENATE BILL No. 215

AN ACT abolishing the liquefied petroleum gas advisory board;  
repealing K.S.A. 55-1811.

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

Section 1. On July 1, 2011, the liquefied petroleum gas advisory board created by K.S.A. 55-1811 is hereby abolished.

Sec. 2. K.S.A. 55-1811 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 13, 2011.

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## CHAPTER 51

## SENATE BILL No. 224

AN ACT concerning utilities; amending K.S.A. 2010 Supp. 66-2203 and repealing the existing section.

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

New Section 1. On or before February 1, 2013, and every two years thereafter, the state corporation commission shall compile a report regarding electric supply and demand for all electric utilities in Kansas. The report shall include, but not be limited to, generation capacity needs, system peak capacity needs and renewable generation needs associated with the 2009 Kansas renewable energy standards. The commission shall submit the report to the house energy and utilities committee and the senate utilities committee.

Sec. 2. K.S.A. 2010 Supp. 66-2203 is hereby amended to read as follows: 66-2203. (a) Notwithstanding any other provisions of chapter 66 of the Kansas Statutes Annotated, and amendments thereto, beginning July 1, 2006, a natural gas public utility providing gas service may file a petition and proposed rate schedules with the commission to establish or change GSRS rate schedules that will allow for the adjustment of the natural gas public utility's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. The commission may not approve a GSRS to the extent it would produce total annualized GSRS revenues below the lesser of \$1,000,000 or ½% of the natural gas public utility's base revenue level approved by the commission in the natural gas public utility's most recent general rate proceeding. The commission may not approve a GSRS to the extent it would produce total annualized GSRS revenues exceeding 10% of the natural gas public utility's base revenue level approved by the commission in the natural gas public utility's most recent general rate proceeding. A GSRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of K.S.A. 2010 Supp. 66-2202 through 66-2204, and amendments thereto. GSRS revenues shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections (e) and (h) of K.S.A. 2010 Supp. 66-2204, and amendments thereto.

(b) The commission shall not approve a GSRS for any natural gas public utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past 60 months, unless the natural gas public utility has filed for or is the subject of a new general rate proceeding.

(c) In no event shall a natural gas public utility collect a GSRS for a period exceeding 60 months unless the natural gas public utility has filed for or is the subject of a new general rate proceeding; except that the GSRS may be collected until the effective date of new rate schedules established

as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

*(d) Notwithstanding the 60-month filing deadlines in subsections (b) and (c), upon motion by a natural gas public utility, the commission may extend the 60-month deadline in subsections (b) and (c) for a period of up to 12 months as the commission determines reasonable or necessary.*

Sec. 3. K.S.A. 2010 Supp. 66-2203 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 13, 2011.

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## CHAPTER 52

### SENATE BILL No. 227

AN ACT concerning property; relating to renewable energy; amending K.S.A. 58-2272 and repealing the existing section.

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

New Section 1. (a) As used in this section:

(1) “Anemometer” means an instrument for measuring and recording the speed of wind; and

(2) “anemometer tower” means a structure, including all guy wires and accessory facilities, on which an anemometer is mounted.

(b) Any anemometer tower that is 50 feet in height above the ground or higher, located outside the corporate boundaries of any city, and whose appearance is not otherwise mandated by state or federal law, shall be marked, painted, flagged or otherwise constructed to be recognizable in clean air during daylight hours. Any anemometer tower that was erected before July 1, 2011 shall be marked as required by this section within two years after the effective date of this act. Any anemometer tower that is erected on or after the July 1, 2011 shall be marked as required by this section at the time it is erected. Marking required under this section includes marking the anemometer tower, guy wires and accessory facilities as follows:

(1) The top  $\frac{1}{3}$  of the anemometer tower shall be painted in equal, alternating bands of aviation orange and white, beginning with orange at the top of the tower and ending with orange at the bottom of the marked portion of the tower;

(2) two marker balls shall be attached to and evenly spaced on each of the outside guy wires; and

(3) one or more seven-foot safety sleeves shall be placed at each anchor

point and shall extend from the anchor point along each guy wire attached to the anchor point.

(c) Failure to properly mark an anemometer tower is failing to mark an anemometer tower as required by subsection (b). An owner of an anemometer tower who fails to properly mark an anemometer tower shall be guilty of a class C nonperson misdemeanor.

Sec. 2. K.S.A. 58-2272 is hereby amended to read as follows: 58-2272.

(a) Every instrument that conveys any estate or interest created by any lease or easement involving wind *or solar* resources and technologies to produce and generate electricity shall include:

~~(a)~~ (1) A description of the real property subject to the easement and a description of the real property benefitting from the wind *or solar* lease or easement;

~~(b)~~ (2) a description of the vertical and horizontal angles, expressed in degrees, and distances from the site of the wind *or solar* power system in which an obstruction to the wind *or solar system* is prohibited or limited;

~~(c)~~ (3) all terms or conditions under which the lease or easement is granted or may be terminated, except that if the instrument is recorded under K.S.A. 58-2221, and amendments thereto, any compensation received by the owner of the real property may be excluded; and

~~(d)~~ (4) any other provisions necessary or desirable to execute the instrument.

(b) *No person other than the surface owner of a tract of land shall have the right to use such land for the production of wind or solar generated energy unless granted such right by the lawful owner of the surface estate by lease or easement for a definite period.*

(c) *The provisions of subsection (b) shall not apply to any lease or easement filed of record prior to July 1, 2011, with the register of deeds of the county in which the tract is located.*

(d) *Nothing in this section shall be construed to affect any otherwise enforceable restriction on the use of any tract of land for the production of wind or solar energy whether or not such restriction is in the form of an easement for a definite term.*

Sec. 3. K.S.A. 58-2272 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 13, 2011.

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## CHAPTER 53

SENATE BILL No. 229  
(Amended by Chapter 91)

AN ACT concerning state finance; relating to certain credits to the state general fund; amending K.S.A. 1-204, 17-12a601, 17-2236, 17-5610, 17-5701, 20-1a02, 20-1a03, 49-420, 55-176, 55-609, 55-711, 55-901, 58-2011, 58-3074, 65-6b10, 65-1718, 65-1817a, 65-1951, 65-2011, 65-2855, 65-5413, 65-5513, 65-7210, 66-1,155, 66-1503, 74-715, 74-1108, 74-1405, 74-1503, 74-1609, 74-2704, 74-3903 and 74-7506 and K.S.A. 2010 Supp. 9-1703, 16a-2-302, 31-133a, 31-134, 36-512, 44-324, 44-926, 47-820, 55-155, 58-4107, 65-2911, 65-4024b, 65-6910, 65-7309, 74-50,188, 74-5805, 74-6708, 74-7009, 75-1119b, 75-1308, 75-1514, 75-3170a and 84-9-801 and repealing the existing sections; also repealing K.S.A. 75-3170.

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

New Section 1. On or before January 1, 2012, the secretary of administration and the director of the division of the budget shall prepare and present a report to the house committee on appropriations and the senate committee on ways and means which accounts for and explains the costs of all services provided to fee agencies. Such report shall include the actual amount credited from each fee agency to the state general fund pursuant to the sections referred to in subsection (a) of K.S.A. 75-3170a, and amendments thereto, and the actual costs of the accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, that were provided to each fee agency.

Sec. 2. K.S.A. 2010 Supp. 75-3170a is hereby amended to read as follows: 75-3170a. (a) The ~~20%~~ 10% credit to the state general fund required by K.S.A. 1-204, ~~2-3506~~, 9-1703, ~~16-609~~, 16a-2-302, ~~17-12a601~~, 17-2236, ~~17-5609~~, 17-5610, ~~17-5612~~, 17-5701, 20-1a02, 20-1a03, 31-133a, 31-134, ~~36-512~~, 44-324, 44-926, 47-820, 49-420, 55-155, 55-176, 55-609, 55-711, 55-901, 58-2011, 58-3074, 58-4107, 65-6b10, 65-1718, 65-1817a, ~~65-1951~~, 65-2011, 65-2855, 65-2911, ~~65-4024b~~ ~~65-4610~~, 65-5413, 65-5513, ~~65-6910~~, ~~65-7210~~, ~~65-7309~~, 66-1,155, 66-1503, 74-715, 74-1108, 74-1405, 74-1503, 74-1609, 74-2704, 74-3903, ~~74-50,188~~, 74-5805, ~~74-6708~~, 74-7009, 74-7506, 75-1119b, 75-1308, 75-1514, ~~84-9-801~~ ~~84-9-411~~ and ~~84-9-413~~, and K.S.A. 2010 Supp. ~~17-12a601~~, and amendments thereto, is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services.

(b) Nothing in this act or in the sections amended by this act or referred to in subsection (a), shall be deemed to authorize remittances to be made less frequently than is authorized under K.S.A. 75-4215, and amendments thereto.

(c) Notwithstanding any provision of any statute referred to in or amended by this act or referred to in subsection (a), whenever in any fiscal

year such ~~20%~~ 10% credit to the state general fund in relation to any particular fee fund is ~~\$200,000~~ \$100,000, in that fiscal year the ~~20%~~ 10% credit no longer shall apply to moneys received from sources applicable to such fee fund and for the remainder of such year the full 100% so received shall be credited to such fee fund, ~~except as otherwise provided in subsection (d) and except that during the fiscal year ending June 30, 1993, with respect to the fire marshal fee fund, when the 20% credit to the state general fund prescribed by K.S.A. 31-133a, 31-134 and 75-1514 and amendments thereto, in the aggregate, is \$400,000, then in that fiscal year such 20% credit no longer shall apply to moneys received from sources applicable to the fire marshal fee fund and for the remainder of such fiscal year the full 100% so received shall be credited to the fire marshal fee fund.~~

Sec. 3. K.S.A. 1-204 is hereby amended to read as follows: 1-204. There is hereby created the board of accountancy fee fund. The board of accountancy 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. ~~Twenty~~ Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the board of accountancy fee fund. All expenditures from the board of accountancy 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 chairperson of the board of accountancy or by a person or persons designated by the chairperson.

Sec. 4. K.S.A. 2010 Supp. 9-1703 is hereby amended to read as follows: 9-1703. (a) The expense of every regular examination, together with the expense of administering the banking and savings and loan laws, including salaries, travel expenses, supplies and equipment, shall be paid by the banks and savings and loan associations of the state, and for this purpose the bank commissioner shall, prior to the beginning of each fiscal year, make an estimate of the expenses to be incurred by the department during such fiscal year. From this total amount the commissioner shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank and savings and loan association assessments. The commissioner shall allocate and assess the remainder to the banks and savings and loan associations in the state on the basis of their total assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 U.S.C. § 1817, and amendments thereto, or K.S.A. 17-5610, and amendments thereto, except that the annual assessment will not be less than \$1,000 for any bank or savings and loan association.

(b) The expense of every regular trust examination, together with the expense of administering trust laws, including salaries, travel expenses,

supplies and equipment, shall be paid by the trust companies and trust departments of banks of this state, and for this purpose, the bank commissioner, prior to the beginning of each fiscal year, shall make an estimate of the trust expenses to be incurred by the department during such fiscal year. The commissioner shall allocate and assess the trust departments in the state on the basis of their total fiduciary assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 U.S.C. § 1817, and amendments thereto, or K.S.A. 17-5610, and amendments thereto, except that the annual assessment shall not be less than \$1,000 for any active trust department. The commissioner shall allocate and assess the trust companies in the state on the basis of their fiduciary assets as reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704, and amendments thereto, except that the annual assessment will not be less than \$1,000 for any active trust company. A trust department which has no fiduciary assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 U.S.C. § 1817, and amendments thereto, or K.S.A. 17-5610, and amendments thereto, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for the inactive trust department. A trust company which has no fiduciary assets, as reflected in the last preceding year-end report filed with the commissioner, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for an inactive trust company. No inactive trust department or trust company shall accept any fiduciary assets or exercise any part of or all of its trust authority until such time as it has applied for and received prior written approval of the commissioner to reactivate its trust authority.

(c) A statement of each assessment made under the provisions of subsection (a) or (b) shall be sent by the commissioner on July 1 or the next business day thereafter, to each bank, savings and loan association, trust department and trust company that exists as a corporate entity with the secretary of state's office as of the close of business on June 30, and is authorized by the office of the state bank commissioner to conduct banking, savings and loan or trust business. The assessment may be collected by the state bank commissioner as needed and in such installment periods as the commissioner deems appropriate, but no more frequently than monthly. When the commissioner issues an invoice to collect the assessment, payment shall be due within 15 days of the date of the invoice. The commissioner may impose a penalty upon any bank, savings and loan association, trust department or trust company which fails to pay its annual assessment when it is 15 days or more past due. The penalty shall be assessed in the amount of \$50 for each day the assessment is past due.

The commissioner shall remit all moneys received from such examination 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. ~~Twenty~~ *Ten* percent of each deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner 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 commissioner or by a person or persons designated by the commissioner.

(d) The amount of expenses incurred and the cost of service performed on account of any bank, trust department or trust company or other corporation which are outside the normal expenses of an examination required under the provisions of K.S.A. 9-1701 or 17-5612, and amendments thereto, shall be charged to and paid by the bank, trust department, trust company or corporation for which such expenses were incurred or cost of services performed.

(e) As used in this section, “savings and loan association” means a Kansas state-chartered savings and loan association.

(f) (1) In the event a bank, savings and loan association or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company, between the preceding March 31 and June 30, for banks and savings and loan associations, or the preceding December 31 and June 30, for trust companies, the surviving or acquiring bank, savings and loan association or trust company is obligated to pay the assessment based on the value of the assets of all institutions involved with the merger, consolidation or assumption for the following fiscal year commencing July 1.

(2) In the event a bank, savings and loan association, or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company after July 1, the surviving entity shall be obligated to pay the unpaid portion of the assessment for the remainder of the fiscal year commencing July 1 which would have been due of the institution being merged, consolidated or assumed.

Sec. 5. K.S.A. 2010 Supp. 16a-2-302 is hereby amended to read as follows: 16a-2-302. (1) (a) The administrator shall receive and act on all applications for licenses to make supervised loans and all applications for residential mortgage loan originator registrations under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain the information the administrator may require by rule and regulation to make an evaluation of the financial responsibility, character and fitness of the applicant.

(b) Submitted with each application shall be a nonrefundable application fee. Application, license and registration fees shall be in such amounts as are established pursuant to subsection (5) of K.S.A. 16a-6-104, and

amendments thereto. The license year shall be the calendar year. Each license shall be nonrefundable and nonassignable, and shall remain in force until surrendered, suspended or revoked.

(c) The administrator shall remit all moneys received under K.S.A. 16a-1-101 to 16a-6-414, inclusive, 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. Of each deposit ~~20%~~ 10% shall be credited to the state general fund and the balance shall be credited to the bank commissioner 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 administrator or by a person or persons designated by the administrator.

~~The 20% credit to the state general fund required by this subsection (c) is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the administrator by other state agencies which receive appropriations from the state general fund to provide such services.~~

(d) Every licensee and registrant shall, on or before the first day of January, pay to the administrator the license or registration fee prescribed under this subsection (1) for each license or registration held for the succeeding license year. Failure to pay the fee within the time prescribed shall automatically revoke the license or registration.

(2) No license or registration shall be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof if the applicant is a copartnership or association and of the officers and directors thereof, if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act. The administrator shall not base a registration denial solely on the applicant's credit score. An applicant meets the minimum standard of financial responsibility for engaging in the business of making supervised loans, under subsection (1) of K.S.A. 16a-2-301, and amendments thereto, only if:

(a) The applicant has filed with the administrator a proper surety bond of at least \$100,000 which has been approved by the administrator. The bond must provide within its terms that the bond shall not expire for two years after the date of the surrender, revocation or expiration of the subject license, whichever shall first occur. The required surety bond may not be canceled by the licensee without providing the administrator at least 30 days' prior written notice, provided that such cancellation shall not affect the surety's liability for violations of the uniform consumer credit code occurring prior to the effective date of cancellation and principal and surety shall be and remain liable for a period of two years from the date of any

action or inaction of the principal that gives rise to a claim under the bond; and

(b) the applicant provides evidence in a form and manner prescribed by the administrator that establishes the applicant will maintain a satisfactory minimum net worth, as determined by the administrator, to engage in credit transactions of the nature proposed by the applicant. Such net worth requirements shall be established by the administrator pursuant to rule and regulation and shall not exceed \$500,000 for each applicant or licensee.

(3) The administrator may deny any application or renewal for a supervised loan license or a residential mortgage loan originator registration, if the administrator finds:

(a) There is a refusal to furnish information required by the administrator within a reasonable time as fixed by the administrator; or

(b) any of the factors stated as grounds for denial, revocation or suspension of a license in K.S.A. 16a-2-303 or K.S.A. 2010 Supp. 16a-2-303a, and amendments thereto.

(4) Upon written request the applicant is entitled to a hearing on the question of license qualifications if: (a) The administrator has notified the applicant in writing that the application has been denied; or (b) the administrator has not issued a license within 60 days after the application for the license was filed. A request for a hearing may not be made more than 15 days after the administrator has mailed a writing to the applicant notifying the applicant that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

(5) The administrator shall adopt rules and regulations regarding whether a licensee shall be required to obtain a single license for each place of business or whether a licensee may obtain a master license for all of its places of business, and in so doing the administrator may differentiate between licensees located in this state and licensees located elsewhere. Each license shall remain in full force and effect until surrendered, suspended or revoked.

(6) No licensee shall change the location of any place of business without giving the administrator at least 15 days prior written notice.

(7) A licensee may conduct the business of making loans for personal, family or household purposes only at or from any place of business for which the licensee holds a license and not under any other name than that in the license. Loans made pursuant to a lender credit card do not violate this subsection.

Sec. 6. K.S.A. 17-12a601 is hereby amended to read as follows: 17-12a601. (a) *Administration*. (1) This act shall be administered by the securities commissioner of Kansas.

(2) All fees herein provided for shall be collected by the administrator. All salaries and expenses necessarily incurred in the administration of this act shall be paid from the securities act fee fund.

(3) The administrator shall remit all moneys received from all fees, charges, deposits or penalties which have been collected under this act or other laws of this state regulating the issuance, sale or disposal of securities or regulating dealers in this state or under the uniform land sales practices act, to the state treasurer at least monthly. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. In accordance with ~~subsection (a) of K.S.A. 75-3170~~ 75-3170a, and amendments thereto, ~~20%~~ 10% of each such deposit shall be credited to the state general fund and, except as provided in subsection (d), the balance shall be credited to the securities act fee fund.

(4) On the last day of each fiscal year, the director of accounts and reports shall transfer from the securities act fee fund to the state general fund any remaining unencumbered amount in the securities act fee fund exceeding \$50,000 so that the beginning unencumbered balance in the securities act fee fund on the first day of each fiscal year is \$50,000. All expenditures from the securities act 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 administrator or by a person or persons designated by the administrator.

(5) All amounts transferred from the securities act fee fund to the state general fund under paragraph (4) are to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services. ~~Such reimbursements are in addition to those authorized by K.S.A. 75-3170a, and amendments thereto.~~

(b) *Prohibited conduct.* (1) It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under K.S.A. 17-12a607(b), and amendments thereto. This act does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with K.S.A. 17-12a602, 17-12a607(c), or 17-12a608, and amendments thereto.

(2) Neither the administrator nor any employee of the administrator shall be interested as an officer, director, or stockholder in securing any authorization to sell securities under the provisions of this act.

(c) *No privilege or exemption created or diminished.* This act does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) *Investor education.* (1) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the admin-

istrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(2) There is hereby established in the state treasury the investor education fund. Such fund shall be administered by the administrator for the purposes described in subsection (d)(1) and for the education of registrants, including official hospitality. Moneys collected as civil penalties under this act shall be credited to the investor education fund. The administrator may also receive payments designated to be credited to the investor education fund as a condition in settlements of cases arising out of investigations or examinations. All expenditures from the investor education 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 administrator or by a person or persons designated by the administrator. Two years after the effective date of this act, the administrator shall conduct a review and submit a report to the governor and the legislature concerning the expenditures from the investor education fund and the results achieved from the investor education program.

Sec. 7. K.S.A. 17-2236 is hereby amended to read as follows: 17-2236. (a) Before entering their respective duties, the administrator, each credit union examiner, and any other employee within the credit union department as determined in accordance with the provisions of K.S.A. 75-4104, and amendments thereto, shall give a bond set at a minimum of \$25,000 per individual conditioned upon the faithful and impartial discharge of their respective duties and the proper accounting for all funds which may come into their hands. Such bonds shall be executed by a surety company authorized to do business in this state. Such bonds shall be approved by the committee on surety bonds and insurance and filed, with the approval of such committee endorsed thereon together with the oaths of office of such officers and employees, with the secretary of state. Premium on such bonds shall be paid from the credit union fee fund. Suits may be maintained on such bonds in the name of the state for the use of the party or parties injured by a breach thereof.

(b) The administrator shall remit all moneys received by or for the administrator 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. ~~Twenty~~ Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited

to the credit union 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 administrator or by a person or persons designated by the administrator. The compensation of members and employees, office costs and other actual and necessary expenses of the department and expenses incurred in the administration and enforcement of this act shall be paid from the credit union fee fund.

Sec. 8. K.S.A. 17-5610 is hereby amended to read as follows: 17-5610. Every association shall at least four times annually file in the office of the commissioner a statement in such form as the commissioner prescribes. Such report shall show in detail the resources and liabilities of the association at the close of business upon the date determined by the commissioner and shall be verified by the president, treasurer or secretary and shall be filed with the commissioner within 30 days. An association may comply with this section by filing with the commissioner a completed thrift financial report within 30 days of the final day of a reporting period as required by the office of thrift supervision pursuant to 12 C.F.R. section 563.180, and amendments thereto. A late penalty fee of \$5 per day shall be charged for each day the report is not received after the due date, but shall not exceed a maximum of \$150. The commissioner shall remit all moneys received by or for the commissioner 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance thereof shall be credited to the bank commissioner fee fund.

Sec. 9. K.S.A. 17-5701 is hereby amended to read as follows: 17-5701. Associations shall pay to the commissioner fees due under the provisions of this section and K.S.A. 17-5702 to 17-5707, inclusive, and amendments thereto. The commissioner shall remit all moneys received by or for the commissioner 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund.

Upon the filing with the commissioner of a certificate of incorporation the incorporators shall simultaneously pay an incorporation fee of \$200. Any savings and loan association incorporated under this act, or any prior act, may extend the duration of time for which such association was organized by a vote of 51% of its shareholders present in person or by proxy at any association annual or special meeting called for that purpose, and such

action of the shareholders shall be certified to the state bank commissioner accompanied by a fee of \$12.50.

Sec. 10. K.S.A. 20-1a02 is hereby amended to read as follows: 20-1a02. The clerk of the supreme court shall remit all moneys received by or for such clerk from applicants for examination for certified shorthand reporter 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund, and the balance shall be credited to the court reporters 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 chief justice of the supreme court or by a person or persons designated by the chief justice. Compensation of members and other actual and necessary expenses of the state board of examiners of court reporters shall be paid from such fund as authorized by the rules of the supreme court.

Sec. 11. K.S.A. 20-1a03 is hereby amended to read as follows: 20-1a03. The clerk of the supreme court shall remit all moneys received by or for such clerk from applicants for admission to the practice of law in Kansas, except amounts received for immediate remittance to carry out contractual investigation and report of bar applicants 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the bar admission 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 chief justice of the supreme court or by a person or persons designated by the chief justice. Compensation of members and other actual and necessary expenses of the state board of law examiners may be paid from such fund.

Sec. 12. K.S.A. 2010 Supp. 31-133a is hereby amended to read as follows: 31-133a. (a) No business shall inspect, install or service portable fire extinguishers or automatic fire extinguishers for commercial cooking equipment without first being certified by the state fire marshal.

(b) (1) The state fire marshal shall adopt rules and regulations as provided in K.S.A. 31-134, and amendments thereto, establishing standards for inspection, installation, servicing and testing procedures and minimum insurance requirements of businesses inspecting, installing or servicing portable fire extinguishers or automatic fire extinguishers for commercial cooking equipment. The rules and regulations shall also provide for qualifications and training of any person or persons designated by such business

as the person or persons upon whose qualifications and training the certification of the business is based and, on and after January 1, 1991, shall require submission of proof, satisfactory to the state fire marshal, that such qualifications and training have been met.

(2) The rules and regulations shall further provide for annual certification of such businesses for a fee of not less than \$25 or more than \$200 for each certification, but no fee shall be charged for any person who is an officer or employee of the state or political or taxing subdivision thereof when that person is acting on behalf of the state or political or taxing subdivision. If the person or persons upon whose qualifications and training the certification of the business is based leave such business, the certification of that business is void.

(3) The state fire marshal shall remit all moneys received for fees 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. The state treasurer shall credit ~~20%~~ 10% of each such deposit to the state general fund and shall credit the remainder of each such deposit to the fire marshal fee fund.

(c) Inspection or service of any portable fire extinguisher or automatic fire extinguisher for commercial cooking equipment by any business who is not certified by the state fire marshal as required by this section shall constitute a deceptive act or practice under the Kansas consumer protection act and shall be subject to the remedies and penalties provided by such act.

(d) As used in this section:

(1) “Automatic fire extinguisher for commercial cooking equipment” means any automatic fire extinguisher mounted directly above or in the ventilation canopy of commercial cooking equipment.

(2) “Business” means any person who inspects, services or installs portable fire extinguishers or automatic fire extinguishers for commercial cooking equipment but does not include (A) any person or authorized agent of the person who installs a portable fire extinguisher for protection of the person’s own property or business or (B) any individual acting as a representative or employee of a certified business.

Sec. 13. K.S.A. 2010 Supp. 31-134 is hereby amended to read as follows: 31-134. (a) Any rules and regulations adopted by the state fire marshal under this act shall comply with the provisions of K.S.A. 77-415 et seq., and amendments thereto, except that:

(1) In addition to the method of providing notice of the public hearing prescribed by K.S.A. 77-421, and amendments thereto, such notice shall be published three times in at least two newspapers of general circulation, with the last published notice to appear not less than 15 days prior to the public hearing.

(2) The state fire marshal shall make available for general distribution

upon request copies of any nationally recognized code adopted by reference, marked so as to indicate the provisions thereof which have been so adopted. The state fire marshal may charge a fee for the copies in an amount equal to the cost of the copies and their distribution. Upon collection of any such fees, the state fire marshal shall remit to the state treasurer such fees in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. The state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall credit ~~20%~~ 10% of each such deposit to the state general fund and shall credit the remainder of each such deposit to the fire marshal fee fund.

(3) In addition to the filing requirements of K.S.A. 77-416, and amendments thereto, the state fire marshal shall publish all such rules and regulations and make the same available for distribution to the general public upon request, but the fire marshal shall not be required to republish the provisions of any nationally recognized code adopted by reference if such provisions are made available for general distribution upon request to the fire marshal's office.

(b) The rules and regulations adopted by the state fire marshal under authority of this act shall be known and may be cited as the Kansas fire prevention code. Such rules and regulations shall have uniform force and effect throughout the state. No municipality shall enact or enforce any ordinance, resolution or rule or regulation inconsistent therewith, except that nothing in this act shall be construed to impair the power of any municipality to regulate the use of land by zoning or fire district regulations or to prohibit or regulate the sale, handling, use or storage of fireworks within its boundaries. Whenever a question shall arise as to whether another state statute or an enactment of a municipality is inconsistent with the provisions of the fire prevention code, it shall be the duty of the state fire marshal to make such determination after a hearing thereon with all interested parties conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the state fire marshal pursuant to this section is subject to review in accordance with the Kansas judicial review act.

Sec. 14. K.S.A. 2010 Supp. 36-512 is hereby amended to read as follows: 36-512. (a) The secretary shall remit all moneys received by the secretary under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Except for moneys remitted under subsection (b), 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.

(b) The secretary shall remit all moneys received by the secretary from fees from food service establishments located in a municipality where food service inspection services are provided by a local agency under contract with the secretary 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 food service inspection reimbursement fund which is hereby created. On July 1, 1988, and on the first day of each month thereafter, the director of accounts and reports shall transfer from the food service inspection reimbursement fund to the state general fund an amount equal to ~~20%~~ 10% of all money credited to such fund during the preceding month. Expenditures from the food service inspection reimbursement fund shall be made to reimburse each local agency under contract with the secretary for food service inspection services in an amount equal to 80% of the money received from food service establishments in the municipality served by the local agency. All expenditures from the food service inspection reimbursement 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 or a person designated by the secretary.

Sec. 15. K.S.A. 2010 Supp. 44-324 is hereby amended to read as follows: 44-324. (a) Any proceeding by one or more employees to assert any claim arising under or pursuant to this act may be brought in any court of competent jurisdiction.

(b) Whenever the secretary determines under K.S.A. 44-322a, and amendments thereto, that an employee has a valid claim for unpaid wages and determines that the amount of the claim is less than \$10,000, the secretary, upon the written request of the employee, shall take an assignment of the claim in trust for such employee and shall take action appropriate to enforce or defend such claim. Whenever the secretary determines under K.S.A. 44-322a, and amendments thereto, that an employee has a valid claim for unpaid wages and determines that the amount of the claim is equal to or greater than \$10,000, the secretary, upon the written request of the employee, may take an assignment of the claim in trust for such employee and if the assessment is taken, shall take action appropriate to enforce or defend such claim. With the written consent of the assignor, the secretary may settle or adjust any claim assigned pursuant to this subsection. Whenever the secretary takes an assignment of a claim in trust for an employee under this section, the secretary shall charge and collect a fee therefor which fee shall be fixed by rules and regulations adopted by the secretary. The fee fixed by rules and regulations shall be in an amount of not more than \$25 per claim assigned under this section.

(c) If the secretary prevails on behalf of the employee, the court shall award a judgment to the agency in an amount equal to the cost of reasonable attorney fees for such action.

(d) There is hereby created the wage claims assignment fee fund. The secretary shall remit all moneys received for assignment and attorney fees charged and 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. ~~Twenty~~ Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the wage claims assignment fee fund. All expenditures from the wage claims assignment 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 or by a person or persons designated by the secretary.

Sec. 16. K.S.A. 2010 Supp. 44-926 is hereby amended to read as follows: 44-926. (a) The owner or user of a boiler or pressure vessel required by this act to be inspected by the chief inspector or a deputy inspector shall pay directly to the chief inspector, upon completion of inspection, inspection fees fixed by the secretary in accordance with this subsection (a). The secretary shall fix annually, by rules and regulations, a schedule of fees for inspections of pressure vessels installed after January 1, 1999, and boilers by state inspectors and may fix different fees for inspection of boilers and pressure vessels in the various categories. Such fees shall not exceed \$500 per day for each boiler or pressure vessel inspected.

(b) The owner or user of a boiler or pressure vessel for which an inspection certificate is to be issued pursuant to subsection (b) of K.S.A. 44-924, and amendments thereto, shall pay directly to the chief inspector, before issuance of such certificate, a certificate fee fixed by the secretary by rules and regulations of not to exceed \$35.

(c) There is hereby created in the state treasury the boiler inspection fee fund. The chief inspector shall pay daily to the secretary all moneys received from the fees established hereunder, and the secretary shall remit all such moneys 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. ~~Twenty~~ Ten percent of such inspection fees shall be credited to the state general fund and the balance including all of the certificate fees shall be credited to the boiler inspection fee fund. All expenditures from the boiler inspection 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 labor or by a person or persons designated by the secretary.

Sec. 17. K.S.A. 2010 Supp. 47-820 is hereby amended to read as follows: 47-820. 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. ~~Twenty~~ Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the veterinary examiners fee fund. Costs relating to assessment and enforcement of civil

finances shall be credited to the veterinary examiners fee fund from all moneys received that are civil fines and the balance shall be credited to the state general 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 or by a person or persons designated by the executive director.

Sec. 18. K.S.A. 49-420 is hereby amended to read as follows: 49-420. (a) The department shall remit all moneys received from the payment of fees or from civil penalties assessed by the secretary, including any interest thereon, 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the mined-land conservation and reclamation fee fund. All expenditures from the mined-land conservation and reclamation 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 or by a person or persons designated by the secretary and may be expended for the administration and enforcement of this act.

(b) The mined-land reclamation fund is hereby created in the state treasury. The secretary shall remit all moneys received from the forfeiture of bonds 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 mined-land reclamation fund. The expenditures from the mined-land reclamation fund which are used for the reclamation of land 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 or by a person or persons designated by the secretary and shall be expended for reclamation of land affected by open pit, strip pit and surface types of mine operations. Administrative expenses associated with reclamation of the respective sites and not charged directly to the mined-land reclamation fund shall be made by intra-agency transfer to the mined-land conservation and reclamation fee fund.

Sec. 19. K.S.A. 2010 Supp. 55-155 is hereby amended to read as follows: 55-155. (a) Operators and contractors shall be licensed by the commission pursuant to this section.

(b) Every operator and contractor shall file an application or a renewal application with the commission. Application and renewal application forms shall be prescribed, prepared and furnished by the commission.

(c) No application or renewal application shall be approved until the applicant has:

(1) Provided sufficient information, as required by the commission, for purposes of identification;

(2) submitted evidence that all current and prior years' taxes for property associated with the drilling or servicing of wells have been paid;

(3) demonstrated to the commission's satisfaction that the applicant complies with all requirements of chapter 55 of the Kansas Statutes Annotated, *and amendments thereto*, all rules and regulations adopted thereunder and all commission orders and enforcement agreements, if the applicant is registered with the federal securities and exchange commission;

(4) demonstrated to the commission's satisfaction that the following comply with all requirements of chapter 55 of the Kansas Statutes Annotated, *and amendments thereto*, all rules and regulations adopted thereunder and all commission orders and enforcement agreements, if the applicant is not registered with the federal securities and exchange commission: (A) The applicant; (B) any officer, director, partner or member of the applicant; (C) any stockholder owning in the aggregate more than 5% of the stock of the applicant; and (D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law or sister-in-law of the foregoing;

(5) paid an annual license fee of \$100, except that an applicant for a license who is operating one gas well used strictly for the purpose of heating a residential dwelling shall pay an annual license fee of \$25;

(6) complied with subsection (d); and

(7) paid an annual license fee of \$25 for each rig operated by the applicant. The commission shall issue an identification tag for each such rig which shall be displayed on such rig at all times.

(d) In order to assure financial responsibility, each operator shall demonstrate annually compliance with one of the following provisions:

(1) The operator has obtained an individual performance bond or letter of credit, in an amount equal to \$.75 times the total aggregate depth of all wells (including active, inactive, injection or disposal) of the operator.

(2) The operator has obtained a blanket performance bond or letter of credit in an amount equal to the following, according to the number of wells (including active, inactive, injection or disposal) of the operator:

(A) Wells less than 2,000 feet in depth: 1 through 5 wells, \$7,500; 6 through 25 wells, \$15,000; and over 25 wells, \$30,000.

(B) Wells 2,000 or more feet in depth: 1 through 5 wells, \$15,000; 6 through 25 wells, \$30,000; and over 25 wells, \$45,000.

(3) The operator: (A) Has an acceptable record of compliance, as demonstrated during the preceding 36 months, with commission rules and regulations regarding safety and pollution or with commission orders issued pursuant to such rules and regulations; (B) has no outstanding undisputed orders issued by the commission or unpaid fines, penalties or costs assessed by the commission and has no officer or director that has been or is associated substantially with another operator that has any such outstanding

orders or unpaid fines, penalties or costs; and (C) pays a nonrefundable fee of \$100 per year.

(4) The operator pays a nonrefundable fee equal to 6% of the amount of the bond or letter of credit that would be required by subsection (d)(2).

(5) The state has a first lien on tangible personal property associated with oil and gas production of the operator that has a salvage value equal to not less than the amount of the bond or letter of credit that would be required by subsection (d)(1) or by subsection (d)(2).

(6) The operator has provided other financial assurance approved by the commission.

(e) Upon the approval of the application or renewal application, the commission shall issue to such applicant a license which shall be in full force and effect until one year from the date of issuance or until surrendered, suspended or revoked as provided in K.S.A. 55-162, and amendments thereto. No new license shall be issued to any applicant who has had a license revoked until the expiration of one year from the date of such revocation.

(f) If an operator transfers responsibility for the operation of a well or gas gathering system or for underground porosity storage of natural gas to another person, such operator shall file a notice of transfer of operator with the commission in accordance with rules and regulations of the commission. The commission shall, upon receipt of such notice, send a copy of such notice to the surface owner, as well as the contact information, including name, address, phone number, fax or email address, for a designated representative of the operator. The commission need not send such information if the operator verifies that the notice filed with the commission has been delivered to the surface owner. The commission need not send a copy of notice to the surface owner for transfers of responsibility for the operation of a gas gathering system or for underground porosity storage of natural gas to another person.

(g) The commission shall remit all moneys received from fees assessed pursuant to subsection (c)(7) of 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the conservation fee fund created by K.S.A. 55-143, and amendments thereto.

(h) The commission shall remit all moneys received pursuant to subsections (d)(3) and (d)(4) 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 well plugging assurance fund.

Sec. 20. K.S.A. 55-176 is hereby amended to read as follows: 55-176. (a) Subject to the provisions of K.S.A. 55-143, and amendments thereto,

the commission shall assess operators or their designated agents for all or part of the actual costs and expenses incurred in: (1) The supervision, administration, inspection, investigation; (2) the enforcement of this act and the rules and regulations adopted pursuant to this act; and (3) monitoring and inspecting oil and gas lease salt water and oil storage, disposal and emergency facilities.

(b) The commission shall remit all moneys received by or for it for costs or expenses 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the conservation fee fund created by K.S.A. 55-143, and amendments thereto.

Sec. 21. K.S.A. 55-609 is hereby amended to read as follows: 55-609.

(a) Subject to the provisions of K.S.A. 55-143, and amendments thereto, the state corporation commission is hereby authorized and directed to tax and assess against the parties involved in any hearing or application all or any part of the costs incurred therein and also, all or any part of the costs to the state incurred in making necessary investigations and in enforcing its orders under K.S.A. 55-601 to 55-613, inclusive, and amendments thereto, and divide such costs among the parties in such proportion as is just and equitable.

(b) The state corporation commission shall remit all moneys received by or for it for costs taxed and assessed 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the conservation fee fund created by K.S.A. 55-143, and amendments thereto.

(c) Assessments imposed on the basis of a volume measure of production under the authority of this section shall be reported and remitted in the manner provided in K.S.A. 79-4230, and amendments thereto.

Sec. 22. K.S.A. 55-711 is hereby amended to read as follows: 55-711.

(a) Subject to the provisions of K.S.A. 55-143, and amendments thereto, the state corporation commission is hereby directed to tax and assess against the parties involved in any hearing or application all or any part of the costs incurred therein, also all or any part of the costs to the commission incurred in making the necessary investigations and the enforcement of its orders under K.S.A. 55-701 to 55-713, inclusive, and amendments thereto, and divide such costs among the interested parties in such proportion as may be just and equitable.

(b) The state corporation commission shall remit all moneys received by or for it for costs 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the conservation fee fund created by K.S.A. 55-143, and amendments thereto.

(c) Assessments imposed on the basis of a volume measure of production under the authority of this section shall be reported and remitted in the manner provided in K.S.A. 79-4230, and amendments thereto.

Sec. 23. K.S.A. 55-901 is hereby amended to read as follows: 55-901.

(a) The owner or operator of any oil or gas well which may be producing and which produces salt water or waters containing minerals in an appreciable degree shall have the right to return such waters to any horizon from which such salt waters may have been produced, or to any other horizon which contains or had previously produced salt water or waters containing minerals in an appreciable degree, if the owner or operator of such well makes a written application to the state corporation commission for authority to do so, and written approval has been granted to the owner or operator after investigation by the state corporation commission.

(b) The state corporation commission is hereby directed to adopt such rules and regulations as may be just and equitable to carry out the provisions of this section.

(c) Subject to the provisions of K.S.A. 55-143, and amendments thereto, the state corporation commission shall assess all or any part of the cost that may be incurred under the provisions of this section against the applicant.

(d) The commission shall remit all moneys received by or for it for costs assessed 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the conservation fee fund created by K.S.A. 55-143, and amendments thereto.

Sec. 24. K.S.A. 58-2011 is hereby amended to read as follows: 58-2011.

(a) Whenever a survey originates from a United States public land survey corner or any related accessory, the land surveyor shall file a copy of the report of the completed survey and references to the corner or accessory with the secretary of the state historical society and with the county surveyor for the county or counties in which the survey corner exists. If there is no county surveyor of such county, such report shall be filed with the county engineer. If there is no county engineer, such report shall be filed in the office of the county road department. Reports filed with the secretary of the state historical society may be filed and retrieved using electronic technologies if authorized by the secretary. Such report shall be filed within 30 days of the date the references are made. At the time of

filing such report with the secretary of the state historical society, the land surveyor shall pay a filing fee in an amount fixed by rules and regulations of the secretary of the state historical society. Fees charged for filing and retrieval of such reports may be billed and paid periodically.

(b) Any person engaged in an activity in which a United States public land survey corner or any related accessory is likely to be altered, removed, damaged or destroyed shall have a person qualified to practice land surveying establish such reference points as necessary for the restoration, reestablishment or replacement of the corner or accessory. The land surveyor shall file a reference report with the secretary of the state historical society and with the county surveyor for the county or counties in which the survey corner exists. Such report shall be filed within 30 days of the date the references are made. At the time of filing such report with the secretary of the state historical society, the land surveyor shall pay a filing fee in an amount fixed by rules and regulations of the secretary of the state historical society.

(c) Upon completion of the activity likely to alter, remove, damage or destroy the public land survey corner or related accessory, the land surveyor shall review the survey corner and its accessories. If the survey corner or any accessory has been altered, removed, damaged or destroyed, the land surveyor shall replace the corner or accessory with a survey monument and file a restoration report with the secretary of the state historical society and the county surveyor in the county or counties in which it existed. If the survey corner and accessories are not damaged during the activity, a restoration report so stating shall be filed with the secretary of the state historical society and county surveyor's office. Such report shall be filed within 30 days after the activity is completed. At the time of filing such report with the office of the secretary of the state historical society the land surveyor shall pay a filing fee in an amount fixed by rules and regulations of the secretary of the state historical society.

(d) Failure to comply with the filing requirements of this section shall be grounds for the suspension or revocation of the land surveyor's license.

(e) The secretary of the state historical society may produce, reproduce and sell maps, plats, reports, studies and records relating to land surveys. The secretary of the state historical society shall charge a fee in an amount to be fixed by rules and regulations of the secretary for the furnishing of information retrieved from records filed pursuant to this section and for reproductions or copies of maps, plats, reports, studies and records filed in such office.

(f) All moneys collected by the secretary of the state historical society under 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall

be credited to the land survey fee fund, which is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants approved by the secretary of the state historical society or a person designated by the secretary of the state historical society and shall be used only for the purpose of paying the costs incurred in administering the provisions of this act. After the effective date of this act, any reference to the secretary of state in regard to appropriations to the land survey fee fund shall be deemed to refer to the secretary of the state historical society.

(g) The failure of any person to have a land surveyor establish reference points as required by subsection (b) shall be a class C misdemeanor.

Sec. 25. K.S.A. 58-3074 is hereby amended to read as follows: 58-3074. (a) Except as provided by subsections (b) and (c), the director of the commission shall remit all moneys received by or for the director 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the real estate fee fund established by former K.S.A. 58-3014, and amendments thereto, which fund is hereby continued in existence. 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 director or by a person or persons designated by the director.

(b) The director of the commission shall remit all moneys received by or for the director pursuant to K.S.A. 58-3066 through 58-3072, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Except as provided by subsections (b) and (d) of K.S.A. 58-3066, 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 real estate recovery revolving fund.

(c) The director of the commission shall remit all moneys received by or for the director pursuant to K.S.A. 58-3050, 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 state general fund~~ *and shall credit the portion of the fine amount collected that equals the commission's actual costs related to the investigation and prosecution of the case and attorney fees, as certified by the executive director of the commission to the state treasurer, to the real estate fee fund as provided by K.S.A. 58-3050, and amendments thereto. The balance of the fine amount collected shall be credited to the state general fund.*

Sec. 26. K.S.A. 2010 Supp. 58-4107 is hereby amended to read as follows: 58-4107. (a) The board shall adopt rules and regulations prescrib-

ing the fees provided for by this act in amounts necessary to administer and enforce this act, subject to the following:

(1) For application for certification or licensure, a fee not to exceed \$50.

(2) For any examination required for certification or licensure, a fee in an amount equal to the actual cost of the examination and administration thereof.

(3) For original or renewal certification or licensure, a fee not to exceed \$300.

(4) For late renewal of a certificate or license, a late fee not to exceed \$50.

(5) For certification to another jurisdiction that an individual is certified or licensed, an amount not exceeding \$25.

(6) For approval of a course of instruction approved pursuant to K.S.A. 58-4105, and amendments thereto, an amount not to exceed \$100.

(7) For renewal of a course of instruction approved pursuant to K.S.A. 58-4105, and amendments thereto, an amount not to exceed \$25.

(8) For reinstatement of active status of a certificate or license, a fee not to exceed \$50.

If a certificate or license is issued or renewed for a period other than one year, the fee shall be prorated to the nearest whole month.

(b) The board may prescribe a fee not to exceed \$50 for registration of an appraiser pursuant to subsection (b) of K.S.A. 58-4103, and amendments thereto.

(c) The board may establish different classes of courses of instruction for the purpose of establishing fees pursuant to subsections (a)(6) and (7) and may establish a different fee for each such class.

(d) In addition to the fees prescribed above, the board shall collect any registry fee required pursuant to federal law. Such registry fees shall be transmitted by the board to the appraisal subcommittee of the federal financial institutions examination council in accordance with federal law.

(e) Except as provided in subsection (f), the board shall collect all fees provided for by this act. No original or renewed certificate or license shall be issued unless all appropriate fees, including any federal registry fee, have been paid.

(f) If a testing service has been designated by the board to administer the examination, each applicant shall pay the examination fee to the testing service.

(g) The 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. ~~Twenty~~ *Ten* percent of each such deposit, other than amounts collected for federal registry fees or for civil fines imposed pursuant to K.S.A. 58-4118, and amendments thereto, shall be credited to the state general fund and the

balance shall be credited to the appraiser fee fund, which is hereby created in the state treasury. 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.

(h) All amounts collected for federal registry fees shall be credited totally to the federal registry clearing fund, which is hereby created in the state treasury. All disbursements from the 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 federal registry clearing fund under this section shall not be subject to any limitations imposed by any appropriations act of the legislature.

Sec. 27. K.S.A. 65-6b10 is hereby amended to read as follows: 65-6b10. The secretary of health and environment shall remit all moneys received by the secretary under 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund, and the balance shall be credited to the amygdalin (laetrile) enforcement fee fund, which fund is hereby created. 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 health and environment or a person or persons designated by the secretary.

Sec. 28. K.S.A. 65-1718 is hereby amended to read as follows: 65-1718. (a) The state board of mortuary arts 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the mortuary arts 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 secretary of the state board of mortuary arts or by a person or persons designated by the secretary.

(b) On July 1, 1985, the director of accounts and reports shall transfer all moneys in the embalming board fee fund to the mortuary arts fee fund. On July 1, 1985, all liabilities of the embalming board fee fund are hereby imposed upon the mortuary arts fee fund, and the embalming board fee fund is hereby abolished.

(c) Whenever the embalming board fee fund, or words of like effect, is referred to or designated by a statute, contract or other document, such

reference or designation shall be deemed to apply to the mortuary arts fee fund.

Sec. 29. K.S.A. 65-1817a is hereby amended to read as follows: 65-1817a. 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the board of barbering 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 chairperson of the board or by a person or persons designated by the chairperson.

Sec. 30. K.S.A. 65-1951 is hereby amended to read as follows: 65-1951. The board, the director or a person authorized by 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. 72-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the cosmetology fee fund.

Sec. 31. K.S.A. 65-2011 is hereby amended to read as follows: 65-2011. The state board of healing arts shall remit all moneys received by or for it under this act 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from such fund shall be made in accordance with the provisions of K.S.A. 65-2855, and amendments thereto.

Sec. 32. K.S.A. 65-2855 is hereby amended to read as follows: 65-2855. The board shall remit all moneys received by or for the board 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. ~~Twenty~~ *Ten* percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from the healing arts 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 president of the board or by a person or persons designated by the president.

Sec. 33. K.S.A. 2010 Supp. 65-2911 is hereby amended to read as follows: 65-2911. (a) The board may adopt such rules and regulations as

necessary to carry out the purposes of this act. The executive director of the board shall keep a record of all proceedings under this act and a roster of all persons licensed or certified under the act. The roster shall show the name, address, date and number of the original license or certificate, and the renewal thereof.

(b) (1) The board shall charge and collect in advance fees provided for in this act as fixed by the board by rules and regulations, subject to the following limitations:

Application based upon certificate of prior examination, not more than .....	\$80
Application based on examination, not more than .....	100
Exempt license fee, not more than .....	80
Annual renewal fee, not more than .....	70
Exempt license renewal fee, not more than .....	70
Late renewal fee, not more than .....	75
Reinstatement fee, not more than .....	80
Certified copy of license or certificate, not more than .....	15
Duplicate certificate .....	15
Temporary permit .....	25
Written verification of license .....	25

(2) The board shall charge and collect in advance fees for any examination administered by the board under article 29 of chapter 65 of the Kansas Statutes Annotated ~~and acts amendatory of the provisions thereof or supplemental thereto, and amendments thereto,~~ as fixed by the board by rules and regulations in an amount equal to the cost to the board of the examination. If the examination is not administered by the board, the board may require that fees paid for any examination under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto be paid directly to the examination service by the person taking the examination.

(3) The fees fixed by the board by rules and regulations under article 29 of chapter 65 of the Kansas Statutes Annotated ~~and acts amendatory of the provisions thereof or supplemental thereto, and amendments thereto,~~ and in effect immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.

(c) 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. ~~Twenty~~ Ten percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts 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 of the board.

Sec. 34. K.S.A. 2010 Supp. 65-4024b is hereby amended to read as

follows: 65-4024b. The secretary shall remit all moneys received from fees for licensing alcohol or other drug treatment facilities 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the other state fees fund of the department of social and rehabilitation services.

Sec. 35. K.S.A. 65-5413 is hereby amended to read as follows: 65-5413. 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the healing arts 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 designated by the president of the board.

Sec. 36. K.S.A. 65-5513 is hereby amended to read as follows: 65-5513. 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the healing arts 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 designated by the president of the board.

Sec. 37. K.S.A. 2010 Supp. 65-6910 is hereby amended to read as follows: 65-6910. (a) The board shall charge and collect in advance fees provided for in this act as fixed by the board by rules and regulations, subject to the following limitations:

Application and license fee based upon certificate of prior examination,	
not more than .....	\$80
Annual renewal fee, not more than .....	\$70
Additional renewal fee, not more than .....	\$75
Reinstatement fee, not more than .....	\$80
Certified copy of license, not more than .....	\$15
Temporary permit .....	\$25

(b) The board shall charge and collect in advance fees for any examination administered by the board under the athletic trainers licensure act as fixed by the board by rules and regulations in an amount equal to the cost to the board of the examination and its administration. If the examination

is not administered by the board, the board may require that fees paid for any examination under the athletic trainers licensure act be paid directly to the examination service by the person taking the examination.

(c) The board shall remit all moneys received 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the healing arts 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 designated by the president of the board.

Sec. 38. K.S.A. 65-7210 is hereby amended to read as follows: 65-7210. (a) 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the healing arts 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 designated by the president of the board.

(b) The provisions of this section shall take effect on and after January 1, 2003.

Sec. 39. K.S.A. 2010 Supp. 65-7309 is hereby amended to read as follows: 65-7309. (a) The board shall remit all moneys received by or for the board 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. ~~Twenty~~ *Ten* percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from the healing arts 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 president of the board or by a person or persons designated by the president.

(b) This section shall take effect on and after July 1, 2005.

Sec. 40. K.S.A. 66-1,155 is hereby amended to read as follows: 66-1,155. The chairperson of the corporation commission 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. ~~Twenty~~ *Ten* percent of each

such deposit shall be credited to the state general fund and the balance shall be credited to the gas pipeline 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 chairperson or by a person or persons designated by the chairperson.

Sec. 41. K.S.A. 66-1503 is hereby amended to read as follows: 66-1503. (a) (1) The state corporation commission shall determine within 15 days after each quarter-year for each such quarter-year, the total amount of its expenditures during such period of time and the total amount of expenditures of the citizens' utility ratepayer board during such period of time. The total amount shall include the salaries of members and employees and all other lawful expenditures of the commission and the board, including all expenditures in connection with investigations or appraisals made under the provisions of K.S.A. 66-1502, and amendments thereto, except that there shall not be included in such total amount of expenditures for the purpose of this section the expenditures during such period of time which are otherwise provided for by fees and assessments made under other existing laws for the regulation of motor carriers or for administering the oil proration and the oil and gas conservation laws.

(2) From the amount determined under paragraph (1) of this subsection, the commission shall deduct (A) all amounts collected under K.S.A. 66-1502, and amendments thereto, during such period of time and (B) the amounts of all fees collected during such period of time under the provisions of subsection (b)(1) of K.S.A. 66-1a01, and amendments thereto.

(3) To the remainder after making the deductions under paragraph (2) of this subsection, the commission shall add such amount as in its judgment may be required to satisfy any deficiency in the prior assessment period's assessment and to provide for anticipated increases in necessary expenditures for the current assessment period.

(b) The amount determined under subsection (a) shall be assessed by the commission against all public utilities and common carriers subject to the jurisdiction of the commission and shall not exceed, during any fiscal year, the greater of \$100 or 0.2% of the respective utility's or common carrier's gross operating revenues derived from intrastate operation as reflected in the last annual report filed with the commission pursuant to K.S.A. 66-123, and amendments thereto, prior to the beginning of the commission's fiscal year or made available to the commission upon request. Such assessment shall be paid to the commission within 15 days after the notice of assessment has been mailed to such public utilities and common carriers, which notice of assessment shall constitute demand of payment thereof.

(c) The commission shall remit all moneys received by or for it for the assessment imposed 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the public service regulation fund.

Sec. 42. K.S.A. 74-715 is hereby amended to read as follows: 74-715. There is hereby created in the state treasury a fund to be called the workmen's compensation fee fund. The workers compensation director shall remit all moneys received by or for such director from fees, charges or penalties which prior to the effective date of this act was required by law to be credited to the workmen's compensation fee fund 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the workmen's compensation fee fund. All expenditures from the workmen's compensation 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 workmen's compensation director or by a person or persons designated by the director.

Sec. 43. K.S.A. 74-1108 is hereby amended to read as follows: 74-1108. The executive administrator of the board of nursing shall remit all moneys received by the board from fees, charges or penalties, other than moneys received under K.S.A. 74-1109, 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the board of nursing 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.

Sec. 44. K.S.A. 74-1405 is hereby amended to read as follows: 74-1405. (a) The board at its first meeting day of each year shall elect from its members a president, vice-president and secretary. The board shall have a common seal. The board shall hold two regular meetings each year at times to be fixed by the board, and special meetings at such other times as may be necessary.

(b) Members of the Kansas dental board attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, or conducting examinations for dental or dental hygienists licenses or conducting inspections of dental laboratories required by K.S.A. 65-1438, and amendments thereto, shall be paid compensation, subsistence

allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. Members of the board conducting examinations for dental or dental hygienists licenses may receive amounts for compensation, subsistence allowances, mileage or other expenses from a nonstate agency for conducting such examinations but no member receiving any such amounts shall be paid any compensation, subsistence allowances, mileage or other expenses under this section for conducting such examinations.

(c) The official office of the board shall be in Topeka. Meetings shall be held in Topeka or at such other places as the board shall determine to be most appropriate. Service of process may be had upon the board by delivery of process to the secretary of state who shall mail the same by registered or certified mail to the executive director of the board.

(d) The board may appoint an executive director who shall be in the unclassified service of the Kansas civil service act. The executive director shall receive an annual salary fixed by the board and approved by the governor. The executive director shall be the legal custodian of all property, money, minutes, records, and proceedings and seal of the board.

(e) The board in its discretion may affiliate as an active member with the national association of dental examiners and any organization of one or more state boards for the purpose of conducting a standard examination of candidates for licensure as dentists or dental hygienists and pay regular dues to such association or organization, and may send members of the board to the meetings of the national association and the meetings of any organization of state boards of dental examiners organized for the purpose of conducting a standard examination of candidates for licensure as dentists and dental hygienists.

(f) The executive director shall remit all moneys received by or for such executive director 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the dental board 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.

Sec. 45. K.S.A. 74-1503 is hereby amended to read as follows: 74-1503. 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. 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. ~~Twenty~~ *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.

Sec. 46. K.S.A. 74-1609 is hereby amended to read as follows: 74-1609. The executive secretary of the board shall be the executive officer in charge of the office of the board. Such secretary shall make, keep, and be in charge of all records and record books required to be kept by such board, including a record of all registrations and permits required under this act, and shall attend to the correspondence of the board and perform such other duties as the board may require in carrying out and administering this act.

The executive secretary shall receive and receipt for all fees collected under this act. The executive secretary of the board shall remit all moneys received by or for such secretary 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the state board of pharmacy fee fund which is hereby created. 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 secretary or by the president of the board, or both, as the board shall determine.

Sec. 47. K.S.A. 74-2704 is hereby amended to read as follows: 74-2704. All fees and payments required to be paid by applicants for examinations or licenses, shall be paid to the executive director of the Kansas state board of cosmetology or the board's designee. The executive director, or the board's designee, shall remit all moneys received 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the cosmetology fee fund. All expenditures from such fund shall be made in accordance with appro-

priation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director or by a person or persons designated by the board.

Sec. 48. K.S.A. 74-3903 is hereby amended to read as follows: 74-3903. The abstracters' board of examiners 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the abstracters' 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 chairperson of the board or by a person or persons designated by chairperson.

Sec. 49. K.S.A. 2010 Supp. 74-50,188 is hereby amended to read as follows: 74-50,188. (a) There is hereby established in the state treasury the athletic fee fund to be administered by the chairperson of the commission or the chairperson's designee. All moneys received by or for the commission from fees, charges or penalties shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, who shall deposit the entire amount thereof in the state treasury to the credit of the athletic fee fund until July 1, 2007. Thereafter, ~~20%~~ *10%* of each such deposit shall be credited to the state general fund and the balance shall be credited to the athletic 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 boxing commissioner or the commissioner's designee. All moneys credited to the athletic fee fund shall be expended for the administration of the powers, duties, functions and operating expenses of the commission and the boxing commissioner.

(b) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the athletic fee fund established in subsection (a) interest earnings based on:

(1) The average daily balance of money in the athletic fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment fund portfolio for the preceding month.

Sec. 50. K.S.A. 2010 Supp. 74-5805 is hereby amended to read as follows: 74-5805. At the first meeting of the board in every year it shall elect from its own membership a chairman and vice-chairman. The board shall appoint one of its own members or some other person to serve as executive officer of the board. The executive officer shall be in the unclassified service of the Kansas civil service act and shall receive compensation fixed by the board with the approval of the state finance council.

Members of the 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. 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the hearing instrument board 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 executive officer or by a person or persons designated by such executive officer.

Sec. 51. K.S.A. 2010 Supp. 74-6708 is hereby amended to read as follows: 74-6708. (a) The commission is authorized to receive any gifts, grants, or donations made for any of the purposes of its program and to disburse and administer all such gifts, grants and donations and moneys appropriated to the commission in accordance with the terms thereof.

(b) The commission is authorized to fix and collect reasonable fees for services and materials provided by the commission.

(c) There is hereby established the commission on disability concerns fee fund. The commission shall remit all moneys received by or for it from 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the commission on disability concerns 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 chairperson of the commission on disability concerns, or by a person or persons designated by the chairperson and secretary of commerce.

Sec. 52. K.S.A. 2010 Supp. 74-7009 is hereby amended to read as follows: 74-7009. (a) The following nonrefundable fees shall be collected by the board:

(1) For an original license, issued upon the basis of an examination given by the board, an application fee in the sum of not more than \$200 plus an amount, to be determined by the board, equal to the cost of any examination required by the board in each branch of the technical professions;

(2) for a license by reciprocity under K.S.A. 74-7024, and amendments thereto, an application fee of not more than \$500;

(3) for a certificate of authorization for a business entity, the sum of not more than \$300;

(4) for the biennial renewal of a license, the sum of not more than \$200;

(5) for the biennial renewal of a certificate of authorization for a business entity, the sum of not more than \$300; and

(6) for the renewal of a certificate of authorization pursuant to subsection (e) of K.S.A. 74-7036, and amendments thereto, ~~one-half~~  $\frac{1}{2}$  of the renewal fee required by paragraph (5) of this subsection.

(b) On or before November 15, each year, the board shall determine the amount necessary to administer the provisions of K.S.A. 74-7001 et seq., and amendments thereto, for the ensuing calendar year ~~including the amount to be credited to the state general fund~~, and shall fix the fees for such year at the sum deemed necessary for such purposes.

(c) 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the technical professions fee fund, which fund is hereby created. 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 board or by a person or persons designated by the chairperson.

Sec. 53. K.S.A. 74-7506 is hereby amended to read as follows: 74-7506. The behavioral sciences regulatory 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the behavioral sciences regulatory board fee fund, which is hereby established. All expenditures from the behavioral sciences regulatory board 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 chairperson of the behavioral sciences regulatory board or by a person or persons designated by the chairperson.

Sec. 54. K.S.A. 2010 Supp. 75-1119b is hereby amended to read as follows: 75-1119b. The board of accountancy shall remit all moneys received by or for it under the provisions of this act 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state

general fund and the balance shall be credited to the board of accountancy fee fund.

Sec. 55. K.S.A. 2010 Supp. 75-1308 is hereby amended to read as follows: 75-1308. The commissioner shall keep a record of all fees collected by the commissioner, together with a record of all expenses incurred in the administration of programs regulated by the division of banking and in the administration of programs regulated by the division of consumer and mortgage lending. The bank commissioner shall remit all moneys received by or for the commissioner from 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. ~~Twenty~~ *Ten* percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner 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 bank commissioner or by a person or persons designated by the commissioner.

Sec. 56. K.S.A. 2010 Supp. 75-1514 is hereby amended to read as follows: 75-1514. (a) The commissioner of insurance shall remit all moneys received by the commissioner under subsection (a) of K.S.A. 75-1508, 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 fire marshal fee fund for the fiscal years ending June 30, 2003, and June 30, 2004, and~~ The state treasurer shall credit ~~20%~~ *10%* of each such deposit to the state general fund and shall credit the remainder of each such deposit to the fire marshal fee fund ~~for the fiscal year ending June 30, 2005, and ensuing fiscal years.~~

(b) There is hereby created the fire marshal fee fund in the state treasury. All expenditures from the fire marshal 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 state fire marshal or a person or persons designated by the state fire marshal.

(c) The commissioner of insurance shall remit all moneys received by the commissioner under subsection (b) of K.S.A. 75-1508, 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 emergency medical services board operating fund.

(d) The commissioner of insurance shall remit all moneys received by the commissioner under subsection (c) of K.S.A. 75-1508, 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 fire service training program fund.

Sec. 57. K.S.A. 2010 Supp. 84-9-801 is hereby amended to read as follows: 84-9-801. (a) There is hereby created in the state treasury the uniform commercial code fee fund.

(b) The secretary of state shall remit to the state treasurer at least monthly all fees received by the secretary of state for providing information concerning filings under article 9 of chapter 84 of the Kansas Statutes Annotated, *and amendments thereto*. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit ~~20%~~ 10% of the amount to the state general fund and the balance to the uniform commercial code fee fund.

(c) All expenditures from the uniform commercial code 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 state or a person or persons designated by the secretary of state.

(d) If information regarding filings in the office of the secretary of state is provided by a register of deeds, the fee to be collected from the customer shall be an amount fixed by rules and regulations adopted by the secretary of state. The rules and regulations adopted by the secretary of state shall specify the amount the register of deeds shall remit to the county treasurer for deposit into the county general fund. The register of deeds shall remit at least monthly the remainder of all such fees collected to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and shall credit ~~20%~~ 10% of the amount to the state general fund and the remainder to the uniform commercial code fee fund.

Sec. 58. K.S.A. 1-204, 17-12a601, 17-2236, 17-5610, 17-5701, 20-1a02, 20-1a03, 49-420, 55-176, 55-609, 55-711, 55-901, 58-2011, 58-3074, 65-6b10, 65-1718, 65-1817a, 65-1951, 65-2011, 65-2855, 65-5413, 65-5513, 65-7210, 66-1,155, 66-1503, 74-715, 74-1108, 74-1405, 74-1503, 74-1609, 74-2704, 74-3903, 74-7506 and 75-3170 and K.S.A. 2010 Supp. 9-1703, 16a-2-302, 31-133a, 31-134, 36-512, 44-324, 44-926, 47-820, 55-155, 58-4107, 65-2911, 65-4024b, 65-6910, 65-7309, 74-50,188, 74-5805, 74-6708, 74-7009, 75-1119b, 75-1308, 75-1514, 75-3170a and 84-9-801 are hereby repealed.

Sec. 59. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 13, 2011.

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## CHAPTER 54

## SUBSTITUTE FOR SENATE BILL No. 72

AN ACT concerning telecommunications; amending K.S.A. 50-6,103 and 66-1,187 and K.S.A. 2010 Supp. 66-2005 and repealing the existing sections.

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

Section 1. K.S.A. 50-6,103 is hereby amended to read as follows: 50-6,103. (a) As used in this section:

(1) “Express authorization” means an express, affirmative act by a consumer clearly agreeing to a change in the consumer’s telecommunications carrier or local exchange carrier to another carrier.

(2) “Supplemental telecommunication services” means any property or services for which any charge or assessment appears on a billing statement directed to a consumer by a local exchange carrier or telecommunications carrier, including but not limited to personal 800 number services, calling card plans, internet advertisement and website services, voice mail services, paging services, psychic services, psychic memberships, dating services or memberships, travel club memberships, internet access services and service maintenance plans. “Supplemental telecommunication services” does not include direct dial services to which a per use charge applies.

(3) “Telecommunications services” has the meaning provided by K.S.A. 66-1,187, and amendments thereto.

(b) No local exchange carrier or telecommunications carrier shall submit or cause to be submitted to a local exchange carrier an order to change a consumer’s telecommunications carrier or local exchange carrier to another carrier without having obtained the express authorization of the consumer authorized to make the change. The local exchange carrier or telecommunications carrier requesting the change shall have the burden of proving the express authorization by a preponderance of the evidence. It shall not be a violation of this subsection for a local exchange carrier to assign a consumer to a telecommunications carrier for purposes of intra-LATA services pursuant to order of the state corporation commission.

(c) No supplier shall:

(1) Engage in any activity, conduct or representation that has the capacity to mislead, deceive or confuse the consumer, while soliciting or verifying a change in a consumer’s telecommunications carrier or local exchange carrier to another carrier;

(2) employ a box or container used to collect entries for sweepstakes, contests or drawings to gather letters of agency or other documents that constitute authorizations by consumers to change the consumers’ telecommunications carrier or local exchange carrier to another carrier or to change or add to the consumers’ accounts any supplemental telecommunications services;

(3) use any methods not approved by statute, regulations of the federal

communications commission or federal trade commission (as in effect on the effective date of this act) or state corporation commission rules and regulations to change a consumer's telecommunications carrier or local exchange carrier to another carrier; or

(4) employ a check, draft or other negotiable instrument that constitutes authorization to change or add to the consumer's accounts any supplemental telecommunications services.

(d) Any supplier that violates subsection (b) or (c) shall be subject to a civil penalty of not less than \$5,000 nor more than \$20,000 for each such violation instead of the penalty provided for in subsection (a) of K.S.A. 50-636, and amendments thereto.

(e) Any violation of this section is a deceptive and unconscionable act or practice under the provisions of the Kansas consumer protection act and shall be subject to any and all of the enforcement provisions of the Kansas consumer protection act. Nothing in this section shall preclude the state corporation commission from exerting its authority as it pertains to intra-state services nor the attorney general from pursuing violations of any other provisions of the Kansas consumer protection act by a supplier.

(f) All local exchange carriers *and electing carriers* shall offer consumers the option of notifying the local exchange carrier in writing that they do not desire any change of telecommunications carrier regardless of any orders to the contrary submitted by any third party. The consumer shall be permitted to cancel such notification or to change its telecommunications carrier by notifying the consumer's local exchange carrier *or electing carrier* accordingly. *For the purposes of this section, a letter of agency, as described in 47 CFR 64.1130, as in effect on the effective date of this act, that is signed by the consumer shall satisfy the notification requirement for purposes of making changes to the consumer's telecommunications carrier.* All local exchange carriers *and electing carriers* shall annually notify the consumers of the carrier's telecommunications services of the availability of this option.

(g) Any person alleging a violation of this section may bring a private action to seek relief pursuant to K.S.A. 50-634, 50-636 and this section, and amendments thereto, and such person may be defined as a consumer pursuant to K.S.A. 50-624, and amendments thereto, for the purposes of such private action.

(h) The attorney general and the state corporation commission shall enter into a memorandum of understanding providing for the cooperation and sharing of information necessary to enforce this section against suppliers and to assist consumers under federal and state law.

(i) This section shall be part of and supplemental to the Kansas consumer protection act.

Sec. 2. K.S.A. 66-1,187 is hereby amended to read as follows: 66-1,187. As used in this act:

(a) “Broadband” means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second.

(b) “CLASS services” means custom local area signaling services, which include automatic callback, automatic recall, calling number identification, selective call rejection, selective call acceptance, selective call forwarding, distinctive ringing and customer originated trace.

(c) “Commission” means the state corporation commission.

(d) “Dialing parity” means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications carrier of the customer’s designation from among two or more telecommunications carriers, including such local exchange carrier.

(e) “Federal act” means the federal telecommunications act of 1996, P.L. 104-104 (amending the communications act of 1934, 47 U.S.C. § 151, et seq.)

(f) “ISDN” means integrated services digital network which is a network and associated technology that provides simultaneous voice and data communications over a single communications channel.

(g) “LATA” has the meaning ascribed to it in the federal act.

(h) “Local exchange carrier” means any telecommunications public utility or its successor providing switched telecommunications service within any local exchange service area, as approved by the commission on or before January 1, 1996. However, with respect to the Hill City exchange area, in which multiple carriers were certified by the commission prior to January 1, 1996, the commission’s determination, subject to any court appeals, of which authorized carrier shall serve as the carrier of last resort will determine which carrier shall be deemed the local exchange carrier for that exchange.

(i) “Number portability” has the meaning ascribed to it in the federal act.

(j) “1+ intraLATA dialing parity” means the ability of a local exchange service customer to specify the telecommunications or local exchange carrier that will carry the intraLATA long distance messages when that customer dials either “1” or “0” plus a 10-digit number.

(k) “Operating area” means:

(1) In the case of a rural telephone company, operating area or service area means such company’s study area or areas as approved by the federal communications commission;

(2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier’s local exchange service area or areas as approved by the commission.

(l) “Rural telephone company” has the meaning ascribed to it in the federal act, excluding any local exchange carrier which together with all of its affiliates has 20,000 or more access lines in the state.

(m) “Telecommunications carrier” means a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996, *except for electing carriers*.

(n) “Telecommunications public utility” means any public utility, as defined in K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages, as defined in K.S.A. 66-104, and amendments thereto, or the provision of telecommunications services in or throughout any part of Kansas.

(o) “Telecommunications service” means the provision of a service for the transmission of telephone messages, or two-way video or data messages.

(p) “Universal service” means telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services.

(q) “Enhanced universal service” means telecommunications services, in addition to those included in universal service, which shall include: Signaling system seven capability, with CLASS service capability; basic and primary rate ISDN capability, or the technological equivalent; full-fiber interconnectivity, or the technological equivalent, between central offices; and broadband capable facilities to: All schools accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services.

Sec. 3. K.S.A. 2010 Supp. 66-2005 is hereby amended to read as follows: 66-2005. (a) Each local exchange carrier shall file a network infrastructure plan with the commission on or after January 1, 1997, and prior to January 1, 1998. Each plan, as a part of universal service protection, shall include schedules, which shall be approved by the commission, for deployment of universal service capabilities by July 1, 1998, and the deployment of enhanced universal service capabilities by July 1, 2003, as defined pursuant to subsections (p) and (q) of K.S.A. 66-1,187, and amendments thereto, respectively. With respect to enhanced universal service, such schedules shall provide for deployment of ISDN, or its technological equivalent, or broadband facilities, only upon a firm customer order for such service, or for deployment of other enhanced universal services by a local exchange carrier. After receipt of such an order and upon completion of a deployment plan designed to meet the firm order or otherwise provide for the deployment of enhanced universal service, a local exchange carrier

shall notify the commission. The commission shall approve the plan unless the commission determines that the proposed deployment plan is unnecessary, inappropriate, or not cost effective, or would create an unreasonable or excessive demand on the KUSF. The commission shall take action within 90 days. If the commission fails to take action within 90 days, the deployment plan shall be deemed approved. This approval process shall continue until July 1, 2000. Each plan shall demonstrate the capability of the local exchange carrier to comply on an ongoing basis with quality of service standards to be adopted by the commission no later than January 1, 1997.

(b) In order to protect universal service, facilitate the transition to competitive markets and stimulate the construction of an advanced telecommunications infrastructure, each local exchange carrier shall file a regulatory reform plan at the same time as it files the network infrastructure plan required in subsection (a). As part of its regulatory reform plan, a local exchange carrier may elect traditional rate of return regulation or price cap regulation. Carriers that elect price cap regulation shall be exempt from rate base, rate of return and earnings regulation and shall not be subject to the provisions of K.S.A. 66-136 and 66-127, and amendments thereto, except as otherwise provided in such sections. However, the commission may resume such regulation upon finding, after a hearing, that a carrier that is subject to price cap regulation has: violated minimum quality of service standards pursuant to subsection (l) of K.S.A. 66-2002, and amendments thereto; been given reasonable notice and an opportunity to correct the violation; and failed to do so. Regulatory reform plans also shall include:

(1) A commitment to provide existing and newly ordered point-to-point broadband services to: Any hospital as defined in K.S.A. 65-425, and amendments thereto; any school accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; any public library; or other state and local government facilities at discounted prices close to, but not below, long-run incremental cost; and

(2) a commitment to provide basic rate ISDN service, or the technological equivalent, at prices which are uniform throughout the carrier's service area. Local exchange carriers shall not be required to allow retail customers purchasing the foregoing discounted services to resell those services to other categories of customers. Telecommunications carriers may purchase basic rate ISDN services, or the technological equivalent, for resale in accordance with K.S.A. 66-2003, and amendments thereto. The commission may reduce prices charged for services outlined in provisions (1) and (2) of this subsection, if the commitments of the local exchange carrier set forth in those provisions are not being kept.

(c) Subject to the commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate levels as provided herein. Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable

manner. The commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions. Any remaining portion of the reduction in access and toll charges not recovered through local residential and business service rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008, and amendments thereto. Each rural telephone company shall adjust its intrastate switched access rates on March 1 of each odd-numbered year to match its interstate switched access rates, subject to the following:

(1) Any reduction of a rural telephone company's cost recovery due to reduction of its interstate access revenue shall be recovered from the KUSF;

(2) any portion of rural telephone company reductions in intrastate switched access rates which would result in an increase in KUSF recovery in a single year which exceeds .75% of intrastate retail revenues used in determining sums which may be recovered from Kansas telecommunications customers pursuant to subsection (a) of K.S.A. 66-2008, and amendments thereto, shall be deferred until March 1 of the next following odd-numbered year; and

(3) no rural company shall be required at any time to reduce its intrastate switched access rates below the level of its interstate switched access rates.

(d) Beginning March 1, 1997, each rural telephone company shall have the authority to increase annually its monthly basic local residential and business service rates by an amount not to exceed \$1 in each 12-month period until such monthly rates reach an amount equal to the statewide rural telephone company average rates for such services. The statewide rural telephone company average rates shall be the arithmetic mean of the lowest flat rate as of March 1, 1996, for local residential service and for local business service offered by each rural telephone company within the state. In the case of a rural telephone company which increases its local residential service rate or its local business service rate, or both, to reach the statewide rural telephone company average rate for such services, the amount paid to the company from the KUSF shall be reduced by an amount equal to the additional revenue received by such company through such rate increase. In the case of a rural telephone company which elects to maintain a local residential service rate or a local business service rate, or both, below the statewide rural telephone company average, the amount paid to the company from the KUSF shall be reduced by an amount equal to the difference between the revenue the company could receive if it elected to increase such rate to the average rate and the revenue received by the company.

(e) For purposes of determining sufficient KUSF support, an affordable rate for local exchange service provided by a rural telephone company subject to traditional rate of return regulation shall be determined as follows:

(1) For residential service, an affordable rate shall be the arithmetic mean of residential local service rates charged in this state in all exchanges served by rural telephone companies and in all exchanges in rate groups 1

through 3 as of February 20, 2002, of all other local exchange carriers, *but not including electing carriers*, weighted by the number of residential access lines to which each such rate applies, and thereafter rounded to the nearest quarter-dollar, subject to the following provisions:

(A) If a rural telephone company's present residential rate, including any separate charge for tone dialing, is at or above such weighted mean, such rate shall be deemed affordable prior to March 1, 2007.

(B) If a rural telephone company's present residential rate, including any separate charge for tone dialing, is below such average: (i) Such rate shall be deemed affordable prior to March 1, 2003; (ii) as of March 1, 2003, and prior to March 1, 2004, a rate \$2 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable; (iii) as of March 1, 2004, and prior to March 1, 2005, a rate \$4 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable; and (iv) as of March 1, 2005, and prior to March 1, 2006, a rate \$6 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable.

(C) As of March 1, 2007, and each two years thereafter, an affordable residential service rate shall be the weighted arithmetic mean of local service rates determined as of October 1 of the preceding year in the manner hereinbefore specified, except that any increase in such mean exceeding \$2 may be satisfied by increases in a rural telephone company's residential monthly service rate not exceeding \$2 per year, effective March 1 of the year when such mean is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

(2) For single line business service at any time, an affordable rate shall be the existing rate or an amount \$3 greater than the affordable rate for residential service as determined under provision (1) of this subsection, whichever is higher, except that any increase in the business service affordable rate exceeding \$2 may be satisfied by increases in a rural telephone company's business monthly service rate not exceeding \$2 per year, effective March 1 of the year when such rate is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

(3) Any flat fee or charge imposed per line on all residential service or single line business service, or both, other than a fee or charge for contribution to the KUSF or imposed by other governmental authority, shall be added to the basic service rate for purposes of determining an affordable rate pursuant to this subsection.

(4) Not later than March 1, 2003, tone dialing shall be made available to all local service customers of each rural telephone company at no charge additional to any increase in the local service rate to become effective on that date. The amount of revenue received as of March 1, 2002, by a rural telephone company from the provision of tone dialing service shall be ex-

cluded from reductions in the company's KUSF support otherwise resulting pursuant to this subsection.

(5) A rural telephone company which raises one or more local service rates on application made after February 20, 2002, and pursuant to subsection (b) of K.S.A. 66-2007, and amendments thereto, shall have the level of its affordable rate increased by an amount equal to the amount of the increase in such rate.

(6) Upon motion by a rural telephone company, the commission may determine a higher affordable local residential or business rate for such company if such higher rate allows the company to provide additional or improved service to customers, but any increase in a rural telephone company's local rate attributable to the provision of increased calling scope shall not be included in any subsequent recalculation of affordable rates as otherwise provided in this subsection.

(7) A uniform rate for residential and single line business local service adopted by a rural telephone company shall be deemed an affordable rate for purposes of this subsection if application of such uniform rate generates revenue equal to that which would be generated by application of residential and business rates which are otherwise deemed affordable rates for such company under this subsection.

(8) The provisions of this subsection relating to the implementation of an affordable rate shall not apply to rural telephone companies which do not receive KUSF support. When recalculating affordable rates as provided in this subsection, the rates used shall include the actual rates charged by rural companies that do not receive KUSF support.

(f) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: Residential and single-line business, including touch-tone; switched access services; and miscellaneous services. The commission shall establish price caps at the prices existing when the regulatory plan is filed subject to rate rebalancing as provided in subsection (c) for residential services, including touch-tone services, and for single-line business services, including touch-tone services, within the residential and single-line business service basket. The commission shall establish a formula for adjustments to the price caps. The commission also shall establish price caps at the prices existing when the regulatory plan is filed for the miscellaneous services basket. The commission shall approve any adjustments to the price caps for the miscellaneous service basket, as provided in subsection (g).

(g) On or before January 1, 1997, the commission shall issue a final order in a proceeding to determine the price cap adjustment formula that shall apply to the price caps for the local residential and single-line business and the miscellaneous services baskets and for sub-categories, if any, within those baskets. In determining this formula, the commission shall balance the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state. The com-

mission also shall establish any informational filing requirements necessary for the review of any price cap tariff filings, including price increases or decreases within the caps, to verify such caps would not be exceeded by any proposed price change. The adjustment formula shall apply to the price caps for the local residential and single-line business basket after December 31, 1999, and to the miscellaneous services basket after December 31, 1997. The price cap formula, but not actual prices, shall be reviewed every five years.

(h) The price caps for the residential and single-line business service basket shall be capped at their initial level until January 1, 2000, except for any increases authorized as a part of the revenue neutral rate rebalancing under subsection (c). The price caps for this basket and for the categories in this basket, if any, shall be adjusted annually after December 31, 1999, based on the formula determined by the commission under subsection (g).

(i) The price cap for the switched access service basket shall be set based upon the local exchange carrier's intrastate access tariffs as of January 1, 1997, except for any revenue neutral rate rebalancing authorized in accordance with subsection (c). Thereafter, the cap for this basket shall not change except in connection with any subsequent revenue neutral rebalancing authorized by the commission under subsection (c).

(j) The price caps for the miscellaneous services basket shall be adjusted annually after December 31, 1997, based on the adjustment formula determined by the commission under subsection (g).

(k) A price cap is a maximum price for all services taken as a whole in a given basket. Prices for individual services may be changed within the service categories, if any, established by the commission within a basket. An entire service category, if any, within the residential and single-line business basket or miscellaneous services basket may be priced below the cap for such category. Unless otherwise approved by the commission, no service shall be priced below the price floor which will be long-run incremental cost and imputed access charges. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by local exchange carriers on a toll service basis.

(l) A local exchange carrier may offer promotions within an exchange or group of exchanges. All promotions shall be approved by the commission and may not be unjust, unreasonably discriminatory or unduly preferential.

(m) Unless the commission authorizes price deregulation at an earlier date, intrastate toll services within the miscellaneous services basket shall continue to be regulated until the affected local exchange carrier begins to offer 1+ intraLATA dialing parity throughout its service territory, at which time intrastate toll will be price deregulated, except that prices cannot be set below the price floor.

(n) On or before July 1, 1997, the commission shall establish guidelines for reducing regulation prior to price deregulation of price cap regulated

services in the miscellaneous services basket, the switched access services basket, and the residential and single-line business basket.

(o) Subsequent to the adoption of guidelines pursuant to subsection (n), the commission shall initiate a petitioning procedure under which the local exchange carrier may request rate range pricing. The commission shall act upon a petition within 21 days, subject to a 30-day extension. The prices within a rate range shall be tariffed and shall apply to all customers in a nondiscriminatory manner in an exchange or group of exchanges.

(p) A local exchange carrier may petition the commission to designate an individual service or service category, if any, within the miscellaneous services basket, the switched access services basket or the residential and single-line business basket for reduced regulation. The commission shall act upon a petition for reduced regulation within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension has been issued. Following an order granting reduced regulation of an individual service or service category, the commission shall act on any request for price reductions within seven days subject to a 30-day extension. The commission shall act on other requests for price cap adjustments, adjustments within price cap plans and on new service offerings within 21 days subject to a 30-day extension. Such a change will be presumed lawful unless it is determined the prices are below the price floor or that the price cap for a category, if any, within the entire basket has been exceeded.

(q) (1) Beginning July 1, 2006, price regulation of telecommunications services in the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation shall be as follows:

(A) Packages or bundles of services shall be price deregulated statewide, however the individual telecommunication service components of such packages or bundles shall remain available for purchase on an individual basis at prices subject to price cap regulation in any exchange in which the standards in subsection (q)(1)(B), (C) or (D) have not been met. If standards in subsection (q)(1)(B), (C) or (D) have been met, the individual telecommunication service components of such packages or bundles shall remain available for purchase on an individual basis and prices for packages or bundles shall not exceed the sum of the highest prices of the ala carte components of the package or bundle;

(B) in any exchange in which there are 75,000 or more local exchange access lines served by all providers, rates for all telecommunications services shall be price deregulated;

(C) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration

by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

(D) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

(E) rates for lifeline services shall remain subject to price cap regulation;

(F) up to and continuing until July 1, 2008, rates for the initial residential local exchange access line and up to four business local exchange access lines at one location shall remain subject to price cap regulation. On and after July 1, 2008, the local exchange carrier shall be authorized to adjust such rates without commission approval by not more than the percentage increase in the consumer price index for all urban consumers, as officially reported by the bureau of labor statistics of the United States department of labor, or its successor index, in any one year period and such rates shall not be adjusted below the price floor established in subsection (k). Such rates shall not be affected by purchase of one or more of the following: Call management services, intraLATA long distance service or interLATA long distance service; and

(G) local exchange carriers shall offer a uniform price throughout each such exchange for services subject to price deregulation, under this subsection, including packages or bundles of services, except as provided in subsection (1) or as otherwise approved by the commission.

(2) For the purposes of this subsection:

(A) Any entity providing voice service shall be considered as a local telecommunications service provider regardless of whether such entity is subject to regulation by the commission;

(B) a provider of local telecommunications service that requires the use of a third party, unaffiliated broadband network or dial-up internet network

for the origination of local voice service shall not be considered a local telecommunications service provider;

(C) telecommunications carriers offering only prepaid telecommunications service shall not be considered entities providing local telecommunications service.

(3) If the services of a local exchange carrier are classified as price deregulated under this subsection, the carrier may thereafter adjust its rates for such price deregulated services upward or downward as it determines appropriate in its competitive environment, with tariffs for such services deemed effective upon filing with the commission. Price deregulated services shall be subject to the price floor in subsection (k), and shall not be unreasonably discriminatory or unduly preferential within an exchange.

(4) The commission shall act upon a petition filed pursuant to subsection (q)(1)(C) or (D) within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension order has been issued.

(5) The commission may resume price cap regulation of a local exchange carrier, deregulated under this subsection upon finding, after a hearing, that such carrier has: Violated minimum quality of service standards pursuant to subsection (1) of K.S.A. 66-2002, and amendments thereto; been given reasonable notice and an opportunity to correct the violation; and failed to do so.

(6) The commission on July 1, 2006, and on each date that any service is deregulated, shall record the rates of each service which has been price deregulated in each exchange.

(7) Prior to January 1, 2007, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. Prior to January 1, 2007, and annually thereafter, the commission shall determine the weighted, average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D). The commission shall report its findings on or before February 1, 2007, and annually thereafter to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues. The commission shall also provide in such annual report ~~any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment, including, but not limited to, the rates recorded under paragraph (6) of this subsection,~~ *on the current rates for services provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used to provide service in price deregulated exchanges, changes in service offerings provided by all telecommunications carriers or other telecommunications service providers*

*regardless of the technology used and available in price deregulated exchanges and the change in the number of competitors in price deregulated exchanges including, but not limited to, facilities based carriers, commercial mobile radio service or broadband based service providers. If the commission finds that the weighted, average rate of nonwireless basic local telecommunications service, in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D) in any one year period is greater than the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2008, multiplied by one plus the percentage increase in the consumer price index for goods and services for the study periods, or the commission believes that changes in state law are warranted due to the status of competition, the commission shall recommend to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues such changes in state law as the commission deems appropriate and the commission shall also send a report of such findings to each member of the legislature.*

(8) For the purposes of this subsection:

(A) "Packages or bundles of services" means the offering of a local telecommunications service with one or more of the following, subscribed together, as one service option offered at one price, one or more call management services, intraLATA long distance service, interLATA long distance service, internet access, video services or wireless services. Packages or bundles of services shall not include only a single residential local exchange access line or up to four business local exchange access lines at one location and intraLATA long distance service or interLATA long distance service, or both;

(B) "local telecommunications service" means two-way voice service capable of being originated and terminated within the exchange of the local exchange telecommunications company seeking price deregulation of its services, regardless of the technology used to provision the voice service;

(C) "broadband network" means a connection that delivers services at speeds exceeding two hundred kilobits per second in both directions;

(D) "prepaid telecommunications service" means a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(E) "facilities based carrier" means a telecommunications carrier or entity providing local telecommunications service either wholly or partially over its own network. Facilities based carrier shall not include any radio communication services provider licensed by the federal communications commission to provide commercial mobile radio services; and

(F) "call management services" means optional telecommunications services that allow a customer to manage call flow generated over the customer's local exchange access line.

(r) (1) Upon complaint or request, the commission may investigate a price deregulated service.

(2) The commission shall resume price cap regulation of a service provided in any exchange area by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the conditions in subsection (q)(1)(C) or (D) are no longer satisfied in that exchange area.

(3) The commission shall resume price cap regulation of business services in any exchange meeting the conditions of subsection (q)(1)(B) by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the following condition is not met: There are at least two nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange.

(4) The commission shall resume price cap regulation of residential services in any exchange meeting the conditions of subsection (q)(1)(B) by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the following condition is not met: There are at least two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange.

(s) The commission shall require that for all local exchange carriers all such price deregulated basic intraLATA toll services be geographically averaged statewide and not be priced below the price floor established in subsection (k).

(t) Cost studies to determine price floors shall be performed as required by the commission in response to complaints. In addition, notwithstanding the exemption in subsection (b), the commission may request information necessary to execute any of its obligations under the act. In response to a complaint that a price deregulated service is priced below the price floor set forth in subsection (k), the commission shall issue an order within 60 days after the filing of the complaint unless the complainant agrees to an extension.

(u) A local exchange carrier may petition for individual customer pric-

ing. The commission shall respond expeditiously to the petition within a period of not more than 30 days subject to a 30-day extension.

(v) No audit, earnings review or rate case shall be performed with reference to the initial prices filed as required herein.

(w) Telecommunications carriers shall not be subject to price regulation, except that: Access charge reductions shall be passed through to consumers by reductions in basic intrastate toll prices; and basic toll prices shall remain geographically averaged statewide. As required under K.S.A. 66-131, and amendments thereto, and except as provided for in subsection (c) of K.S.A. 66-2004, and amendments thereto, telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission's approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas. Any structurally separate affiliate of a local exchange carrier that provides telecommunications services shall be subject to the same regulatory obligations and oversight as a telecommunications carrier, as long as the local exchange carrier's affiliate obtains access to any services or facilities from its affiliated local exchange carrier on the same terms and conditions as the local exchange carrier makes those services and facilities available to other telecommunications carriers. The commission shall oversee telecommunications carriers to prevent fraud and other practices harmful to consumers and to ensure compliance with quality of service standards adopted for all local exchange carriers and telecommunications carriers in the state.

(x) *(1) Any local exchange carrier with a majority of the carrier's local exchange access lines in the state price deregulated pursuant to subsection (q) may elect to no longer be regulated as a local exchange carrier and, notwithstanding any other provisions, upon such election shall instead be regulated as a telecommunications carrier, except as provided in this subsection. A local exchange carrier making such election shall be referred to as an "electing carrier." A local exchange carrier may make such election by providing the commission with at least 90 days' written notice of election. The notice of election shall include a verified statement that a majority of the carrier's local exchange access lines are price deregulated. Such notification shall include information regarding the number of access lines the carrier serves in each of the carrier's exchanges. Within 45 days of receipt of such a notification, the commission shall review the information concerning the carrier's local exchange access lines and upon failure*

*of the commission, within 45 days of receipt of the notification, to determine that a majority of such lines of the carrier are not price deregulated the commission shall designate the carrier as an electing carrier.*

*(2) An electing carrier shall not be subject to price regulation and shall be subject to nondiscriminatory regulation by the commission in the same manner as and subject to no more regulation than other telecommunications carriers operating in the state, except that the carrier shall remain subject to:*

*(A) The reasonable resale of retail telecommunications services, as well as unbundling and interconnection obligations as required by K.S.A. 66-2003, and amendments thereto;*

*(B) the requirements of subsection (c) concerning intrastate access charges;*

*(C) the requirements of the KLSP, as required by K.S.A. 66-2006, and amendments thereto;*

*(D) price cap regulation for lifeline services; and*

*(E) shall remain eligible to receive KUSF funding.*

*(3) An electing carrier's rates for single residential or business local exchange access lines in its rural exchanges shall be no higher than the average of such rates for single residential or business local exchange access lines respectively in its urban exchanges.*

*(4) An electing carrier may elect to be relieved of the requirement to serve as carrier of last resort, as required by K.S.A. 66-2009, and amendments thereto, by providing written notification to the commission of the specific urban exchanges for which the electing carrier is electing to be relieved of carrier of last resort obligations, in the electing carrier's urban exchanges.*

*(5) Notwithstanding any other provision of law to the contrary, an electing carrier that notifies the commission that the electing carrier chooses to be relieved of carrier of last resort obligations in specific urban exchanges or any local exchange carrier that does not have a carrier of last resort obligation in a specific exchange shall not be eligible for KUSF funding for carrier of last resort obligations, as required by K.S.A. 66-2009, and amendments thereto, or high cost support in those specific exchanges, but would remain eligible for KUSF support for Kansas lifeline service program purposes.*

*(6) Notwithstanding the provisions of this subsection (x), an electing carrier shall offer single residential local exchange access lines in the electing carrier's exchanges.*

*(7) For the purposes of this subsection:*

*(A) "Facilities based carrier" means a telecommunications carrier or entity providing local telecommunications service either wholly or partially over its own network. Facilities based carrier shall not include any radio communication services provider licensed by the federal communications commission to provide commercial mobile radio services;*

(B) “rural exchange” means any exchange in which there are fewer than 6,000 local exchange access lines served by the electing carrier and all facilities based carriers; and

(C) “urban exchange” means any exchange in which there are 75,000 or more local exchange access lines served by the electing carrier and all facilities based carriers.

(y) Notwithstanding the provisions of this act, a telecommunications carrier is entitled to interconnection with an electing carrier to transmit and route voice traffic between both the telecommunications carrier and the electing carrier regardless of the technology by which the voice traffic is originated by and terminated to a consumer. The commission shall afford such telecommunications carrier all substantive and procedural rights available to such carrier regarding interconnection pursuant to 47 U.S.C. §§ 251 and 252 as in effect on the effective date of this act.

Sec. 4. K.S.A. 50-6,103 and 66-1,187 and K.S.A. 2010 Supp. 66-2005 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 14, 2011.

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## CHAPTER 55

### SUBSTITUTE FOR HOUSE BILL No. 2134

AN ACT concerning workers compensation; amending K.S.A. 44-503a, 44-510c, 44-510d, 44-510e, 44-510f, 44-515, 44-516, 44-520, 44-525, 44-528, 44-531, 44-532a, 44-534a, 44-536, 44-549 and 44-5a01 and K.S.A. 2010 Supp. 44-501, 44-508, 44-510b, 44-510h, 44-510k, 44-511, 44-523, and 44-552 and repealing the existing sections; also repealing K.S.A. 44-510a and 44-520a and K.S.A. 2010 Supp. 44-596.

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

New Section 1. (a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant’s right to an award of compensation and to prove the various conditions on which the claimant’s right depends. In determining whether the claimant

has satisfied this burden of proof, the trier of fact shall consider the whole record.

(d) Except as provided in the workers compensation act, no employer, or other employee of such employer, shall be liable for any injury, whether by accident, repetitive trauma, or occupational disease, for which compensation is recoverable under the workers compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.

New Sec. 2. (a) An insurer or self-insured employer shall provide the following notice to an insured worker on or with the first check for temporary disability benefits:

Warning: Acceptance of employment with a different employer that requires the performance of activities you have stated you cannot perform because of the injury for which you are receiving temporary disability benefits could constitute fraud and could result in loss of future benefits and restitution of prior workers compensation awards and benefits paid.

(b) This section shall be part of and supplemental to the workers compensation act.

Sec. 3. K.S.A. 2010 Supp. 44-501 is hereby amended to read as follows: 44-501. ~~(a) If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.~~

~~(b) Except as provided in the workers compensation act, no employer, or other employee of such employer, shall be liable for any injury for which compensation is recoverable under the workers compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.~~

~~(c) The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.~~

~~(d) (1) If the injury to the employee results from the employee's deliberate intention to cause such injury; or from the employee's willful failure~~

to use a guard or protection against accident required pursuant to any statute and provided for the employee, or a reasonable and proper guard and protection voluntarily furnished the employee by the employer, any compensation in respect to that injury shall be disallowed.

~~(2)~~ (a) (1) Compensation for an injury shall be disallowed if such injury to the employee results from:

- (A) The employee's deliberate intention to cause such injury;
- (B) the employee's willful failure to use a guard or protection against accident or injury which is required pursuant to any statute and provided for the employee;
- (C) the employee's willful failure to use a reasonable and proper guard and protection voluntarily furnished the employee by the employer;
- (D) the employee's reckless violation of their employer's workplace safety rules or regulations; or
- (E) the employee's voluntary participation in fighting or horseplay with a co-employee for any reason, work related or otherwise.

(2) Subparagraphs (B) and (C) of paragraph (1) of subsection (a) shall not apply when it was reasonable under the totality of the circumstances to not use such equipment, or if the employer approved the work engaged in at the time of an accident or injury to be performed without such equipment.

(b) (1) (A) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances, including, but not limited to, any drugs or medications which are available to the public without a prescription from a health care provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens.

(B) In the case of drugs or medications which are available to the public without a prescription from a health care provider and prescription drugs or medications, compensation shall not be denied if the employee can show that such drugs or medications were being taken or used in therapeutic doses and there have been no prior incidences of the employee's impairment on the job as the result of the use of such drugs or medications within the previous 24 months.

(C) It shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that, at the time of the injury, that the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above the levels shown on the following chart for the drugs of abuse listed:

Confirmatory test cutoff levels (ng/ml)

Marijuana metabolite <sup>1</sup> .....	15
Cocaine metabolite <sup>2</sup> .....	150
Opiates:	
Morphine .....	2000

Codeine .....	2000
6-Acetylmorphine <sup>4</sup> .....	10 ng/ml
Phencyclidine .....	25
Amphetamines:	
Amphetamine .....	500
Methamphetamine <sup>3</sup> .....	500

<sup>1</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid.

<sup>2</sup> Benzoylcegonine.

<sup>3</sup> Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

<sup>4</sup> Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

*(D) If it is shown that the employee was impaired pursuant to subsection (b)(1)(C) at the time of the injury, there shall be a rebuttable presumption that the accident, injury, disability or death was contributed to by such impairment. The employee may overcome the presumption of contribution by clear and convincing evidence.*

*(E) An employee’s refusal to submit to a chemical test ~~shall not be admissible evidence to prove impairment unless there was probable cause to believe that the employee used, possessed or was impaired by a drug or alcohol while working.~~ at the request of the employer shall result in the forfeiture of benefits under the workers compensation act if the employer had sufficient cause to suspect the use of alcohol or drugs by the claimant or if the employer’s policy clearly authorizes post-injury testing.*

*(2) The results of a chemical test shall ~~not~~ be admissible evidence to prove impairment unless the following conditions were met if the employer establishes that the testing was done under any of the following circumstances:*

*(A) As a result of an employer mandated drug testing policy, in place in writing prior to the date of accident or injury, requiring any worker to submit to testing for drugs or alcohol;*

*(B) during an autopsy or in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and not at the direction of the employer;*

*(C) the worker, prior to the date and time of the accident or injury, gave written consent to the employer that the worker would voluntarily submit to a chemical test for drugs or alcohol following any accident or injury;*

*(D) the worker voluntarily agrees to submit to a chemical test for drugs or alcohol following any accident or injury; or*

*(E) as a result of federal or state law or a federal or state rule or regulation having the force and effect of law requiring a post-injury testing program and such required program was properly implemented at the time of testing.*

*(3) Notwithstanding subsection (b)(2), the results of a chemical test performed on a sample collected by an employer shall not be admissible evidence to prove impairment unless the following conditions are met:*

~~(A) There was probable cause to believe that the employee used, had possession of, or was impaired by the drug or alcohol while working;~~

~~(B) The test sample was collected at a time contemporaneous with the events establishing probable cause within a reasonable time following the accident or injury;~~

~~(C)(B) the collecting and labeling of the test sample was performed by or under the supervision of a licensed health care professional;~~

~~(D)(C) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;~~

~~(E)(D) the test was confirmed by gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and~~

~~(F)(E) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the employee; and~~

~~(F) a split sample sufficient for testing shall be retained and made available to the employee within 48 hours of a positive test.~~

~~(3) For purposes of satisfying the probable cause requirement of subsection (d)(2)(A) of this section, the employer shall be deemed to have met their burden of proof on this issue by establishing any of the following circumstances:~~

~~(A) The testing was done as a result of an employer mandated drug testing policy, in place in writing prior to the date of accident, requiring any worker to submit to testing for drugs or alcohol if they are involved in an accident which requires medical attention;~~

~~(B) the testing was done in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and was not at the direction of the employer; however, the request for GCMS testing for purposes of confirmation, required by subsection (d)(2)(E) of this section, may have been at the employer's request;~~

~~(C) the worker, prior to the date and time of the accident, gave written consent to the employer that the worker would voluntarily submit to a chemical test for drugs or alcohol following any accident requiring the worker to obtain medical treatment for the injuries suffered. If after suffering an accident requiring medical treatment, the worker refuses to submit to a chemical test for drugs or alcohol, this refusal shall be considered evidence of impairment, however, there must be evidence that the presumed impairment contributed to the accident as required by this section; or~~

~~(D) the testing was done as a result of federal or state law or a federal or state rule or regulation having the force and effect of law requiring a post accident testing program and such required program was properly implemented at the time of testing.~~

~~(e)~~(c) Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

~~(f)~~(d) Except as provided in the workers compensation act, no construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injury resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under the workers compensation act, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

~~(g)~~ It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

~~(h)~~(e) *An award of compensation for permanent partial impairment, work disability, or permanent total disability shall be reduced by the amount of functional impairment determined to be preexisting. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment.*

*(1) Where workers compensation benefits have previously been awarded through settlement or judicial or administrative determination in Kansas, the percentage basis of the prior settlement or award shall conclusively establish the amount of functional impairment determined to be preexisting. Where workers compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Kansas, the amount of preexisting functional impairment shall be established by competent evidence.*

*(2) In all cases, the applicable reduction shall be calculated as follows:*

*(A) If the preexisting impairment is the result of injury sustained while working for the employer against whom workers compensation benefits are currently being sought, any award of compensation shall be reduced by the current dollar value attributable under the workers compensation act to the percentage of functional impairment determined to be preexisting. The "current dollar value" shall be calculated by multiplying the percentage of preexisting impairment by the compensation rate in effect on the date of the accident or injury against which the reduction will be applied.*

*(B) In all other cases, the employer against whom benefits are currently*

*being sought shall be entitled to a credit for the percentage of preexisting impairment.*

(f) If the employee ~~is receiving~~ receives, whether periodically or by lump sum, retirement benefits under the federal social security act or retirement benefits from any other retirement system, program, policy or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions made by the employee, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment. *Where the employee elects to take retirement benefits in a lump sum, the lump sum payment shall be amortized at the rate of 4% per year over the employee's life expectancy to determine the weekly equivalent value of the benefits.*

Sec. 4. K.S.A. 44-503a is hereby amended to read as follows: 44-503a. Whenever an employee is engaged in multiple employment, in which such employee performs the same or a very similar type of work on a part-time basis for each of two ~~(2)~~ or more employers, and such employee sustains an injury ~~by accident~~ which arose out of and in the course of the multiple employment with all such employers, and which did not clearly arise out of and in the course of employment with any particular employer, all such employers shall be liable to pay a proportionate amount of the compensation payable under the workmen's compensation act as follows: Each such employer shall be liable for such proportion of the total amount of compensation which is required to be paid by all such employers, as the average ~~gross~~ weekly wages paid to the employee by such employer, bears to the total average ~~gross~~ weekly wages paid to the employee by all such employers, determined as provided in subsection (b) ~~(7)~~ (3) of K.S.A. 44-511, ~~as amended and amendments thereto.~~

Sec. 5. K.S.A. 2010 Supp. 44-508 is hereby amended to read as follows: 44-508. As used in the workers compensation act:

(a) "Employer" includes: (1) Any person or body of persons, corporate or ~~unincorporate~~ *unincorporated*, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; (2) the state or any department, agency or authority of the state, any city, county, school district or other political subdivision or municipality or public corporation and any instrumentality thereof; and (3) for the purposes of community service work, the entity for which the community service work is being performed and the governmental agency which assigned the community service work, if any, if either such entity or such governmental agency has filed a written statement of election with the di-

rector to accept the provisions under the workers compensation act for persons performing community service work and in such case such entity and such governmental agency shall be deemed to be the joint employer of the person performing the community service work and both shall have the rights, liabilities and immunities provided under the workers compensation act for an employer with regard to the community service work, except that the liability for providing benefits shall be imposed only on the party which filed such election with the director, or on both if both parties have filed such election with the director; for purposes of community service work, "governmental agency" shall not include any court or any officer or employee thereof and any case where there is deemed to be a "joint employer" shall not be construed to be a case of dual or multiple employment.

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, attendants, as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection (b) of K.S.A. 65-6112, and amendments thereto, firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a, and amendments thereto, such terms shall not include individual employers, limited liability company members, partners or self-employed persons.

(c) (1) "Dependents" means such members of the employee's family

as were wholly or in part dependent upon the employee at the time of the accident *or injury*.

(2) “Members of a family” means only surviving legal spouse and children; or if no surviving legal spouse or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section, parents include stepparents, children include stepchildren, grandchildren include stepgrandchildren, brothers and sisters include stepbrothers and stepsisters, and children and parents include that relation by legal adoption. In the meaning of this section, a surviving spouse shall not be regarded as a dependent of a deceased employee or as a member of the family, if the surviving spouse shall have for more than six months willfully or voluntarily deserted or abandoned the employee prior to the date of the employee’s death.

(3) “Wholly dependent child or children” means:

(A) A birth child or adopted child of the employee except such a child whose relationship to the employee has been severed by adoption;

(B) a stepchild of the employee who lives in the employee’s household;

(C) any other child who is actually dependent in whole or in part on the employee and who is related to the employee by marriage or consanguinity; or

(D) any child as defined in ~~subsections~~ *subsection (c)(3)(A), (3)(B) or (3)(C)* who is less than 23 years of age and who is not physically or mentally capable of earning wages in any type of substantial and gainful employment or who is a full-time student attending an accredited institution of higher education or vocational education.

(d) “Accident” means an undesigned, sudden and unexpected ~~traumatic event or events~~, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. ~~The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment. In cases where the accident occurs as a result of a series of events, repetitive use, cumulative traumas or microtraumas, the date of accident shall be the date the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition. In the event the worker is not taken off work or restricted as above described, then the date of injury shall be the earliest of the following dates: (1) The date upon which the employee gives written notice to the employer of the injury; or (2) the date the condition is diagnosed as work related, provided such fact is communicated in writing to the injured worker. In cases where none of the above criteria are met, then the date of accident shall be determined by the administrative law judge based on all the evidence and circumstances; and in no event shall the date of accident be the~~

~~date of, or the day before the regular hearing. Nothing in this subsection shall be construed to preclude a worker's right to make a claim for aggravation of injuries under the workers compensation act. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.~~

(e) *"Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.*

*In the case of injury by repetitive trauma, the date of injury shall be the earliest of:*

(1) *The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;*

(2) *the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;*

(3) *the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or*

(4) *the last day worked, if the employee no longer works for the employer against whom benefits are sought.*

*In no case shall the date of accident be later than the last date worked.*

~~(e)(f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.~~

(2) *An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.*

(A) *An injury by repetitive trauma shall be deemed to arise out of employment only if:*

(i) *The employment exposed the worker to an increased risk or hazard*

which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3) (A) The words “arising out of and in the course of employment” as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

~~(B)~~ The words “arising out of and in the course of employment” as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer’s negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

(C) The words, “arising out of and in the course of employment” as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where ~~the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee’s normal job duties or as specifically instructed to be performed by the employer.~~ the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee’s

*normal job duties or as specifically instructed to be performed by the employer.*

(g) “Prevailing” as it relates to the term “factor” means the primary factor, in relation to any other factor. In determining what constitutes the “prevailing factor” in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

~~(g)~~(h) “Burden of proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record *unless a higher burden of proof is specifically required by this act.*

~~(h)~~(i) “Director” means the director of workers compensation as provided for in K.S.A. 75-5708, and amendments thereto.

~~(i)~~(j) “Health care provider” means any person licensed, by the proper licensing authority of this state, another state or the District of Columbia, to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry, audiology or psychology.

~~(j)~~(k) “Secretary” means the secretary of labor.

~~(k)~~(l) “Construction design professional” means any person who is an architect, professional engineer, landscape architect or land surveyor who has been issued a license by the state board of technical professions to practice such technical profession in Kansas or any corporation organized to render professional services through the practice of one or more of such technical professions in Kansas under the professional corporation law of Kansas or any corporation issued a certificate of authorization under K.S.A. 74-7036, and amendments thereto, to practice one or more of such technical professions in Kansas.

~~(l)~~(m) “Community service work” means: (1) Public or community service performed as a result of a contract of diversion or of assignment to a community corrections program or conservation camp or suspension of sentence or as a condition of probation or in lieu of a fine imposed by court order; or (2) public or community service or other work performed as a requirement for receipt of any kind of public assistance in accordance with any program administered by the secretary of social and rehabilitation services.

~~(m)~~(n) “Utilization review” means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on accepted standards of the health care profession involved. Such evaluation is accomplished by means of a system which identifies the utilization of health care services above the usual range of utilization for such services, which is based on accepted standards of the health care profession involved, and which refers instances of possible inappropriate utilization to the director for referral to a peer review committee.

~~(n)~~(o) “Peer review” means an evaluation by a peer review committee of the appropriateness, quality and cost of health care and health services

provided a patient, which is based on accepted standards of the health care profession involved and which is conducted in conjunction with utilization review.

~~(p)~~(p) “Peer review committee” means a committee composed of health care providers licensed to practice the same health care profession as the health care provider who rendered the health care services being reviewed.

~~(q)~~(q) “Group-funded self-insurance plan” includes each group-funded workers compensation pool, which is authorized to operate in this state under K.S.A. 44-581 through 44-592, and amendments thereto, each municipal group-funded pool under the Kansas municipal group-funded pool act which is covering liabilities under the workers compensation act, and any other similar group-funded or pooled plan or arrangement that provides coverage for employer liabilities under the workers compensation act and is authorized by law.

~~(r)~~(r) On and after the effective date of this act, “workers compensation board” or “board” means the workers compensation board established under K.S.A. 44-555c, and amendments thereto.

~~(s)~~(s) “Usual charge” means the amount most commonly charged by health care providers for the same or similar services.

~~(t)~~(t) “Customary charge” means the usual rates or range of fees charged by health care providers in a given locale or area.

(u) “*Functional impairment*” means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of impairment, if the impairment is contained therein.

(v) “*Authorized treating physician*” means a licensed physician or other health care provider authorized by the employer or insurance carrier or both, or appointed pursuant to court-order to provide those medical services deemed necessary to diagnose and treat an injury arising out of and in the course of employment.

(w) “*Mail*” means the use of the United States postal service or other land based delivery service or transmission by electronic means, including delivery by fax, e-mail or other electronic delivery method designated by the director of workers compensation.

Sec. 6. K.S.A. 2010 Supp. 44-510b is hereby amended to read as follows: 44-510b. Where death results from injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and as follows:

(a) If an employee leaves any dependents wholly dependent upon the employee’s earnings at the time of the accident *or injury*, all compensation benefits under this section shall be paid to such dependent persons. There shall be an initial payment of \$40,000 to the surviving legal spouse or a

wholly dependent child or children or both. The initial payment shall not be subject to the 8% discount as provided in K.S.A. 44-531, and amendments thereto. The initial payment shall be immediately due and payable and apportioned 50% to the surviving legal spouse and 50% to the dependent children. Thereafter, such dependents shall be paid weekly compensation, except as otherwise provided in this section, in a total sum to all such dependents, equal to 66<sup>2</sup>/<sub>3</sub>% of the average ~~gross~~ weekly wage of the employee at the time of the accident *or injury*, computed as provided in K.S.A. 44-511, and amendments thereto, but in no event shall such weekly benefits exceed the maximum weekly benefits provided in K.S.A. 44-510c, and amendments thereto, nor be less than a minimum weekly benefit of the dollar amount nearest to 50% of the state's average weekly wage as determined pursuant to K.S.A. 44-511, and amendments thereto subject to the following:

(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.

(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age. A wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 23 years of age during any period of time that one of the following conditions is met:

(A) The wholly dependent child is not physically or mentally capable of earning wages in any type of substantial and gainful employment; or

(B) the wholly dependent child is a student enrolled full-time in an accredited institution of higher education or vocational education.

(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, such other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as such other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all such other dependents, regardless of the number of such other dependents, shall not exceed a maximum amount of \$18,500.

(b) Where the employee leaves a surviving legal spouse and dependent children who were wholly dependent upon the employee's earnings and are eligible for benefits under this section 50% of the maximum weekly benefits payable shall be apportioned to such spouse and 50% to such dependent children.

(c) If an employee does not leave any dependents who were wholly dependent upon the employee's earnings at the time of the ~~accident~~ injury but leaves dependents, other than a spouse or children, in part dependent on the employee's earnings, such percentage of a sum equal to three times the employee's average yearly earnings but not exceeding \$18,500 but not less than \$2,500, as such employee's average annual contributions which the employee made to the support of such dependents during the two years preceding the date of the ~~accident~~ injury, bears to the employee's average yearly earnings during the contemporaneous two-year period, shall be paid in compensation to such dependents, in weekly payments as provided in subsection (a), not to exceed \$18,500 to all such dependents.

(d) If an employee does not leave any dependents, either wholly or partially dependent upon the employee, a lump-sum payment of \$25,000 shall be made to the legal heirs of such employee in accordance with Kansas law. However under no circumstances shall such payment escheat to the state. Notwithstanding the provisions of this subsection, no such payment shall be required if the employer has procured a life insurance policy, with beneficiaries designated by the employee, providing coverage in an amount not less than \$18,500.

(e) The administrative law judge, except as otherwise provided in this section, shall have the power and authority to apportion and reapportion the compensation allowed under this section, either to wholly dependent persons or partially dependent persons, in accordance with the degree of dependency as of the date of the ~~accident~~ injury, except that the weekly payment of compensation to any and all dependents shall not exceed the maximum nor be less than the minimum weekly benefits provided in subsection (a).

(f) In all cases of death compensable under this section, the employer shall pay the reasonable expense of burial not exceeding \$5,000. *Where required, the employer shall pay the costs of a court-appointed conservator not to exceed \$1,000.*

(g) The marriage or death of any dependent shall terminate all compensation, under this section, to such dependent except the marriage of the surviving legal spouse shall not terminate benefits to such spouse. Upon the death of the surviving legal spouse or the marriage or death of a dependent child, the compensation payable to such spouse or child shall be reapportioned to those, among the surviving legal spouse and dependent children, who remain eligible to receive compensation under this section.

(h) Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section, including the initial payment in subsection (a) to any and all dependents by the employer shall not exceed a total amount of ~~\$250,000~~ \$300,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compen-

sation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age.

(i) Persons receiving benefits under this section shall submit an annual statement to the insurance carrier, self-insured employer or group-funded workers compensation pool paying the benefits, in such form and containing such information relating to eligibility for compensation under this section as may be required by rules and regulations of the director. If the person receiving benefits under this section is a surviving spouse or a dependent child who has reached the age of majority, such person shall personally submit an annual statement. If the person receiving benefits under this section is a dependent child subject to a conservator, the conservator of such child shall submit the annual statement. If such person fails to submit an annual statement, the payer of benefits may notify the director of such failure and the director shall notify the person of the failure by certified mail with return receipt. If such person fails to submit the annual statement or fails to reasonably provide the required information within 30 days after receipt of the notice from the director, all compensation benefits paid under this section to such person shall be suspended until the annual statement is submitted in proper form to the payer of benefits.

Sec. 7. K.S.A. 44-510c is hereby amended to read as follows: 44-510c. Where death does not result from the injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto and as follows:

(a) (1) Where permanent total disability results from the injury, weekly payments shall be made during the period of permanent total disability in a sum equal to 66 $\frac{2}{3}$ % of the average ~~gross~~ weekly wage of the injured employee, computed as provided in K.S.A. 44-511, and amendments thereto, but in no case less than \$25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto, per week. The payment of compensation for permanent total disability shall continue for the duration of such disability, subject to review and modification as provided in K.S.A. 44-528, and amendments thereto.

(2) Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. ~~Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from injury independent of all other causes, shall constitute permanent total disability. In all other cases permanent total disability shall~~

~~be determined in accordance with the facts. Expert evidence shall be required to prove permanent total disability.~~

(3) *An injured worker shall not be eligible to receive more than one award of workers compensation permanent total disability in such worker's lifetime.*

(b) (1) Where temporary total disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in K.S.A. 44-510h and 44-510i, and amendments thereto, unless the temporary total disability exists for three consecutive weeks, in which case compensation shall be paid for the first week of such disability. Thereafter weekly payments shall be made during such temporary total disability, in a sum equal to 66 $\frac{2}{3}$ % of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511, and amendments thereto, but in no case less than \$25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto, per week.

(2) (A) Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary ~~medical limitations~~ *restrictions* for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, ~~except provided that temporary total disability compensation shall not be awarded unless the opinion of the authorized treating health care provider is shown to be based on an assessment of the employee's actual job duties with the employer, with or without accommodation. if there is an authorized treating physician, such physicians opinion regarding the employee's work status shall be presumed to be determinative.~~

(B) *Where the employee remains employed with the employer against whom benefits are sought, an employee shall be entitled to temporary total disability benefits if the authorized treating physician imposed temporary restrictions as a result of the work injury which the employer cannot accommodate. A refusal by the employee of accommodated work within the temporary restrictions imposed by the authorized treating physician shall result in a rebuttable presumption that the employee is ineligible to receive temporary total disability benefits.*

(C) *If the employee has been terminated for cause or voluntarily resigns following a compensable injury, the employer shall not be liable for temporary total disability benefits if the employer could have accommodated the temporary restrictions imposed by the authorized treating physician but for the employee's separation from employment.*

(3) Where no award has been entered, a return by the employee to any type of substantial and gainful employment ~~or, subject to the provisions of subsection (b)(2), a release by a treating health care provider or examining health care provider, who is not regularly employed or retained by the~~

~~employer, to return to any type of substantial and gainful employment, shall suspend the employee's right to the payment of temporary total disability compensation, but shall not affect any right the employee may have to compensation for partial disability in accordance with K.S.A. 44-510d and 44-510e, and amendments thereto.~~

*(4) An employee shall not be entitled to receive temporary total disability benefits for those weeks during which the employee is also receiving unemployment benefits.*

(c) When any permanent total disability or temporary total disability is followed by partial disability, compensation shall be paid as provided in K.S.A. 44-510d and 44-510e, and amendments thereto.

Sec. 8. K.S.A. 44-510d is hereby amended to read as follows: 44-510d.

(a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i, and amendments thereto, ~~but. The injured employee may be entitled to payment of temporary total disability as defined in K.S.A. 44-510c, and amendments thereto, or temporary partial disability as defined in subsection (a)(1) of K.S.A. 44-510e, and amendments thereto, provided that the injured employee shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total loss of use and or temporary partial disability as provided in the following schedule, 66⅔% of the average gross weekly wages to be computed as provided in K.S.A. 44-511, and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c, and amendments thereto.~~

(b) If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

- (1) For loss of a thumb, 60 weeks.
- (2) For the loss of a first finger, commonly called the index finger, 37 weeks.
- (3) For the loss of a second finger, 30 weeks.
- (4) For the loss of a third finger, 20 weeks.
- (5) For the loss of a fourth finger, commonly called the little finger, 15 weeks.
- (6) Loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of ½ of such thumb or finger, and the compensation shall be ½ of the amount specified above. The loss of the first phalange and any part of the second phalange of any finger, which includes the loss of any part of the bone of such second phalange, shall be

considered to be equal to the loss of  $\frac{2}{3}$  of such finger and the compensation shall be  $\frac{2}{3}$  of the amount specified above. The loss of the first phalange and any part of the second phalange of a thumb which includes the loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of the entire thumb. The loss of the first and second phalanges and any part of the third proximal phalange of any finger, shall be considered as the loss of the entire finger. Amputation through the joint shall be considered a loss to the next higher schedule.

(7) For the loss of a great toe, 30 weeks.

(8) For the loss of any toe other than the great toe, 10 weeks.

(9) The loss of the first phalange of any toe shall be considered to be equal to the loss of  $\frac{1}{2}$  of such toe and the compensation shall be  $\frac{1}{2}$  of the amount above specified.

(10) The loss of more than one phalange of a toe shall be considered to be equal to the loss of the entire toe.

(11) For the loss of a hand, 150 weeks.

(12) For the loss of a forearm, 200 weeks.

(13) For the loss of an arm, excluding the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 210 weeks, and for the loss of an arm, including the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 225 weeks.

(14) For the loss of a foot, 125 weeks.

(15) For the loss of a lower leg, 190 weeks.

(16) For the loss of a leg, 200 weeks.

(17) For the loss of an eye, or the complete loss of the sight thereof, 120 weeks.

(18) Amputation or severance below the wrist shall be considered as the loss of a hand. Amputation at the wrist and below the elbow shall be considered as the loss of the forearm. Amputation at or above the elbow shall be considered loss of the arm. Amputation below the ankle shall be considered loss of the foot. Amputation at the ankle and below the knee shall be considered as loss of the lower leg. Amputation at or above the knee shall be considered as loss of the leg.

(19) For the complete loss of hearing of both ears, 110 weeks.

(20) For the complete loss of hearing of one ear, 30 weeks.

(21) Permanent loss of the use of a finger, thumb, hand, shoulder, arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight of an eye or the hearing of an ear, shall be equivalent to the loss thereof. For the permanent partial loss of the use of a finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, compensation shall be paid as provided for in K.S.A. 44-510c, and amendments thereto, per week during that proportion of the number of weeks in the foregoing schedule provided for the loss of such finger, thumb, hand, shoulder, arm, toe, foot or leg; or the sight of an eye or the hearing of an ear, which partial loss thereof bears to the total loss of a finger, thumb, hand, shoulder, arm,

toe, foot or leg, or the sight of an eye or the hearing of an ear; but in no event shall the compensation payable hereunder for such partial loss exceed the compensation payable under the schedule for the total loss of such finger, thumb, hand, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, exclusive of the healing period. As used in this paragraph (21), "shoulder" means the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures.

(22) For traumatic hernia, compensation shall be limited to the compensation under K.S.A. 44-510h and 44-510i, and amendments thereto, compensation for temporary total disability during such period of time as such employee is actually unable to work on account of such hernia, and, in the event such hernia is inoperable, weekly compensation during 12 weeks, except that, in the event that such hernia is operable, the unreasonable refusal of the employee to submit to an operation for surgical repair of such hernia shall deprive such employee of any benefits under the workers compensation act.

(23) Loss of *or loss of use of* a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

(24) *Where an injury results in the loss of or loss of use of more than one scheduled member within a single extremity, the functional impairment attributable to each scheduled member shall be combined pursuant to the fourth edition of the American medical association guides for evaluation of permanent impairment and compensation awarded shall be calculated to the highest scheduled member actually impaired.*

~~(b)~~(c) Whenever the employee is entitled to compensation for a specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability, except that the director, in proper cases, may allow additional compensation during the actual healing period, following amputation. The healing period shall not be more than 10% of the total period allowed for the scheduled injury in question nor in any event for longer than 15 weeks. The return of the employee to the employee's usual occupation shall terminate the healing period.

(d) *The amount of compensation for permanent partial disability under this section shall be determined by multiplying the payment rate by the weeks payable. As used in this section:*

(1) *Payment rate shall be the lesser of (A) the amount determined by multiplying the average weekly wage of the worker prior to such injury by 66⅔% or (B) the maximum provided in K.S.A. 44-510c, and amendments thereto;*

(2) *weeks payable shall be determined as follows: (A) Determine the*

*weeks of benefits provided for the injury on schedule; (B) determine the weeks of temporary compensation paid by adding the amounts of temporary total and temporary partial disability compensation paid and dividing the sum by the payment rate above; (C) subtract the weeks of temporary compensation calculated in (d)(2)(B) from the weeks of benefits provided for the injury as determined in (d)(2)(A); (D) multiply the weeks as determined in (d)(2)(C) by the percentage of permanent partial impairment of function as determined under subsection (b)(23).*

*The resulting award shall be paid for the number of weeks at the payment rate until fully paid or modified. Under no circumstances shall the period of permanent partial disability run concurrently with the period of temporary total or temporary partial disability.*

Sec. 9. K.S.A. 44-510e is hereby amended to read as follows: 44-510e. (a) ~~If the employer and the employee are unable to agree upon the amount of compensation to be paid in the case of injury not covered by the schedule in K.S.A. 44-510d and amendments thereto, the amount of compensation shall be settled according to the provisions of the workers compensation act as in other cases of disagreement, except that~~ In case of *whole body injury resulting in temporary or permanent partial general disability not covered by such the schedule in K.S.A. 44-510d, and amendments thereto*, the employee shall receive weekly compensation as determined in this subsection during ~~such~~ *the* period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks.

(1) Weekly compensation for temporary partial general disability shall be ~~66 $\frac{2}{3}$ %~~ of the difference between the average ~~gross~~ weekly wage that the employee was earning prior to ~~such the date of injury as provided in the workers compensation act~~ and the amount the employee is actually earning after such injury in any type of employment, ~~except that~~. In no case shall such weekly compensation exceed the maximum as provided for in K.S.A. 44-510c, and amendments thereto.

(2) (A) Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d, and amendments thereto. ~~The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established~~

by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury. If the employer and the employee are unable to agree upon the employee's functional impairment and if at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination. Compensation for permanent partial general disability shall also be paid as provided in this section where an injury results in:

(i) The loss of or loss of use of a shoulder, arm, forearm or hand of one upper extremity, combined with the loss of or loss of use of a shoulder, arm, forearm or hand of the other upper extremity;

(ii) the loss of or loss of use of a leg, lower leg or foot of one lower extremity, combined with the loss of or loss of use of a leg, lower leg or foot of the other lower extremity; or

(iii) the loss of or loss of use of both eyes.

(B) The extent of permanent partial general disability shall be the percentage of functional impairment the employee sustained on account of the injury as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

(C) An employee may be eligible to receive permanent partial general disability compensation in excess of the percentage of functional impairment ("work disability") if:

(i) The percentage of functional impairment determined to be caused solely by the injury exceeds 7½% to the body as a whole or the overall functional impairment is equal to or exceeds 10% to the body as a whole in cases where there is preexisting functional impairment; and

(ii) the employee sustained a post-injury wage loss, as defined in subsection (a)(2)(E) of K.S.A. 44-510e, and amendments thereto, of at least 10% which is directly attributable to the work injury and not to other causes or factors.

In such cases, the extent of work disability is determined by averaging together the percentage of post-injury task loss demonstrated by the employee to be caused by the injury and the percentage of post-injury wage loss demonstrated by the employee to be caused by the injury.

(D) “Task loss” shall mean the percentage to which the employee, in the opinion of a licensed physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the five-year period preceding the injury. The permanent restrictions imposed by a licensed physician as a result of the work injury shall be used to determine those work tasks which the employee has lost the ability to perform. If the employee has preexisting permanent restrictions, any work tasks which the employee would have been deemed to have lost the ability to perform, had a task loss analysis been completed prior to the injury at issue, shall be excluded for the purposes of calculating the task loss which is directly attributable to the current injury.

(E) “Wage loss” shall mean the difference between the average weekly wage the employee was earning at the time of the injury and the average weekly wage the employee is capable of earning after the injury. The capability of a worker to earn post-injury wages shall be established based upon a consideration of all factors, including, but not limited to, the injured worker’s age, physical capabilities, education and training, prior experience, and availability of jobs in the open labor market. The administrative law judge shall impute an appropriate post-injury average weekly wage based on such factors. Where the employee is engaged in post-injury employment for wages, there shall be a rebuttable presumption that the average weekly wage an injured worker is actually earning constitutes the post-injury average weekly wage that the employee is capable of earning. The presumption may be overcome by competent evidence.

(i) To establish post-injury wage loss, the employee must have the legal capacity to enter into a valid contract of employment. Wage loss caused by voluntary resignation or termination for cause shall in no way be construed to be caused by the injury.

(ii) The actual or projected weekly value of any employer-paid fringe benefits are to be included as part of the worker’s post-injury average weekly wage and shall be added to the wage imputed by the administrative law judge pursuant to K.S.A. 44-510e(a)(2)(E), and amendments thereto.

(iii) The injured worker’s refusal of accommodated employment within the worker’s medical restrictions as established by the authorized treating physician and at a wage equal to 90% or more of the pre-injury average weekly wage shall result in a rebuttable presumption of no wage loss.

(F) The amount of weekly compensation for permanent partial general disability shall be determined as follows:

(1) Find the payment rate which shall be the lesser of (A) the amount determined by multiplying the average gross weekly wage of the worker prior to such injury by 66<sup>2</sup>/<sub>3</sub>% or (B) the maximum provided in K.S.A. 44-510e, and amendments thereto;

(2) find the number of disability weeks payable by subtracting from 415 weeks the total number of weeks of temporary total disability compensation was paid, excluding the first 15 weeks of temporary total disability

~~compensation that was paid, and multiplying the remainder by the percentage of permanent partial general disability as determined under this subsection (a); and~~

~~(3) multiply the number of disability weeks determined in paragraph (2) of this subsection (a) by the payment rate determined in paragraph (1) of this subsection (a).~~

*The amount of compensation for whole body injury under this section shall be determined by multiplying the payment rate by the weeks payable. As used in this section: (1) The payment rate shall be the lesser of: (A) The amount determined by multiplying the average weekly wage of the worker prior to such injury by 66<sup>2</sup>/<sub>3</sub>%; or (B) the maximum provided in K.S.A. 44-510c, and amendments thereto; (2) weeks payable shall be determined as follows: (A) Determine the weeks of temporary compensation paid by adding the amounts of temporary total and temporary partial disability compensation paid and dividing the sum by the payment rate above; (B) subtract from 415 weeks the total number of weeks of temporary compensation paid as determined in (F)(2)(A), excluding the first 15 such weeks; (3) multiply the number of weeks as determined in (F)(2)(B) by the percentage of functional impairment pursuant to subsection (a)(2)(B) or the percentage of work disability pursuant to subsection (a)(2)(C), whichever is applicable.*

*(3) When an injured worker is eligible to receive an award of work disability, compensation is limited to the value of the work disability as calculated above. In no case shall functional impairment and work disability be awarded together.*

The resulting award shall be paid for the number of disability weeks at the full payment rate until fully paid or modified. ~~If there is an award of permanent disability as a result of the compensable injury, there shall be a presumption that disability existed immediately after such injury.~~ In any case of permanent partial disability under this section, the employee shall be paid compensation for not to exceed 415 weeks following the date of such injury, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto. *If there is an award of permanent disability as a result of the compensable injury, there shall be a presumption that disability existed immediately after such injury. Under no circumstances shall the period of permanent partial disability run concurrently with the period of temporary total or temporary partial disability.*

(b) If an employee has ~~received~~ sustained an injury for which compensation is being paid, and the employee's death is caused by other and independent causes, any payment of compensation already due the employee at the time of death and then unpaid shall be paid to the employee's dependents directly or to the employee's legal representatives if the employee left no dependent, but the liability of the employer for the payments of compensation not yet due at the time of the death of such employee shall cease and be abrogated by the employee's death.

(c) The total amount of compensation that may be allowed or awarded

an injured employee for all injuries received in any one accident shall in no event exceed the compensation which would be payable under the workers compensation act for 100% permanent total disability resulting from such accident.

(d) Where a minor employee or a minor employee's dependents are entitled to compensation under the workers compensation act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or cause of action against the employer shall inure or accrue to or exist in favor of the parent or parents of such minor employee on account of any damage resulting to such parent or parents on account of the loss of earnings or loss of service of such minor employee.

(e) In any case of injury to or death of an employee, where the employee or the employee's dependents are entitled to compensation under the workers compensation act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or action shall inure, accrue to or exist in favor of the surviving spouse or any relative or next of kin of such employee against such employer on account of any damage resulting to such surviving spouse or any relative or next of kin on account of the loss of earnings, services, or society of such employee or on any other account resulting from or growing out of the injury or death of such employee.

Sec. 10. K.S.A. 44-510f is hereby amended to read as follows: 44-510f.

(a) Notwithstanding any provision of the workers compensation act to the contrary, the maximum compensation benefits payable by an employer shall not exceed the following:

(1) For permanent total disability, including temporary total, temporary partial, permanent partial and temporary partial disability payments paid or due, ~~\$125,000~~ *\$155,000* for an injury ~~or any aggravation thereof~~;

(2) for temporary total disability, including any prior permanent total, permanent partial or temporary partial disability payments paid or due, ~~\$100,000~~ *\$130,000* for an injury ~~or any aggravation thereof~~;

(3) subject to the provisions of subsection (a)(4), for permanent or temporary partial disability, including any prior temporary total, permanent total, temporary partial, or permanent partial disability payments paid or due, ~~\$100,000~~ *\$130,000* for an injury ~~or any aggravation thereof~~; and

(4) for permanent partial disability, where functional impairment only is awarded, ~~\$50,000~~ *\$75,000* for an injury ~~or aggravation thereof~~. *The \$75,000 cap contained in this subsection shall apply whether or not temporary total disability or temporary partial disability benefits were paid.*

(b) If an employer shall voluntarily pay unearned wages to an employee in addition to ~~and in excess of~~ any amount of disability benefits to which the employee is entitled under the workers compensation act, the excess amount paid ~~shall~~:

(1) *Shall* be allowed as a credit to the employer in any final ~~lump-sum~~ settlement, or

(2) may be withheld from the employee's wages in weekly amounts ~~the same as~~ *equal to* the weekly amount or amounts paid in excess of compensation due, ~~but not until and unless~~ *The excess amount paid may only be withheld from the employee's wages if* the employee's average ~~gross~~ weekly wage for the calendar year exceeds 125% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto. ~~The provisions of this subsection shall not apply to any employer who pays any such unearned wages to an employee pursuant to an agreement between the employer and employee or labor organization to which the employee belongs.~~

Sec. 11. K.S.A. 2010 Supp. 44-510h is hereby amended to read as follows: 44-510h. (a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

(b) (1) If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of ~~three~~ *two* health care providers who, if possible given the availability of local health care providers, are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider. If the injured employee is unable to obtain satisfactory services from any of the health care providers submitted by the employer under this paragraph, either party or both parties may request the director to select a treating health care provider.

(2) Without application or approval, an employee may consult a health care provider of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for the fees and charges of such health care provider up to a total amount of \$500. The amount allowed for such examination, diagnosis or treatment shall not be used to obtain a functional impairment rating. Any medical opinion obtained in violation of this prohibition shall not be admissible in any claim proceedings under the workers compensation act.

(c) An injured employee whose injury or disability has been established

under the workers compensation act may rely, if done in good faith, solely or partially on treatment by prayer or spiritual means in accordance with the tenets of practice of a church or religious denomination without suffering a loss of benefits subject to the following conditions:

(1) The employer or the employer's insurance carrier agrees thereto in writing either before or after the injury;

(2) the employee submits to all physical examinations required by the workers compensation act;

(3) the cost of such treatment shall be paid by the employee unless the employer or insurance carrier agrees to make such payment;

(4) the injured employee shall be entitled only to benefits that would reasonably have been expected had such employee undergone medical or surgical treatment; and

(5) the employer or insurance carrier that made an agreement under paragraph (1) or (3) of this subsection may withdraw from the agreement on 10 days' written notice.

(d) In any employment to which the workers compensation act applies, the employer shall be liable to each employee who is employed as a duly authorized law enforcement officer, firefighter, driver of an ambulance as defined in subsection (b) of K.S.A. 65-6112, and amendments thereto, an ambulance attendant as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, or a member of a regional emergency medical response team as provided in K.S.A. 48-928, and amendments thereto, including any person who is serving on a volunteer basis in such capacity, for all reasonable and necessary preventive medical care and treatment for hepatitis to which such employee is exposed under circumstances arising out of and in the course of employment.

(e) *It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.*

Sec. 12. K.S.A. 2010 Supp. 44-510k is hereby amended to read as follows: 44-510k. (a) (1) At any time after the entry of an award for compen-

sation *wherein future medical benefits were awarded*, the employee, employer or insurance carrier may make application for a hearing, in such form as the director may require for the furnishing *termination or modification* of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523, and amendments thereto.

(2) The administrative law judge can (A) make an award for further medical care if the administrative law judge finds *that it is more probably true than not that the injury which was the subject of the underlying award is the prevailing factor in the need for further medical care and that the care requested is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award such injury*, or (B) terminate or modify an award of current or future medical care if the administrative law judge finds *that no further medical care is required, the injury which was the subject of the underlying award is not the prevailing factor in the need for further medical care, or that the care requested is not necessary to cure or relieve the effects of such injury*.

(3) *If the claimant has not received medical treatment, as defined in subsection (e) of K.S.A. 44-510h, and amendments thereto, from an authorized health care provider within two years from the date of the award or two years from the date the claimant last received medical treatment from an authorized health care provider, the employer shall be permitted to make application under this section for permanent termination of future medical benefits. In such case, there shall be a presumption that no further medical care is needed as a result of the underlying injury. The presumption may be overcome by competent medical evidence.*

(4) No post-award benefits shall be ordered, *modified or terminated* without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551, and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556, and amendments thereto.

(b) Any application for hearing made pursuant to this section shall receive priority setting by the administrative law judge, only superseded by preliminary hearings pursuant to K.S.A. 44-534a, and amendments thereto. The parties shall meet and confer prior to the hearing pursuant to this section, but a prehearing settlement conference shall not be necessary. The administrative law judge shall have authority to award medical treatment relating back to the entry of the underlying award, but in no event shall such medical treatment relate back more than six months following the filing of such application for post-award medical treatment. Reviews taken under this section shall receive priority settings before the board, only superseded by reviews for preliminary hearings. A decision shall be rendered

by the board within 30 days from the time the review hereunder is submitted.

(c) The administrative law judge may award attorney fees and costs on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536, and amendments thereto. As used in this subsection, "costs" include, but are not limited to, witness fees, mileage allowances, any costs associated with reproduction of documents that become a part of the hearing record, the expense of making a record of the hearing and such other charges as are by statute authorized to be taxed as costs.

Sec. 13. K.S.A. 2010 Supp. 44-511 is hereby amended to read as follows: 44-511. (a) As used in this section:

(1) The term "money" shall be construed to mean the gross remuneration, on an hourly, output, salary, commission or other basis, ~~at which the service rendered is recompensed in money by the employer, but it earned while employed by the employer, including bonuses and gratuities.~~ Money shall not include any additional compensation, as defined in ~~this section, any remuneration in any medium other than cash, or any other compensation or benefits received by the employee from the employer or any other source~~ paragraph 2.

(2) (A) The term "additional compensation" shall include and mean only the following: ~~(A) Gratuities in cash received by the employee from persons other than the employer for services rendered in the course of the employee's employment; (B) any cash bonuses paid by the employer within one year prior to the date of the accident, for which the average weekly value shall be determined by averaging all such bonuses over the period of time employed prior to the date of the accident, not to exceed 52 weeks; (C) (i) Board and lodging when furnished by the employer as part of the wages, which shall be valued at a maximum of \$25 per week for board and lodging combined, unless the value has been fixed otherwise by the employer and employee prior to the date of the accident or injury, or unless a higher weekly value is proved; (D) the average weekly cash value of remuneration for services in any medium other than cash where such remuneration is in lieu of money, which shall be valued in terms of the average weekly cost to the employer of such remuneration for the employee; and (E) and (ii) employer-paid life insurance, disability insurance, health and accident insurance and employer contributions to pension and profit sharing plans.~~

(B) In no case shall additional compensation include any amounts of employer taxes paid by the employer under the old-age and survivors insurance system embodied in the federal social security system.

(C) Additional compensation shall not ~~include the value of such remuneration until and unless such remuneration is discontinued~~ be included in the calculation of average wage until and unless such additional compensation is discontinued. If such ~~remuneration~~ additional compensation is

discontinued subsequent to a computation of average ~~gross~~ weekly wages under this section, there shall be a recomputation to include such discontinued ~~remuneration~~ *additional compensation*.

(3) The term “wage” shall be construed to mean the total of the money and any additional compensation which the employee receives for services rendered for the employer in whose employment the employee sustains an injury ~~by accident~~ arising out of and in the course of such employment.

(4) ~~The term “part-time hourly employee” shall mean and include any employee paid on an hourly basis: (A) Who by custom and practice or under the verbal or written employment contract in force at the time of the accident is employed to work, agrees to work, or is expected to work on a regular basis less than 40 hours per week; and (B) who at the time of the accident is working in any type of trade or employment where there is no customary number of hours constituting an ordinary day in the character of the work involved or performed by the employee.~~

(5) ~~The term “full-time hourly employee” shall mean and include only those employees paid on an hourly basis who are not part-time hourly employees, as defined in this section, and who are employed in any trade or employment where the customary number of hours constituting an ordinary working week is 40 or more hours per week, or those employees who are employed in any trade or employment where such employees are considered to be full-time employees by the industrial customs of such trade or employment, regardless of the number of hours worked per day or per week.~~

(b) (1) ~~The~~ *Unless otherwise provided, the employee’s average gross weekly wage for the purpose of computing any compensation benefits provided by the workers compensation act shall be determined as follows: the wages the employee earned during the calendar weeks employed by the employer, up to 26 calendar weeks immediately preceding the date of the injury, divided by the number of calendar weeks the employee actually worked, or by 26 as the case may be.*

(1) ~~If at the time of the accident the money rate is fixed by the year, the average gross weekly wage shall be the yearly rate so fixed divided by 52, plus the average weekly value of any additional compensation and the value of the employee’s average weekly overtime as computed in paragraph (4) of this subsection.~~

(2) ~~If at the time of the accident the money rate is fixed by the month, the average gross weekly wage shall be the monthly rate so fixed multiplied by 12 and divided by 52, plus the average weekly value of any additional compensation and the value of the employee’s average weekly overtime computed as provided in paragraph (4) of this subsection.~~

(3) ~~If at the time of the accident, the money rate is fixed by the week, the amount so fixed, plus the average weekly value of any additional compensation and the value of the employee’s average weekly overtime as computed in paragraph (4) of this subsection, shall be the average gross weekly wage.~~

~~(4) If at the time of the accident the employee's money rate was fixed by the hour, the employee's average gross weekly wage shall be determined as follows: (A) If the employee was a part-time hourly employee, as defined in this section, the average gross weekly wage shall be determined in the same manner as provided in paragraph (5) of this subsection; (B) if the employee is a full-time hourly employee, as defined in this section, the average gross weekly wage shall be determined as follows: (i) A daily money rate shall first be found by multiplying the straight-time hourly rate applicable at the time of the accident, by the customary number of working hours constituting an ordinary day in the character of work involved; (ii) the straight-time weekly rate shall be found by multiplying the daily money rate by the number of days and half days that the employee usually and regularly worked, or was expected to work, but 40 hours shall constitute the minimum hours for computing the wage of a full-time hourly employee, unless the employer's regular and customary workweek is less than 40 hours, in which case, the number of hours in such employer's regular and customary workweek shall govern; (iii) the average weekly overtime of the employee shall be the total amount earned by the employee in excess of the amount of straight-time money earned by the employee during the 26 calendar weeks immediately preceding the date of the accident, or during the actual number of such weeks the employee was employed if less than 26 weeks, divided by the number of such weeks; and (iv) the average gross weekly wage of a full-time hourly employee shall be the total of the straight-time weekly rate, the average weekly overtime and the weekly average of any additional compensation.~~

~~(5) If at the time of the accident the money rate is fixed by the output of the employee, on a commission or percentage basis, on a flat rate basis for performance of a specified job, or on any other basis where the money rate is not fixed by the week, month, year or hour, and if the employee has been employed by the employer at least one calendar week immediately preceding the date of the accident, the average gross weekly wage shall be the gross amount of money earned during the number of calendar weeks so employed, up to a maximum of 26 calendar weeks immediately preceding the date of the accident, divided by the number of weeks employed, or by 26 as the case may be, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection.~~

(2) If the employee had been in the employment of *actually employed* by the employer for less than one calendar week immediately preceding the accident or injury, the average gross weekly wage shall be determined by the administrative law judge based upon all of the evidence and circumstances, including the usual wage for similar services paid by the same employer, or if the employer has no employees performing similar services, the usual wage paid for similar services by other employers. The average gross weekly wage so determined shall not exceed the actual average gross

weekly wage the employee was reasonably expected to earn in the employee's specific employment, including the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection. In making any computations under this paragraph (5), workweeks during which the employee was on vacation, leave of absence, sick leave or was absent the entire workweek because of illness or injury shall not be considered.

~~(6) (A) — The average gross weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, ambulance attendants and drivers as provided in subsection (b) of K.S.A. 44-508, and amendments thereto, firefighter or members of regional emergency medical response teams as provided in K.S.A. 48-928, and amendments thereto, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the dollar amount closest to, but not exceeding, 112.5% of the state average weekly wage.~~

~~(B) — The average gross weekly wage of any person performing community service work shall be deemed to be \$37.50.~~

~~(C) — The average gross weekly wage of a volunteer member of the Kansas department of civil air patrol officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto, shall be deemed to be \$476.38. Whenever the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act are increased for payroll periods chargeable to fiscal years commencing after June 30, 1988, the average gross weekly wage which is deemed to be the average gross weekly wage under the provisions of this subsection for a volunteer member of the Kansas department of civil air patrol shall be increased by an amount, adjusted to the nearest dollar, computed by multiplying the average of the percentage increases in all monthly steps of such pay plan by the average gross weekly wage deemed to be the average gross weekly wage of such volunteer member under the provisions of this subsection prior to the effective date of such increase in the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act.~~

~~(D) — The average weekly wage of any other volunteer under the workers compensation act, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the usual wages paid by the employer for such services to employees who are not volunteers, or, if the employer has no employees performing such services for wages who are not volunteers, the average gross weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who~~

are not volunteers. Volunteer employment is not presumed to be full-time employment.

~~(7)(3)~~ The average gross weekly wage of an employee who sustains an injury by accident arising out of and in the course of multiple employment, in which such employee who performs the same or a very similar type of work on a part-time basis for each of two or more employers, shall be the total average gross weekly wage of such employee paid by all the employers in such multiple employment. The total average gross weekly wage of such employee shall be the total amount of the individual average gross weekly wage determinations under this section for each individual employment of such multiple employment *sum of the average weekly wages of such employee paid by each of the employers.*

~~(8)(4)~~ In determining an employee's average gross weekly wage with respect to the employer against whom claim for compensation is made, no money or additional compensation paid to or received by the employee from such employer, or from any source other than from such employer, shall be included as wages, except as provided in this section. No wages, other compensation or benefits of any type, except as provided in this section, shall be considered or included in determining the employee's average gross weekly wage.

(5) (A) *The average weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, ambulance attendants and drivers as provided in subsection (b) of K.S.A. 44-508, and amendments thereto, firefighter or members of regional emergency medical response teams as provided in K.S.A. 48-928, and amendments thereto, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the dollar amount closest to, but not exceeding, 112½% of the state average weekly wage.*

(B) *The average weekly wage of any person performing community service work shall be deemed to be \$37.50.*

(C) *The average weekly wage of a volunteer member of the Kansas department of civil air patrol officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto, shall be deemed to be \$476.38. Whenever the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act are increased for payroll periods chargeable to fiscal years commencing after June 30, 1988, the average weekly wage which is deemed to be the average weekly wage under the provisions of this subsection for a volunteer member of the Kansas department of civil air patrol shall be increased by an amount, adjusted to the nearest dollar, computed by multiplying the average of the percentage increases in all monthly steps of such pay plan by the average weekly wage deemed to be the average weekly wage of such volunteer member under the provisions of this subsection prior to the effective*

*date of such increase in the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act.*

*(D) The average weekly wage of any other volunteer under the workers compensation act, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the usual wages paid by the employer for such services to employees who are not volunteers, or, if the employer has no employees performing such services for wages who are not volunteers, the average weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who are not volunteers. Volunteer employment is not presumed to be full-time employment.*

~~(c) In any case, the average yearly wage shall be found by multiplying the average gross weekly wage, as determined in subsection (b), by 52.~~

~~(d)~~ The state's average weekly wage for any year shall be the average weekly wage paid to employees in insured work subject to Kansas employment security law as determined annually by the secretary of labor as provided in K.S.A. 44-704, and amendments thereto.

~~(e)~~(d) Members of a labor union or other association who perform services in behalf of the labor union or other association and who are not paid as full-time employees of the labor union or other association and who are injured or suffer occupational disease in the course of the performance of duties in behalf of the labor union or other association shall recover compensation benefits under the workers compensation act from the labor union or other association if the labor union or other association files an election with the director to bring its members who perform such services under the coverage of the workers compensation act. The average weekly wage for the purpose of this subsection shall be based on what the employee would earn in the employee's general occupation if at the time of the injury the employee had been performing work in the employee's general occupation. The insurance coverage shall be furnished by the labor union or other association.

Sec. 14. K.S.A. 44-515 is hereby amended to read as follows: 44-515.

(a) After an employee sustains an injury, the employee shall, upon request of the employer, submit to an examination at any reasonable time and place by any one or more reputable health care providers, selected by the employer, and shall so submit to an examination thereafter at intervals during the pendency of such employee's claim for compensation, upon the request of the employer, but the employee shall not be required to submit to an examination oftener than twice in any one month, unless required to do so in accordance with such orders as may be made by the director. *All benefits shall be suspended to an employee who refuses to submit to such examination or examinations until such time as the employee complies with the*

*employer's request. The suspension of benefits shall occur even if the employer is under preliminary order to provide such benefits.* Any employee so submitting to an examination or such employee's authorized representative shall upon *written* request be entitled to receive and shall have delivered to such employee a copy of the health care provider's report of such examination within ~~15 days~~ *a reasonable amount of time* after such examination, which report shall be identical to the report submitted to the employer. If the employee is notified to submit to an examination before any health care provider in any town or city other than the residence of the employee at the time that the employee received an injury, the employee shall not be required to submit to an examination until such employee has been furnished with sufficient funds to pay for transportation to and from the place of examination at the rate prescribed for compensation of state officers and employees under K.S.A. 75-3203a, and amendments thereto, for each mile actually and necessarily traveled to and from the place of examination, any turnpike or other tolls and any parking fees actually and necessarily incurred, and in addition the sum of \$15 per day for each *full* day ~~or a part thereof~~ that the employee was required to be away from such employee's residence to defray such employee's board and lodging and living expenses. The employee shall not be liable for any fees or charge of any health care provider selected by the employer for making any examination of the employee. The employer or the insurance carrier of the employer of any employee making claim for compensation under the workers compensation act shall be entitled to a copy of the report of any health care provider who has examined or treated the employee in regard to such claim upon written request to the employee or the employee's attorney within ~~15 days~~ *a reasonable amount of time* after such examination or treatment, which report shall be identical to the report submitted to the employee or the employee's attorney.

(b) If the employee requests, such employee shall be entitled to have health care providers of such employee's own selection present at the time to participate in such examination.

(c) Unless a report is furnished as provided in subsection (a) and unless there is a reasonable opportunity thereafter for the health care providers selected by the employee to participate in the examination in the presence of the health care providers selected by the employer, the health care providers selected by the employer or employee shall not be permitted afterwards to give evidence of the condition of the employee at the time such examination was made.

(d) Except as provided in this section, there shall be no disqualification or privilege preventing the furnishing of reports by or the testimony of any health care provider who actually makes an examination or treats an injured employee, prior to or after an injury.

(e) Any health care provider's opinion, whether the provider is a treating health care provider or is an examining health care provider, regarding

a claimant's need for medical treatment, inability to work, prognosis, diagnosis and disability rating shall be considered and given appropriate weight by the trier of fact together with consideration of all other evidence.

Sec. 15. K.S.A. 44-516 is hereby amended to read as follows: 44-516.

(a) In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct. The report of any such health care provider shall be considered by the administrative law judge in making the final determination.

(b) *If at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be agreed upon by the parties. Where the parties cannot agree, an independent healthcare provider shall be selected by the administrative law judge. The health care provider agreed to by the parties or selected by the administrative law judge pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination.*

Sec. 16. K.S.A. 44-520 is hereby amended to read as follows: 44-520.

~~Except as otherwise provided in this section, (a) (1) Proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice injury by accident or repetitive trauma is given to the employer by the earliest of the following dates:~~

~~(A) 30 calendar days from the date of accident or the date of injury by repetitive trauma;~~

~~(B) if the employee is working for the employer against whom benefits~~

*are being sought and such employee seeks medical treatment for any injury by accident or repetitive trauma, 20 calendar days from the date such medical treatment is sought; or*

*(C) if the employee no longer works for the employer against whom benefits are being sought, 20 calendar days after the employee's last day of actual work for the employer.*

*Notice may be given orally or in writing.*

*(2) Where notice is provided orally, if the employer has designated an individual or department to whom notice must be given and such designation has been communicated in writing to the employee, notice to any other individual or department shall be insufficient under this section. If the employer has not designated an individual or department to whom notice must be given, notice must be provided to a supervisor or manager.*

*(3) Where notice is provided in writing, notice must be sent to a supervisor or manager at the employee's principal location of employment. The burden shall be on the employee to prove that such notice was actually received by the employer.*

*(4) The notice, whether provided orally or in writing, shall include the time, date, place, person injured and particulars of such injury. It must be apparent from the content of the notice that the employee is claiming benefits under the workers compensation act or has suffered a work-related injury.*

*(b) The notice required by subsection (a) shall be waived if the employee proves that (1) the employer or the employer's duly authorized agent had actual knowledge of the injury; (2) the employer or the employer's duly authorized agent was unavailable to receive such notice within the applicable period as provided in paragraph (1) of subsection (a); or (3) the employee was physically unable to give such notice.*

*(c) For the purposes of calculating the notice period proscribed in subsection (a), weekends shall be included.*

Sec. 17. K.S.A. 2010 Supp. 44-523 is hereby amended to read as follows: 44-523. (a) The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

(b) Whenever a party files an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, the matter shall be assigned to an administrative law judge for hearing and the administrative law judge shall set a terminal date to require the claimant to submit all evidence in support of the claimant's claim no later than 30 days after the first full hearing before the administrative law judge and to require the respondent to submit all evidence in support of the respondent's position no later than 30 days there-

after. An extension of the foregoing time limits shall be granted if all parties agree. An extension of the foregoing time limits may also be granted:

(1) If the employee is being paid temporary or permanent total disability compensation;

(2) for medical examination of the claimant if the party requesting the extension explains in writing to the administrative law judge facts showing that the party made a diligent effort but was unable to have a medical examination conducted prior to the submission of the case by the claimant but then only if the examination appointment was set and notice of the appointment sent prior to submission by the claimant; or

(3) on application for good cause shown.

(c) When all parties have submitted the case to an administrative law judge for an award, the administrative law judge shall issue an award within 30 days. The administrative law judge shall not stay a decision due to the absence of a submission letter. When the award is not entered in 30 days, any party to the action may notify the director that an award is not entered and the director shall assign the matter to an assistant director or to a special administrative law judge who shall enter an award forthwith based on the evidence in the record, or the director, on the director's own motion, may remove the case from the administrative law judge who has not entered an award within 30 days following submission by the party and assign it to an assistant director or to a special administrative law judge for immediate decision based on the evidence in the record.

(d) Not less than 10 days prior to the first full hearing before an administrative law judge, the administrative law judge shall conduct a pre-hearing settlement conference for the purpose of obtaining stipulations from the parties, determining the issues and exploring the possibility that the parties may resolve those issues and reach a settlement prior to the first full hearing.

(e) (1) If a party or a party's attorney believes that the administrative law judge to whom a case is assigned cannot afford that party a fair hearing in the case, the party or attorney may file a motion for change of administrative law judge. A party or a party's attorney shall not file more than one motion for change of administrative law judge in a case. The administrative law judge shall promptly hear the motion informally upon reasonable notice to all parties who have appeared in the case. Notwithstanding the provisions of K.S.A. 44-552, and amendments thereto, the administrative law judge shall decide, in the administrative law judge's discretion, whether or not the hearing of such motion shall be taken down by a certified shorthand reporter. If the administrative law judge disqualifies the administrative law judge's self, the case shall be assigned to another administrative law judge by the director. If the administrative law judge refuses to disqualify the administrative law judge's self, the party seeking a change of administrative law judge may file in the district court of the county in which the accident *or injury* occurred the affidavit provided in subsection

(e)(2). If an affidavit is to be filed in the district court, it shall be filed within 10 days.

(2) If a party or a party's attorney files an affidavit alleging any of the grounds specified in subsection (e)(3), the chief judge shall at once determine, or refer the affidavit to another district court judge for prompt determination of, the legal sufficiency of the affidavit. If the affidavit is filed in a district court in which there is no other judge who is qualified to hear the matter, the chief judge shall at once notify the departmental justice for the district and request the appointment of another district judge to determine the legal sufficiency of the affidavit. If the affidavit is found to be legally sufficient, the district court judge shall order the director to assign the case to another administrative law judge or to an assistant director.

(3) Grounds which may be alleged as provided in subsection (e)(2) for change of administrative law judge are that:

(A) The administrative law judge has been engaged as counsel in the case prior to the appointment as administrative law judge.

(B) The administrative law judge is otherwise interested in the case.

(C) The administrative law judge is related to either party in the case.

(D) The administrative law judge is a material witness in the case.

(E) The party or party's attorney filing the affidavit has cause to believe and does believe that on account of the personal bias, prejudice or interest of the administrative law judge such party cannot obtain a fair and impartial hearing. Such affidavit shall state the facts and the reasons for the belief that bias, prejudice or an interest exists.

(4) In any affidavit filed pursuant to subsection (e)(2), the recital of previous rulings or decisions by the administrative law judge on legal issues or concerning prior motions for change of administrative law judge filed by counsel or such counsel's law firm, pursuant to this subsection, shall not be deemed legally sufficient for any believe that bias or prejudice exists.

(f) (1) ~~Any~~ *In any claim that has not proceeded to final a regular hearing, a settlement hearing, or an agreed award under the workers compensation act within five three years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, shall be dismissed by the administrative law judge for lack of prosecution the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant's attorney, if the claimant is represented, or to the claimant's last known address. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the five three year limitation provided for herein. If the claimant cannot establish good cause, the claim shall be dismissed with prejudice by the administrative law judge for lack of prosecution. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement*

from the fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto.

(2) *In any claim which has not proceeded to regular hearing within one year from the date of a preliminary award denying compensability of the claim, the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant's attorney, if the claimant is represented, or to the claimant's last known address. Unless the claimant can prove a good faith reason for delay, the claim shall be dismissed with prejudice by the administrative law judge. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto.*

(3) This section shall not affect any future benefits which have been left open upon proper application by an award or settlement.

Sec. 18. K.S.A. 44-525 is hereby amended to read as follows: 44-525.

(a) Every finding or award of compensation shall be in writing signed and acknowledged by the administrative law judge and shall specify the amount due and unpaid by the employer to the employee up to the date of the award, if any, and the amount of the payments thereafter to be paid by the employer to the employee, if any, and the length of time such payment shall continue. *No award shall include the right to future medical treatment, unless it is proved by the claimant that it is more probable than not that future medical treatment, as defined in subsection (e) of K.S.A. 44-510h, and amendments thereto, will be required as a result of the work-related injury.* The award of the administrative law judge shall be effective the day following the date noted in the award.

(b) No award shall be or provide for payment of compensation in a lump sum, except as to such portion of the compensation as shall be found to be due and unpaid at the time of the award, or except at the discretion of the director on settlement agreements, and credit shall be given to the employer in such award for any amount or amounts paid by the employer to the employee as compensation prior to the date of the award.

(c) In the event the employee has been overpaid temporary total disability benefits as described in subsection (b) of K.S.A. 44-534a, and amendments thereto, and the employee is entitled to additional disability benefits, the administrative law judge shall provide for the application of a credit against such benefits. The credit shall first be applied to the final week of any such additional disability benefit award and then to each preceding week until the credit is exhausted.

Sec. 19. K.S.A. 44-528 is hereby amended to read as follows: 44-528.

(a) ~~Any award or modification thereof agreed upon by the parties, Except lump-sum settlements approved by the director or administrative law judge, whether the award provides for compensation into the future or whether it~~

~~does not~~, any award or modification thereof may be reviewed by the administrative law judge for good cause shown upon the application of the employee, employer, dependent, insurance carrier or any other interested party. In connection with such review, the administrative law judge may appoint one or two health care providers to examine the employee and report to the administrative law judge. The administrative law judge shall hear all competent evidence offered and if the administrative law judge finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished, the administrative law judge may modify such award, or reinstate a prior award, ~~upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workers compensation act pursuant to the provisions set forth in K.S.A. 44-510b, 44-510c, 44-510d or 44-510e, and amendments thereto, as may be applicable.~~

(b) ~~If the administrative law judge finds that the employee has returned to work for the same employer in whose employ the employee was injured or for another employer and is earning or is capable of earning the same or higher wages than the employee did at the time of the accident, or is capable of gaining an income from any trade or employment which is equal to or greater than the wages the employee was earning at the time of the accident, or finds that the employee has absented and continues to be absent so that a reasonable examination cannot be made of the employee by a health care provider selected by the employer, or has departed beyond the boundaries of the United States, the administrative law judge may modify the award and reduce compensation or may cancel the award and end the compensation.~~

(c) The number of reviews under this section shall be limited pursuant to rules and regulations adopted by the director to avoid abuse.

(d) Any modification of an award under this section on the basis that the functional impairment or work disability of the employee has increased or diminished shall be effective as of the date that the increase or diminishment actually occurred, except that in no event shall the effective date of any such modification be more than six months prior to the date the application was made for review and modification under this section.

Sec. 20. K.S.A. 44-531 is hereby amended to read as follows: 44-531.

(a) Where all parties agree to the payment of all or any part of compensation due under the workers compensation act or under any award or judgment, and where it has been determined at a hearing before the administrative law judge that it is for the best interest of the injured employee or the dependents of a deceased employee, or that it will avoid undue expense, litigation or hardship to any party or parties, the administrative law judge may permit the employer to redeem all or any part of the employer's liability under the

workers compensation act by the payment of compensation in a lump-sum; ~~except that no agreement for payment of compensation in a lump sum shall be approved for nine months after an employee has returned to work in cases in which the employee, who would otherwise be entitled to compensation for work disability, is not entitled to work disability compensation because of being returned to work at a comparable wage by the employer who employed the worker at the time of the injury giving rise to the claim being settled.~~ The employer shall be entitled to an 8% discount except as provided in subsection (a) of K.S.A. 44-510b, and amendments thereto on the amount of any such lump-sum payment that is not yet due at the time of the award. Upon paying such lump-sum the employer shall be released and discharged of and from all liability under the workers compensation act for that portion of the employer's liability redeemed under this section.

(b) No lump-sum awards, unless agreed to by the parties, shall be rendered under the workers compensation act except: (1) As provided in subsection (a) of this section, (2) as provided in subsection (a) K.S.A. 44-510b, and amendments thereto, (3) in cases involving compensation due the employee at the time the award is rendered as provided in K.S.A. 44-525, and amendments thereto and in cases of past due compensation as provided in K.S.A. 44-529, and amendments thereto.

(c) *The parties, by agreement and with approval of an administrative law judge, may enter into a compromise lump-sum settlement in either permanent total or permanent partial disability cases which prorates the lump-sum settlement over the life expectancy of the injured worker. When such an agreement has been approved, neither the weekly compensation rate paid throughout the case nor the maximum statutory weekly rate applicable to the injury shall apply. No compensation rate shall exceed the maximum statutory weekly rate as of the date of the injury. Instead, the prorated rate set forth in the approved settlement documents shall control and become the rate for that case. This section shall be retroactive in effect.*

Sec. 21. K.S.A. 44-532a is hereby amended to read as follows: 44-532a. (a) If an employer has no insurance to secure the payment of compensation or has insufficiently funded a self-insurance bond, as provided in subsection (b) (1) and (2) of K.S.A. 44-532, and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workers compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits, including medical compensation, to which such injured worker is entitled, to be paid from the workers compensation fund. Whenever a worker files an application under this section, the matter shall be assigned to an administrative law judge for hearing. If the administrative law judge is satisfied as to the existence of the conditions prescribed by this section, the administrative law judge may make an award, or modify an existing award, and prescribe

the payments to be made from the workers compensation fund as provided in K.S.A. 44-569, and amendments thereto. The award shall be certified to the commissioner of insurance, and upon receipt thereof, the commissioner of insurance shall cause payment to be made to the worker in accordance therewith.

(b) The commissioner of insurance, acting as administrator of the workers compensation fund, shall have a cause of action against the employer for recovery of any amounts paid from the workers compensation fund pursuant to this section. Such action shall be filed in the district court of the county in which the accident occurred or where the contract of employment was entered into.

Sec. 22. K.S.A. 44-534a is hereby amended to read as follows: 44-534a. (a) (1) After an application for a hearing has been filed pursuant to K.S.A. 44-534, and amendments thereto, the employee or the employer may make application for a preliminary hearing, in such form as the director may require, on the issues of the furnishing of medical treatment and the payment of temporary total *or temporary partial* disability compensation. At least seven days prior to filing an application for a preliminary hearing, the applicant shall give written notice to the adverse party of the intent to file such an application. Such notice of intent shall contain a specific statement of the benefit change being sought that is to be the subject of the requested preliminary hearing. If the parties do not agree to the change of benefits within the seven-day period, the party seeking a change in benefits may file an application for preliminary hearing which shall be accompanied by a copy of the notice of intent and the applicant's certification that the notice of intent was served on the adverse party or that party's attorney and that the request for a benefit change has either been denied or was not answered within seven days after service. Copies of medical reports or other evidence which the party intends to produce as exhibits supporting the change of benefits shall be included with the application. The director shall assign the application to an administrative law judge who shall set the matter for a preliminary hearing and shall give at least seven days' written notice by mail to the parties of the date set for such hearing.

(2) Such preliminary hearing shall be summary in nature and shall be held by an administrative law judge in any county designated by the administrative law judge, and the administrative law judge shall exercise such powers as are provided for the conduct of full hearings on claims under the workers compensation act. Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim, except that if the employee's entitlement to medical compensation or temporary total disability compensation is disputed or there is a dispute

as to the compensability of the claim, no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues. A finding with regard to a disputed issue of whether the employee suffered an ~~accidental~~ *accident, repetitive trauma or resulting injury*, whether the injury arose out of and in the course of the employee's employment, whether notice is given ~~or claim timely made~~, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. If an appeal from a preliminary order is perfected under this section, such appeal shall not stay the payment of medical compensation and temporary total disability compensation from the date of the preliminary award. If temporary total compensation is awarded, such compensation may be ordered paid from the date of filing the application, except that if the administrative law judge finds from the evidence presented that there were one or more periods of temporary total disability prior to such filing date, temporary total compensation may be ordered paid for all periods of temporary total disability prior to such date of filing. The decision in such preliminary hearing shall be rendered within five days of the conclusion of such hearing. Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

(b) If compensation in the form of medical benefits or temporary total disability benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to an award entered under this section and, upon a full hearing on the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and the employer's insurance carrier shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a, and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation the employee is entitled to less any amount deducted from additional disability benefits due the employee pursuant to subsection (c) of K.S.A. 44-525, and amendments thereto, as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith. No reimbursement shall be certified unless the request is made by the employer or employer's insurance carrier within one year of the final award.

Sec. 23. K.S.A. 44-536 is hereby amended to read as follows: 44-536.

(a) With respect to any and all proceedings in connection with any initial or original claim for compensation, no claim of any attorney for services rendered in connection with the securing of compensation for an employee or the employee's dependents, whether secured by agreement, order, award or a judgment in any court shall exceed a reasonable amount for such services or 25% of the amount of compensation recovered and paid, whichever is less, in addition to actual expenses incurred, and subject to the other provisions of this section. Except as hereinafter provided in this section, in death cases, total disability and partial disability cases, the amount of attorney fees shall not exceed 25% of the sum which would be due under the workers compensation act beyond 415 weeks of permanent total disability based upon the employee's average ~~gross~~ weekly wage prior to the date of the accident and subject to the maximum weekly benefits provided in K.S.A. 44-510c, and amendments thereto.

(b) All attorney fees in connection with the initial or original claim for compensation shall be fixed pursuant to a written contract between the attorney and the employee or the employee's dependents, which shall be subject to approval by the director in accordance with this section. Every attorney, whether the disposition of the original claim is by agreement, settlement, award, judgment or otherwise, shall file the attorney contract with the director for review in accordance with this section. The director shall review each such contract and the fees claimed thereunder as provided in this section and shall approve such contract and fees only if both are in accordance with all provisions of this section. Any claims for attorney fees not in excess of the limits provided in this section and approved by the director shall be enforceable as a lien on the compensation due or to become due. The director shall specifically and individually review each claim of an attorney for services rendered under the workers compensation act in each case of a settlement agreement under K.S.A. 44-521, and amendments thereto or a lump-sum payment under K.S.A. 44-531, and amendments thereto as to the reasonableness thereof. In reviewing the reasonableness of such claims for attorney fees, the director shall consider the other provisions of this section and the following:

(1) The written offers of settlement received by the employee prior to execution of a written contract between the employee and the attorney; the employer shall attach to the settlement worksheet copies of any written offers of settlement which were sent to the employee before the employer was aware that the employee had hired an attorney;

(2) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;

(3) the likelihood, if apparent to the employee or the employee's dependents, that the acceptance of the particular case will preclude other employment by the attorney;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount of compensation involved and the results obtained;

(6) the time limitations imposed by the employee, by the employee's dependents or by the circumstances;

(7) the nature and length of the professional relationship with the employee or the employee's dependents; and

(8) the experience, reputation and ability of the attorney or attorneys performing the services.

(c) No attorney fees shall be charged with respect to compensation for medical expenses, except where an allowance is made for proposed or future treatment as a part of a compromise settlement. No attorney fees shall be charged with respect to vocational rehabilitation benefits.

(d) No attorney fees shall be charged in connection with any temporary total disability compensation unless the payment of such compensation in the proper amount is refused, or unless such compensation is terminated by the employer and the payment of such compensation is obtained or reinstated by the efforts of the attorney, whether by agreement, settlement, award or judgment.

(e) With regard to any claim where there is no dispute as to any of the material issues prior to representation of the claimant or claimants by an attorney, or where the amount to be paid for compensation does not exceed the written offer made to the claimant or claimants by the employer prior to execution of a written contract between the employee and an attorney, the fees to any such attorney shall not exceed either the sum of \$250 or a reasonable fee for the time actually spent by the attorney, as determined by the director, whichever is greater, exclusive of reasonable attorney fees for any representation by such attorney in reference to any necessary probate proceedings. With regard to any claim where the amount to be paid for compensation does exceed the written offer made prior to representation, fees for services rendered by an attorney shall not exceed the lesser of (1) a reasonable amount for such services; (2) an amount equal to the total of 50% of that portion of the amount of compensation recovered and paid, which is in excess of the amount of compensation offered to the employee by the employer prior to the execution of a written contract between the employee and the attorney; or (3) 25% of the total amount of compensation recovered and paid as described in subsection (a).

(f) All attorney fees for representation of an employee or the employee's dependents shall be only recoverable from compensation actually paid to such employee or dependents, except as specifically provided otherwise in subsection (g) and (h).

(g) In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, an application for penalties or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original

claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis.

(1) If the services rendered under this subsection by an attorney result in an additional award of disability compensation, the attorney fees shall be paid from such amounts of disability compensation.

(2) If such services involve no additional award of disability compensation, but result in an additional award of medical compensation, penalties, or other benefits, the director shall fix the proper amount of such attorney fees in accordance with this subsection and such fees shall be paid by the employer or the workers compensation fund, if the fund is liable for compensation pursuant to K.S.A. 44-567, and amendments thereto, to the extent of the liability of the fund.

(3) If the services rendered herein result in a denial of additional compensation, ~~the director may authorize a fee to be paid by the respondent~~ *penalties, or other benefits, and it is determined that the attorney engaged in frivolous prosecution of the claim, the employer and insurance carrier shall not be liable for any portion of the attorney fees incurred for such services.*

(h) Any and all disputes regarding attorney fees, whether such disputes relate to which of one or more attorneys represents the claimant or claimants or is entitled to the attorney fees, or a division of attorney fees where the claimant or claimants are or have been represented by more than one attorney, or any other disputes concerning attorney fees or contracts for attorney fees, shall be heard and determined by the administrative law judge, after reasonable notice to all interested parties and attorneys.

(i) After reasonable notice and hearing before the administrative law judge, any attorney found to be in violation of any provision of this section shall be required to make restitution of any excess fees charged.

Sec. 24. K.S.A. 2010 Supp. 44-552 is hereby amended to read as follows: 44-552. (a) The director with the approval of the secretary of labor shall at each hearing under the workers compensation act appoint a certified shorthand reporter, who may be within the classified service of the Kansas civil service act, to attend each hearing where testimony is introduced, and preserve a complete record of all oral or documentary evidence introduced and all proceedings had at such hearing unless such appointment is waived by mutual agreement. At the conclusion of the hearing in any case, if neither party has requested opportunity to file briefs, the administrative law judge may read into the record for certification and filing in the office of the director such stipulations, findings, rulings or orders the administrative law judge deems expedient to the early disposition of the case. If the administrative law judge uses such procedure, with the consent of the parties, no transcript of the record of the hearing shall be made, except that part which is read into the record by the administrative law judge.

(b) All testimony introduced and proceedings had in hearings shall be taken down by the certified shorthand reporter, and if an action for review is commenced or if the director, or either party or the best interests of the administration of justice, so instructs, the certified shorthand reporter shall transcribe the certified shorthand reporter's notes of such hearing. If an action for review is commenced, the cost of preparing a transcript shall be paid as provided by K.S.A. 77-620, and amendments thereto. If no action for review is commenced, the cost of preparing a transcript shall be taxed as costs in the case at the discretion of the director in accordance with fair and customary rates charged in the state of Kansas. All official notes of such certified shorthand reporters shall be preserved and filed in the office of the director. Any transcript prepared as above provided and duly certified shall be received as evidence by the board and by any court with the same effect as if the certified shorthand reporter were present and testified to the records so certified.

(c) The director or administrative law judge, whoever is conducting the hearing, may make the findings, awards, decisions, rulings or modifications of findings or awards and do all acts at any time without awaiting the transcription of the testimony of the certified shorthand reporter if the director or administrative law judge deems it expedient and advisable to do so.

(d) *The certified short hand reporter's fee shall be taxed to the division of workers compensation if a fee is incurred and no record is taken.*

Sec. 25. K.S.A. 44-5a01 is hereby amended to read as follows: 44-5a01.

(a) Where the employer and employee or workman are subject by law or election to the provisions of the workmen's compensation act, the disablement or death of an employee or workman resulting from an occupational disease as defined in this section shall be treated as the happening of an injury by accident, and the employee or workman or, in case of death, his dependents shall be entitled to compensation for such disablement or death resulting from an occupational disease, in accordance with the provisions of the workmen's compensation act as in cases of injuries by accident which are compensable thereunder, except as specifically provided otherwise for occupational diseases. *In no circumstances shall an occupational disease be construed to include injuries caused by repetitive trauma as defined in K.S.A. 44-508, and amendments thereto.*

(b) "Occupational disease" shall mean only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged. "Nature of the employment" shall mean, for purposes of this section, that to the occupation, trade or employment in which the employee was engaged, there is attached a particular and peculiar hazard of such disease which distinguishes the employment from other occupations and employments, and which creates a

hazard of such disease which is in excess of the hazard of such disease in general. The disease must appear to have had its origin in a special risk of such disease connected with the particular type of employment and to have resulted from that source as a reasonable consequence of the risk. Ordinary diseases of life and conditions to which the general public is or may be exposed to outside of the particular employment, and hazards of diseases and conditions attending employment in general, shall not be compensable as occupational diseases. ~~Provided, except~~ that compensation shall not be payable for pulmonary emphysema or other types of emphysema unless it is proved, by clear and convincing medical evidence to a reasonable probability, that such emphysema was caused, solely and independently of all other causes, by the employment with the employer against whom the claim is made, except that, if it is proved to a reasonable medical probability that an existing emphysema was aggravated and contributed to by the employment with the employer against whom the claim is made, compensation shall be payable for the resulting condition of the workman, but only to the extent such condition was so contributed to and aggravated by the employment.

(c) In no case shall an employer be liable for compensation under this section unless disablement results within one (~~1~~) year or death results within three (~~3~~) years in case of silicosis, or one (~~1~~) year in case of any other occupational disease, after the last injurious exposure to the hazard of such disease in such employment, or, in case of death, unless death follows continuous disability from such disease, commencing within the period above limited, for which compensation has been paid or awarded or timely claim made as provided in the workmen's compensation act, and results within seven (~~7~~) years after such last exposure. Where payments have been made on account of any disablement from which death shall thereafter result such payments shall be deducted from the amount of liability provided by law in case of death. The time limit prescribed by this section shall not apply in the case of an employee whose disablement or death is due to occupational exposure to ionizing radiation.

(d) Where an occupational disease is aggravated by any disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease, as a causative factor, bears to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

(e) No compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased employee or

workman arose subsequent to the beginning of the first compensable disability save only to afterborn children.

(f) The provisions of K.S.A. 44-570, *and amendments thereto*, shall apply in case of an occupational disease.

New Sec. 26. (a) If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(b) This section shall be part of and supplemental to the workers compensation act.

New Sec. 27. (a) Any person who is not required to be covered under a workers compensation insurance policy or other plan for the payment of workers compensation may execute an affidavit of exempt status under the workers compensation act. The affidavit shall be a form prescribed by the commissioner of insurance. The affidavit shall be available on the web site of the department of insurance.

(b) Execution of the affidavit shall establish a rebuttable presumption that the executor is not an employee for purposes of the workers compensation act and that an individual or company possessing the affidavit is in compliance and therefore shall not be responsible for workers compensation claims made by the executor.

(c) The execution of an affidavit shall not affect the rights or coverage of any employee of the individual executing the affidavit.

(d) (1) Knowingly providing false information on a notarized affidavit of exempt status under the workers compensation act shall constitute a misdemeanor punishable by a fine not to exceed \$1,000.

(2) Affidavits shall conspicuously state on the front thereof in at least 10 point, boldfaced print that it is a crime to falsify information on the form.

(3) The commissioner of insurance shall immediately notify the fraud unit in the department of insurance of any violations or suspected violations of this section. The commissioner of insurance shall cooperate with the fraud unit.

(e) The commissioner of insurance shall have the power to adopt all reasonable rules and regulations necessary to implement this section.

Sec. 28. K.S.A. 44-549 is hereby amended to read as follows: 44-549.

(a) All hearings upon all claims for compensation under the workers compensation act shall be held by the administrative law judge *in person* in the county in which the accident occurred, *or by video conferencing or telephone conference* unless otherwise mutually agreed by the employee and employer. The award, finding, decision or order of an administrative law judge when filed in the office of the director shall be deemed to be the final award, finding, decision or order of the administrative law judge.

(b) The director and the board, for the purpose of the workers com-

pensation act, shall have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents, and records to the same extent as is conferred on district courts of this state under the code of civil procedure.

Sec. 29. K.S.A. 44-503a, 44-510a, 44-510c, 44-510d, 44-510e, 44-510f, 44-515, 44-516, 44-520, 44-520a, 44-525, 44-528, 44-531, 44-532a, 44-534a, 44-536, 44-549 and 44-5a01 and K.S.A. 2010 Supp. 44-501, 44-508, 44-510b, 44-510h, 44-510k, 44-511, 44-523, 44-552 and 44-596 are hereby repealed.

Sec. 30. This act shall take effect and be in force from and after May 15, 2011, and its publication in the Kansas register.

Approved April 18, 2011.

Published in the *Kansas Register* April 28, 2011.

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## CHAPTER 56

HOUSE BILL No. 2067  
(Amended by Chapter 112)

AN ACT concerning elections; amending K.S.A. 25-208a, 25-2203, 25-2352 and 25-3203 and K.S.A. 2010 Supp. 8-1324, 25-1122, 25-1122d, 25-1123, 25-1124, 25-1128, 25-2309, 25-2320, 25-2908, 25-3002, 25-3104, 25-3107 and 65-2418 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 8-1324 is hereby amended to read as follows: 8-1324. (a) Any resident who does not hold a current valid Kansas driver's license may make application to the division of vehicles and be issued one identification card.

(b) For the purpose of obtaining an identification card, an applicant shall submit, with the application, proof of age, proof of identity and proof of lawful presence. An applicant shall submit with the application 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 account 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 identification card. Before issuing an identification card to a person, the division shall make reasonable efforts to verify with the issuing agency the issuance, validity and

completeness of each document required to be presented by the applicant to prove age, identity and lawful presence.

(c) The division shall not issue an identification card to any person who fails to provide proof that the person is lawfully present in the United States. If an applicant provides evidence of lawful presence as set out in subsections (b)(2)(E) through (2)(I) of K.S.A. 8-240, and amendments thereto, or is an alien lawfully admitted for temporary residence under subsection (b)(2)(B) of K.S.A. 8-240, and amendments thereto, the division may only issue a temporary identification card to the person under the following conditions: (A) A temporary identification card 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 temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date upon which it expires; (C) no temporary identification card issued pursuant to this subparagraph shall be for a longer period of time than the time period permitted by K.S.A. 8-1325, and amendments thereto; and (D) a temporary identification card issued pursuant to this subparagraph may be renewed, subject at the time of renewal, to the same requirements and conditions set forth in this subsection (c) for the issuance of the original temporary identification card.

(d) The division shall not issue an identification card to any person who holds a current valid Kansas driver's license unless such driver's license has been physically surrendered pursuant to the provisions of subsection (e) of K.S.A. 8-1002, and amendments thereto.

(e) The division shall refuse to issue an identification card to a person holding a driver's license or identification card issued by another state without confirmation that the person is terminating or has terminated the license or identification card.

(f) The parent or guardian of an applicant under 16 years of age shall sign the application for an identification card submitted by such applicant.

(g) (1) The division shall require payment of a fee of \$14 at the time application for an identification card is made, except that persons who are 65 or more years of age or who are handicapped, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of only \$10. In addition to the fees prescribed by this subsection, the division shall require payment of the photo fee established pursuant to K.S.A. 8-243, and amendments thereto, for the cost of the photograph to be placed on the identification card.

(2) *The division shall not require or accept payment of application or photo fees under this subsection for any person 17 years of age or older for purposes of meeting the voter identification requirements of K.S.A. 25-2908, and amendments thereto. Such person shall: (A) Swear under oath that such person desires an identification card in order to vote in an election in Kansas and that such person does not possess any of the forms of iden-*

*tification acceptable under K.S.A. 25-2908, and amendments thereto. The affidavit shall specifically list the acceptable forms of identification under K.S.A. 25-2908, and amendments thereto.*

*(B) Such person shall also produce evidence that such person is registered to vote in Kansas.*

(h) All Kansas identification cards shall have physical security features designed to prevent tampering, counterfeiting or duplication for fraudulent purposes.

(i) For the purposes of K.S.A. 8-1324 through 8-1328, and amendments thereto, a person shall be deemed to be a resident of the state if:

- (1) The person owns, leases or rents a place of domicile in this state;
- (2) the person engages in a trade, business or profession in this state;
- (3) the person is registered to vote in this state;
- (4) the person enrolls the person's child in a school in this state; or
- (5) the person registers the person's motor vehicle in this state.

(j) The division shall require that any person applying for an identification card submit to a mandatory facial image capture.

(k) The director of vehicles may issue a temporary identification card to an applicant who cannot provide valid documentary evidence as defined by subsection (c), if the applicant provides compelling evidence proving current lawful presence. Any temporary identification card issued pursuant to this subparagraph shall be valid for one year.

(l) Upon payment of the required fee, the division shall issue to every applicant qualifying under the provisions of this act an identification card. Such identification card shall bear a distinguishing number assigned to the cardholder, the full legal name, date of birth, address of principal residence, a brief description of the cardholder, a colored digital photograph of the cardholder, and a facsimile of the signature of the cardholder. An identification card which does not contain the address of principal residence of the cardholder as required may be issued to persons who are program participants pursuant to K.S.A. 2010 Supp. 75-455, and amendments thereto.

Sec. 2. K.S.A. 2010 Supp. 25-1122 is hereby amended to read as follows: 25-1122. (a) Any registered voter may file with the county election officer where such person is a resident, or where such person is authorized by law to vote as a former precinct resident, an application for an advance voting ballot. The signed application shall be transmitted only to the county election officer by personal delivery, mail, facsimile or as otherwise provided by law.

(b) If the registered voter is applying for an advance voting ballot to be transmitted in person, ~~and such voter is a first-time voter,~~ such voter shall provide *identification pursuant to K.S.A. 25-2908, and amendments thereto.* ~~a form of valid identification such as a current and valid Kansas driver's license, nondriver's identification card, utility bill, bank statement, paycheck, government check or other government document containing the~~

voter's current name and address as indicated on the registration book. Such voter shall not be required to provide identification if such voter has previously provided current and valid identification in the county where registered.

(c) If the registered voter is applying for an advance voting ballot to be transmitted by mail, ~~and such voter is a first-time voter,~~ such voter shall provide ~~on~~ with the application for an advance voting ballot the voter's current and valid Kansas driver's license number, nondriver's identification card number or *a photocopy of any other identification provided by K.S.A. 25-2908, and amendments thereto.* ~~the last four digits of the voter's social security number, or shall provide with the application a copy of the voter's current and valid Kansas driver's license, nondriver's identification card, utility bill, bank statement, paycheck, government check or other government document containing the voter's current name and address as indicated on the registration book. Such voter shall not be required to provide identification if such voter has previously provided current and valid identification in the county where registered.~~

(d) ~~If a first-time voter is unable or refuses to provide current and valid identification, or if the name and address do not match the voter's name and address on the registration book,~~ the A voter may vote a provisional ballot according to K.S.A. 25-409, and amendments thereto, if:

(1) *The voter is unable or refuses to provide current and valid identification; or*

(2) *the name and address of the voter provided on the application for an advance voting ballot do not match the voter's name and address on the registration book.* The voter shall provide a valid form of identification as defined in ~~subsection (c) of K.S.A. 25-2908, and amendments thereto,~~ ~~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) *No county election officer shall provide an advance voting ballot to a person who is requesting an advance voting ballot to be transmitted by mail unless:*

(1) *The county election official verifies that the signature of the person matches that on file in the county voter registration records. Signature verification may occur by electronic device or by human inspection. In the event that the signature of a person who is requesting an advance voting ballot does not match that on file, the county election officer shall attempt to contact the person and shall offer the person another opportunity to ~~mail~~ ~~in~~ provide such person's signature for the purposes of verifying the person's identity. If the county election officer is unable to reach the person, the*

*county election officer may transmit a provisional ballot, however, such provisional ballot may not be counted unless a signature is included therewith that can be verified; and*

*(2) the person provides such person's full Kansas driver's license number, Kansas nondriver's identification card number issued by the division of vehicles, or submits such person's application for an advance voting ballot and a copy of identification provided by K.S.A. 25-2908, and amendments thereto, to the county election officer for verification. If a person applies for an advance voting ballot to be transmitted by mail but fails to provide identification pursuant to this subsection or the identification of such person cannot be verified by the county election officer, the county election officer shall provide information to such person regarding the voter rights provisions of subsection (d) and shall provide such person an opportunity to provide identification pursuant to this subsection. For the purposes of this act, Kansas state offices and offices of any subdivision of the state will allow any person seeking to vote by an advance voting ballot the use a photocopying device to make one photocopy of an identification document at no cost.*

*(e) (f)* Applications for advance voting ballots to be transmitted to the voter by mail shall be filed only at the following times:

(1) For the primary election occurring on the first Tuesday in August in even-numbered years, between April 1 of such year and the last business day of the week preceding such primary election.

(2) For the general election occurring on the Tuesday succeeding the first Monday in November in even-numbered years, between 90 days prior to such election and the last business day of the week preceding such general election.

(3) For the primary election held five weeks preceding the first Tuesday in April, between January 1 of the year of such election and the last business day of the week preceding such primary election.

(4) For the general election occurring on the first Tuesday in April, between January 1 of the year of such election and the last business day of the week preceding such general election.

(5) For question submitted elections occurring on the date of a primary or general election, the same as is provided for ballots for election of officers at such election.

(6) For question submitted elections not occurring on the date of a primary or general election, between the time of the first published notice thereof and the last business day of the week preceding such question submitted election, except that if the question submitted election is held on a day other than a Tuesday, the county election officer shall determine the final date for mailing of advance voting ballots, but such date shall not be more than three business days before such election.

(7) For any special election of officers, at such time as is specified by the secretary of state.

(8) For the presidential preference primary, between January 1 of the year in which such primary is held and the last business day of the week preceding such primary election.

The county election officer of any county may receive applications prior to the time specified in this subsection ~~(e)~~ and hold such applications until the beginning of the prescribed application period. Such applications shall be treated as filed on that date.

~~(f)~~ (g) Unless an earlier date is designated by the county election office, applications for advance voting ballots transmitted to the voter in person in the office of the county election officer shall be filed on the Tuesday next preceding the election and on each subsequent business day until no later than 12:00 noon on the day preceding such election. If the county election officer so provides, applications for advance voting ballots transmitted to the voter in person in the office of the county election officer also may be filed on the Saturday preceding the election. Upon receipt of any such properly executed application, the county election officer shall deliver to the voter such ballots and instructions as are provided for in this act.

An application for an advance voting ballot filed by a voter who has a temporary illness or disability or who is not proficient in reading the English language or by a person rendering assistance to such voter may be filed during the regular advance ballot application periods until the close of the polls on election day.

The county election officer may designate places other than the central county election office as satellite advance voting sites. At any satellite advance voting site, a registered voter may obtain an application for advance voting ballots. Such ballots and instructions shall be delivered to the voter in the same manner and subject to the same limitations as otherwise provided by this subsection.

~~(g)~~ (h) Any person having a permanent disability or an illness which has been diagnosed as a permanent illness is hereby authorized to make an application for permanent advance voting status. Applications for permanent advance voting status shall be in the form and contain such information as is required for application for advance voting ballots and also shall contain information which establishes the voter's right to permanent advance voting status.

~~(h)~~ (i) On receipt of any application filed under the provisions of this section, the county election officer shall prepare and maintain in such officer's office a list of the names of all persons who have filed such applications, together with their correct post office address and the precinct, ward, township or voting area in which such persons claim to be registered voters or to be authorized by law to vote as former precinct residents and the present resident address of each applicant. Such names and addresses shall remain so listed until the day of such election. The county election officer shall maintain a separate listing of the names and addresses of persons qualifying for permanent advance voting status. All such lists shall be

available for inspection upon request in compliance with this subsection by any registered voter during regular business hours. The county election officer upon receipt of such applications shall enter upon a record kept by such officer the name and address of each applicant, which record shall conform to the list above required. Before inspection of any advance voting ballot application list, the person desiring to make such inspection shall provide to the county election officer identification in the form of driver's license or other reliable identification and shall sign a log book or application form maintained by such officer stating such person's name and address and showing the date and time of inspection. All records made by the county election officer shall be subject to public inspection, except that the voter identification information required by subsections (b) and (c) and the identifying number on ballots and ballot envelopes and records of such numbers shall not be made public.

(j) If a person on the permanent advance voting list fails to vote in two consecutive general elections held on the Tuesday succeeding the first Monday in November of each even-numbered year, the county election officer may mail a notice to such voter. Such notice shall inform the voter that the voter's name will be removed from the permanent advance voting list unless the voter renews the application for permanent advance voting status within 30 days after the notice is mailed. If the voter fails to renew such application, the county election officer shall remove the voter's name from the permanent advance voting list. Failure to renew the application for permanent advance voting status shall not result in removal of the voter's name from the voter registration list.

~~(j) For the purposes of this section, "first-time voter" means a registered voter who has not previously voted in any election in the county in which the voter desires to vote. First-time voter includes a person whose name was removed from the county registration list in accordance with K.S.A. 25-2316e, and amendments thereto, and who has re-registered.~~

(k) The secretary of state may adopt rules and regulations *in order to implement the provisions of this section and to define* ~~defining~~ valid forms of identification.

Sec. 3. K.S.A. 2010 Supp. 25-1122d is hereby amended to read as follows: 25-1122d. (a) The application for an advance voting ballot to be transmitted by mail shall be accompanied by an affirmation in substance as follows:

Affirmation of an Elector of the County of \_\_\_\_\_ and State of Kansas Desiring to Vote an Advance Voting Ballot

State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

I, \_\_\_\_\_  
(Please print name)

do solemnly affirm under penalty of perjury that I am a qualified elector of the \_\_\_\_\_ precinct of the \_\_\_\_\_ ward, residing at number \_\_\_\_\_ on \_\_\_\_\_ street, city of \_\_\_\_\_

\_\_\_\_\_, or in the township of \_\_\_\_\_, county of \_\_\_\_\_, and state of Kansas. My date of birth is \_\_\_\_\_ (month/day/year).

I understand that ~~if I have not previously voted in any election in this county and I have not previously submitted valid identification, a current and valid Kansas driver's license number or Kansas nondriver's identification card number must be provided in order to receive a ballot. If I do not have a current and valid Kansas driver's license number or Kansas nondriver's identification card number, I must provide one of the following forms of identification with this application in order to receive a ballot:~~

~~(1) A current and valid Kansas driver's license number or nondriver's identification card number; or a copy of any one of the following types of photographic identification: a driver's license issued by Kansas or by another state or district of the United States, a state identification card issued by Kansas or by another state or district of the United States, 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, a United States passport, an employee badge or identification document issued by a municipal, county, state, or federal government office or agency, a military identification document issued by the United States, a student identification card issued by an accredited post secondary institution of education in the state of Kansas, or a public assistance identification card issued by a municipal, county, state, or federal government office or agency.~~

~~(2) the last four digits of my social security number; or~~

~~(3) a copy of a current and valid Kansas driver's license or nondriver's identification card, utility bill, bank statement, paycheck, government check, or other government document that shows my name and address.~~

I am entitled to vote an advance voting ballot and I have not voted and will not otherwise vote at the election to be held on \_\_\_\_\_ (date). My political party is \_\_\_\_\_ (to be filled in only when requesting primary election ballots). I desire my ballots to be sent to the following address:

\_\_\_\_\_  
\_\_\_\_\_

Signature of voter.

Note: False statement on this affirmation is a severity level 9, nonperson felony.

(b) The application for an advance voting ballot to be transmitted in person shall be accompanied by an affirmation in substance as follows:

Affirmation of an Elector of the County of \_\_\_\_\_ and State of Kansas Desiring to Vote an Advance Voting Ballot

State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

I, \_\_\_\_\_  
(Please print name)

do solemnly affirm under penalty of perjury that I am a qualified elector of the \_\_\_\_\_ precinct of the \_\_\_\_\_ ward, residing at number \_\_\_\_\_ on \_\_\_\_\_ street, city of \_\_\_\_\_, or in the township of \_\_\_\_\_, county of \_\_\_\_\_, and state of Kansas. My date of birth is \_\_\_\_\_ (month/day/year).

~~I understand that if I have not previously voted in any election in this county and I have not previously submitted valid identification, I must provide one of the following forms of identification with this application in order to receive a ballot: a current and valid Kansas driver's license number or nondriver's identification card, utility bill, bank statement, paycheck, government check or other government document that shows my name and address.~~

I am entitled to vote an advance voting ballot and I have not voted and will not otherwise vote at the election to be held on \_\_\_\_\_ (date). My political party is \_\_\_\_\_ (to be filled in only when requesting primary election ballots).

\_\_\_\_\_  
\_\_\_\_\_

Signature of voter.

Note: False statement on this affirmation is a severity level 9, nonperson felony.

(c) An application for permanent advance voting status shall be on a form prescribed by the secretary of state for this purpose. Such application shall contain an affirmation concerning substantially the same information

required in subsection (a) and in addition thereto a statement regarding the permanent character of such illness or disability.

(d) Any application by a former precinct resident shall state both the former and present residence, address, precinct and county of such former precinct resident and the date of change of residence.

(e) *The secretary of state may adopt rules and regulations in order to implement the provisions of this section.*

Sec. 4. K.S.A. 2010 Supp. 25-1123 is hereby amended to read as follows: 25-1123. (a) When an application for an advance voting ballot has been filed in accordance with K.S.A. 25-1122, and amendments thereto, the county election officer shall transmit to the voter applying therefor one each of the appropriate ballots. ~~Except as provided by subsection (b)~~ *Unless an advance voting ballot is transmitted in person pursuant to this subsection, the county election officer shall transmit the advance voting ballots to the voter at one of the following addresses as specified by the voter on such application: (1) The voter's residential address or mailing address as indicated on the registration list; (2) the voter's temporary residential address; or (3) a medical care facility as defined in K.S.A. 65-425, and amendments thereto, psychiatric hospital, hospice or adult care home where the voter resides. No advance voting ballot shall be transmitted by the county election officer by any means prior to the 20th day before the election for which an application for an advance voting ballot has been received by such county election officer. If the advance voting ballot is transmitted by mail, such ballot shall be transmitted with printed instructions prescribed by the secretary of state and a ballot envelope bearing upon the outside a printed form as described in K.S.A. 25-1120, and amendments thereto, and the same number as the number of the ballot. If the advance voting ballot is transmitted to the applicant in person in the office of the county election officer or at a satellite advance voting site, such advance voting ballot and printed instructions shall be transmitted in an advance voting ballot envelope bearing upon the outside a printed form as described in K.S.A. 25-1120, and amendments thereto, and the same number as the number of the ballot unless the voter elects to deposit the advance voting ballot into a locked ballot box without an envelope. All ballots shall be transmitted to the advance voting voter not more than 20 days before the election but within two business days of the receipt of such voter's application by the election officer or the commencement of such 20-day period. In primary elections required to be conducted on a partisan basis, the election officer shall deliver to such voter the ballot of the political party of the applicant.*

(b) The restrictions in subsection (a) relating to where a county election officer may transmit an advance voting ballot shall not apply to an advance voting ballot requested pursuant to an application for an advance voting ballot filed by a voter who has a temporary illness or disability or who is not proficient in reading the English language.

(c) The county election officer shall compare the driver's license number, nondriver's identification card number; ~~social security number~~ or copy of other valid identification provided by a ~~first-time~~ voter to the voter registration list verified by the division of ~~motor~~ vehicles in accordance with federal law. If no identification information was provided by the ~~first-time~~ voter; or if such information does not match the information on the voter registration list, the county election officer shall ~~not transmit an~~ *transmit a provisional advance voting ballot.*

Sec. 5. K.S.A. 2010 Supp. 25-1124 is hereby amended to read as follows: 25-1124. (a) Upon receipt of the advance voting ballot, the voter shall cast such voter's vote as follows: The voter shall make a cross or check mark in the square or parentheses opposite the name of each candidate or question for whom the voter desires to vote. The voter shall make no other mark, and shall allow no other person to make any mark, upon such ballot. If the advance voting ballot was transmitted by mail, the voter personally shall place the ballot in the ballot envelope bearing the same number as the ballot and seal the envelope. The voter shall complete the form on the ballot envelope and shall sign the same. Except as provided by K.S.A. 25-2908, and amendments thereto, the ballot envelope shall be mailed or otherwise transmitted to the county election officer. If the advance voting ballot was transmitted to the voter in person in the office of the county election officer or at a satellite advance voting site, the voter may deposit such ballot into a locked ballot box without an envelope.

(b) Any ~~sick, physically disabled or illiterate~~ voter who *has an illness or physical disability or who is not proficient in reading the English language* that is unable to apply for or mark or transmit an advance voting ballot, may request assistance by a person who has signed a statement required by subsection (d) in applying for or marking an advance voting ballot.

(c) Any voted ballot may be transmitted to the county election officer by the voter or by another person ~~upon request of~~ *designated in writing by* the voter. Any such voted ballot shall be transmitted to the county election officer before the close of the polls on election day.

(d) The county election officer shall allow a person to assist a ~~sick, physically disabled or illiterate~~ voter who *has an illness or physical disability or who is not proficient in reading the English language* in applying for or marking an application or advance voting ballot, provided a written statement is signed by the person who renders assistance to the ~~sick, physically disabled or illiterate~~ voter who *has an illness or physical disability or who is not proficient in reading the English language* and such statement is submitted to the county election officer with the application or ballot. The statement shall be on a form prescribed by the secretary of state and shall contain a statement from the person providing assistance that the person has not exercised undue influence on the voting decision of the ~~sick,~~

~~physically disabled or illiterate~~ voter who has an illness or physical disability or who is not proficient in reading the English language and that the person providing assistance has completed the application or marked the ballot as instructed by the ~~sick, physically disabled or illiterate~~ voter.

(e) Any person assisting a ~~sick, physically disabled or illiterate~~ voter who has an illness or physical disability or who is not proficient in reading the English language in applying for or marking an advance voting ballot who knowingly and willfully fails to sign and submit the statement required by this section or who exercises undue influence on the voting decision of such voter shall be guilty of a severity level 9, nonperson felony.

Sec. 6. K.S.A. 2010 Supp. 25-1128 is hereby amended to read as follows: 25-1128. (a) No voter shall knowingly mark or transmit to the county election officer more than one advance voting ballot, or set of one of each kind of ballot, if the voter is entitled to vote more than one such ballot at a particular election.

(b) Except as provided in K.S.A. 25-1124, and amendments thereto, no person shall knowingly interfere with or delay the transmission of any advance voting ballot application from a voter to the county election officer, nor shall any person mail, fax or otherwise cause the application to be sent to a place other than the county election office. Any person or group engaged in the distribution of advance voting ballot applications shall mail, fax or otherwise deliver any application signed by a voter to the county election office within two days after such application is signed by the applicant.

(c) Except as otherwise provided by law, no person other than the voter, shall knowingly mark, sign or transmit to the county election officer any advance voting ballot or advance voting ballot envelope.

(d) *Except as otherwise provided by law, no person shall knowingly sign an application for an advance voting ballot for another person. This provision shall not apply if a voter has a disability preventing the voter from signing an application or if an immediate family member signs an application on behalf of another immediate family member with proper authorization being given.*

~~(d)~~ (e) No person, unless authorized by K.S.A. 25-1122 or K.S.A. 25-1124, and amendments thereto, shall knowingly intercept, interfere with, or delay the transmission of advance voting ballots from the county election officer to the voter.

~~(e)~~ (f) No person shall knowingly willfully and falsely affirm, declare or subscribe to any material fact in an affirmation form for an advance voting ballot; or set of advance voting ballots. ~~if the voter is entitled to vote more than one kind of advance voting ballot at a particular election, or in a declaration form on an advance voting ballot envelope.~~

~~(f) Nothing in this section shall be construed to prohibit any person from mailing, carrying or otherwise conveying advance voting ballots or~~

~~sets of advance voting ballots to the county election officer upon request of advance voting voters.~~

(g) *A voter may return such voter's advance voting ballot to the county election officer by personal delivery or by mail. Upon written designation by the voter, a person other than the voter may return the advance voting ballot by personal delivery or mail. Any such person designated by the voter shall sign a statement that such person has not exercised undue influence on the voting decisions of the voter and agrees to deliver the ballot as directed by the voter.*

~~(g)~~ (h) Violation of any provision of this section is a class C misdemeanor.

Sec. 7. K.S.A. 25-2203 is hereby amended as follows: 25-2203. (a) There is hereby established the state election board, the members of which shall be the lieutenant governor, the secretary of state and the attorney general. The state election board shall meet on the call of the secretary of state.

(b) The state election board shall:

(1) Adopt rules and regulations for determination of apportionment of election expenses among the subdivisions of government. Such rules and regulations shall identify and define the election expenses which are direct and those which are indirect, or shall define sufficient means of making determination thereof;

(2) *assess information provided by any applicant for voter registration as evidence of citizenship pursuant to K.S.A. 25-2309(m), and amendments thereto; and*

~~(3) The state election board shall~~ make such additional rules and regulations as it deems advisable relating to payment of election expenses.

Sec. 8. K.S.A. 2010 Supp. 25-2309 is hereby amended to read as follows: 25-2309. (a) Any person may apply in person, by mail, through a voter registration agency, or by other delivery to a county election officer to be registered. Such application shall be made on: (1) A form approved by the secretary of state, which shall be provided by a county election officer or chief state election official upon request in person, by telephone or in writing; or (2) ~~the national mail voter registration application prescribed by form the issued pursuant to federal law.election commission.~~ Such application shall be signed by the applicant under penalty of perjury and shall contain the original signature of the applicant or the computerized, electronic or digitized transmitted signature of the applicant. 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.

(b) Applications made under this section shall give voter eligibility requirements and such information as is necessary to *prevent duplicative*

*voter registrations and enable the relevant election officer to assess the eligibility of the applicant and to administer voter registration, identify the applicant and to determine the qualifications of the applicant as an elector and the facts authorizing such person to be registered, including, but not limited to, the following data to be kept by the relevant election officer as provided by law:*

- (1) Name;
- (2) place of residence, including specific address or location, and mailing address if the residence address is not a permissible postal address;
- (3) date of birth;
- (4) sex;
- (5) the last four digits of the person's social security number or the person's full driver's license or nondriver's identification card number;
- (6) telephone number, if available;
- (7) naturalization data (if applicable);
- (8) if applicant has previously registered or voted elsewhere, residence at time of last registration or voting;
- (9) when present residence established;
- (10) name under which applicant last registered or voted, if different from present name;
- (11) an attestation that the applicant meets each eligibility requirement;
- (12) a statement that the penalty for submission of a false voter registration application is a maximum presumptive sentence of 17 months in prison;
- (13) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes;
- (14) a statement that if an applicant does register to vote, the office to which a voter registration application is submitted will remain confidential and will be used only for voter registration purposes;
- (15) boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States, together with the question "Are you a citizen of the United States of America?";
- (16) *boxes for the county election officer or chief state election official to check to indicate whether the applicant has provided with the application the information necessary to assess the eligibility of the applicant, including such applicant's United States citizenship;*
- (17) boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day, together with the question "Will you be 18 years of age on or before election day?";
- ~~(17)~~ (18) in reference to paragraphs (15) and ~~(16)~~(17) the statement "If you checked 'no' in response to either of these questions, do not complete this form.";
- ~~(18)~~ (19) a statement that the applicant ~~may~~*shall* be required to provide identification when voting; and

~~(19)~~ (20) political party affiliation declaration, if any. An applicant's failure to make a declaration will result in the applicant being registered as an unaffiliated voter.

If the application discloses any previous registration in any other county or state, as indicated by paragraph (8) or (10), or otherwise, the county election officer shall upon the registration of the applicant, give notice to the election official of the place of former registration, notifying such official of applicant's present residence and registration, and authorizing cancellation of such former registration. *This section shall be interpreted and applied in accordance with federal law. No eligible applicant whose qualifications have been assessed shall be denied registration.*

(c) Any person who applies for registration through a voter registration agency shall be provided with, in addition to the application under subsection (b), a form which includes:

(1) The question "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(2) a statement that if the applicant declines to register to vote, this decision will remain confidential and be used only for voter registration purposes;

(3) a statement that if the applicant does register to vote, information regarding the office to which the application was submitted will remain confidential and be used only for voter registration purposes; and

(4) if the agency provides public assistance, (i) the statement "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(ii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote, together with the statement "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(iii) the statement "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and

(iv) the statement "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Kansas Secretary of State."

(d) If any person, in writing, declines to register to vote, the voter registration agency shall maintain the form prescribed by subsection (c).

(e) A voter registration agency shall transmit the completed registration application to the county election officer not later than five days after the date of acceptance. Upon receipt of an application for registration, the county election officer shall send, by nonforwardable mail, a notice of dis-

position of the application to the applicant at the postal delivery address shown on the application. If a notice of disposition is returned as undeliverable, a confirmation mailing prescribed by K.S.A. 25-2316c, and amendments thereto, shall occur.

(f) If an application is received while registration is closed, such application shall be considered to have been received on the next following day during which registration is open.

(g) A person who completes an application for voter registration shall be considered a registered voter when the county election officer adds the applicant's name to the county voter registration list.

(h) Any registered voter whose residence address is not a permissible postal delivery address shall designate a postal address for registration records. When a county election officer has reason to believe that a voter's registration residence is not a permissible postal delivery address, the county election officer shall attempt to determine a proper mailing address for the voter.

(i) Any registered voter may request that such person's residence address be concealed from public inspection on the voter registration list and on the original voter registration application form. Such request shall be made in writing to the county election officer, and shall specify a clearly unwarranted invasion of personal privacy or a threat to the voter's safety. Upon receipt of such a request, the county election officer shall take appropriate steps to ensure that such person's residence address is not publicly disclosed. Nothing in this subsection shall be construed as requiring or authorizing the secretary of state to include on the voter registration application form a space or other provision on the form that would allow the applicant to request that such applicant's residence address be concealed from public inspection.

(j) No application for voter registration shall be made available for public inspection or copying unless the information required by paragraph (5) of subsection (b) has been removed or otherwise rendered unreadable.

(k) If an applicant fails to answer the question prescribed in paragraph (15) of subsection (b), the county election officer shall send the application to the applicant at the postal delivery address given on the application, by nonforwardable mail, with a notice of incompleteness. The notice shall specify a period of time during which the applicant may complete the application in accordance with K.S.A. 25-2311, and amendments thereto, and be eligible to vote in the next election.

(l) *The county election officer or secretary of state's office shall accept any completed application for registration, but an applicant shall not be registered until the applicant has provided satisfactory evidence of United States citizenship. Evidence of United States citizenship as required in this section will be satisfied by presenting one of the documents listed in paragraphs (1) through (13) of subsection (1) in person at the time of filing the application for registration or by including a photocopy of one of the fol-*

lowing documents with a mailed registration application. After a person has submitted satisfactory evidence of citizenship, the county election officer shall indicate this information in the person's permanent voter file. Evidence of United States citizenship shall be satisfied by providing one of the following, or a legible photocopy of one of the following documents:

(1) The applicant's driver's license or nondriver's identification card issued by the division of vehicles or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver's license or nondriver's identification card that the person has provided satisfactory proof of United States citizenship;

(2) the applicant's birth certificate that verifies United States citizenship to the satisfaction of the county election officer or secretary of state;

(3) pertinent pages of the applicant's United States valid or expired passport identifying the applicant and the applicant's passport number, or presentation to the county election officer of the applicant's United States passport;

(4) the applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States bureau of citizenship and immigration services by the county election officer or the secretary of state, pursuant to 8 U.S.C. § 1373(c);

(5) other documents or methods of proof of United States citizenship issued by the federal government pursuant to the immigration and nationality act of 1952, and amendments thereto;

(6) the applicant's bureau of Indian affairs card number, tribal treaty card number or tribal enrollment number;

(7) the applicant's consular report of birth abroad of a citizen of the United States of America;

(8) the applicant's certificate of citizenship issued by the United States citizenship and immigration services;

(9) the applicant's certification of report of birth issued by the United States department of state;

(10) the applicant's American Indian card, with KIC classification, issued by the United States department of homeland security;

(11) the applicant's final adoption decree showing the applicant's name and United States birthplace;

(12) the applicant's official United States military record of service showing the applicant's place of birth in the United States; or

(13) an extract from a United States hospital record of birth created at the time of the applicant's birth indicating the applicant's place of birth in the United States.

(m) If an applicant is a United States citizen but does not have any of the documentation listed in this section as satisfactory evidence of United

*States citizenship, such applicant may submit any evidence that such applicant believes demonstrates the applicant's United States citizenship.*

*(1) Any applicant seeking an assessment of evidence under this subsection may directly contact the elections division of the secretary of state by submitting a voter registration application or form as described by this section and any supporting evidence of United States citizenship. Upon receipt of this information, the secretary of state shall notify the state election board, as established under K.S.A. 25-2203, and amendments thereto, that such application is pending.*

*(2) The state election board shall give the applicant an opportunity for a hearing and an opportunity to present any additional evidence to the state election board. Notice of such hearing shall be given to the applicant at least five days prior to the hearing date. An applicant shall have the opportunity to be represented by counsel at such hearing.*

*(3) The state election board shall assess the evidence provided by the applicant to determine whether the applicant has provided satisfactory evidence of United States citizenship. A decision of the state election board shall be determined by a majority vote of the election board.*

*(4) If an applicant submits an application and any supporting evidence prior to the close of registration for an election cycle, a determination by the state election board shall be issued at least five days before such election date.*

*(5) If the state election board finds that the evidence presented by such applicant constitutes satisfactory evidence of United States citizenship, such applicant will have met the requirements under this section to provide satisfactory evidence of United States citizenship.*

*(6) If the state election board finds that the evidence presented by an applicant does not constitute satisfactory evidence of United States citizenship, such applicant shall have the right to appeal such determination by the state election board by instituting an action under 8 U.S.C. § 1503. Any negative assessment of an applicant's eligibility by the state election board shall be reversed if the applicant obtains a declaratory judgment pursuant to 8 U.S.C. § 1503, demonstrating that such applicant is a national of the United States.*

*(n) Any person who is registered in this state on the effective date of this amendment to this section is deemed to have provided satisfactory evidence of citizenship and shall not be required to resubmit evidence of citizenship.*

*(o) For purposes of this section, proof of voter registration from another state is not satisfactory evidence of United States citizenship.*

*(p) A registered Kansas voter who moves from one residence to another within the state of Kansas or who modifies such voter's registration records for any other reason shall not be required to submit evidence of United States citizenship.*

*(q) If evidence of citizenship is deemed to be unsatisfactory due to an*

*inconsistency between the document submitted as evidence and the name or sex provided on the application for registration, such applicant may sign an affidavit:*

*(1) Stating the inconsistency or inconsistencies related to the name or sex, and the reason therefor; and*

*(2) swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship. However, there shall be no inconsistency between the date of birth on the document provided as evidence of citizenship and the date of birth provided on the application for registration. If such an affidavit is submitted by the applicant, the county election officer or secretary of state shall assess the eligibility of the applicant without regard to any inconsistency stated in the affidavit.*

*(r) All documents submitted as evidence of citizenship shall be kept confidential by the county election officer or the secretary of state and maintained as provided by Kansas record retention laws. The provisions of this subsection shall expire on July 1, 2016, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2016.*

*(s) The secretary of state may adopt rules and regulations to in order to implement the provisions of this section.*

*(t) Nothing in this section shall prohibit an applicant from providing, or the secretary of state or county election officer from obtaining satisfactory evidence of United States citizenship, as described in subsection (1), at a different time or in a different manner than an application for registration is provided, as long as the applicant's eligibility can be adequately assessed by the secretary of state or county election officer as required by this section.*

*(u) The proof of citizenship requirements of this section shall not become effective until January 1, 2013.*

Sec. 9. K.S.A. 2010 Supp. 25-2320 is hereby amended to read as follows: 25-2320. (a) The county election officer shall allow access to any person at any time during regular business hours, under supervision of the county election officer for the purpose of examining the voter registration books, active voter lists and other lists of voters required to be kept. Any person may make a written request for a copy of the registration books at any time except on any election day. The election officer is hereby directed to provide one or more copies which are accurate insofar as practicable of such books to the person so requesting. The election officer shall provide such copies to the person within 10 days following the request if so requested. The expense of making such copies shall be paid by the person requesting them. The cost of copies shall be established by the county election officer at a price which is not more than the actual cost and shall

be set uniformly in order that the price therefor shall be the same for all persons requesting identical copies.

(b) No voter registration record shall be made available for public inspection or copying unless the individual's social security number, *driver's license number, nondriver's identification card number* or any part thereof, has been removed or otherwise been rendered unreadable.

Sec. 10. K.S.A. 25-2352 is hereby amended to read as follows: 25-2352. (a) (1) Each Kansas division of motor vehicles driver's license application and nondriver identification card application (including any renewal application) submitted to a division of motor vehicles office in Kansas shall serve as an application for voter registration unless the applicant fails to sign the voter registration application. An individual who completes the application for voter registration and is otherwise eligible shall be registered to vote in accordance with the information supplied by the individual.

(2) An application for voter registration submitted under subsection (a)(1) shall be considered as updating any previous voter registration by the applicant.

(b) The voter registration section of the application:

(1) May require a second signature or other information that duplicates, or is in addition to, information in the driver's license or nondriver's identification card section of the application to prevent duplicate voter registrations, and to enable Kansas election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that specifies each eligibility requirement for voting, contains an attestation that the applicant meets each such requirement, including citizenship, and requires the signature of the applicant, under penalty of perjury;

(3) shall include a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes;

(4) shall include a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes;

(5) shall be made available by the division of vehicles (as submitted by the applicant, or in machine-readable or other format) to the secretary of state and county election officers, as provided by rules and regulations adopted by the secretary of state; and

(6) shall be transmitted to the county election officer not later than five days after the date of acceptance.

(c) The motor vehicle driver's license and nondriver identification card form used for change of residence address shall also serve as a notification

of change of residence address for voter registration for elections, unless the registrant states on the form that the change is not for voter registration purposes.

(d) The voter registration portion of the motor vehicle driver's license and nondriver identification card applications and change of address forms used shall be subject to approval by the secretary of state for purposes of voter registration under this section.

(e) Following the line fixed for the signature of the applicant on the application for voter registration, a statement shall be printed stating that the penalty for submission of a false voter registration application is a maximum presumptive sentence of 17 months in prison.

*(f) The department of revenue or an employee of the department of revenue acting within the scope of the employee's employment shall not be liable for any damages resulting from any claim based on the department of revenue's transfer of any motor vehicle record information to the secretary of state that is required or permitted by law.*

(f) (g) The secretary of state is hereby authorized to adopt such rules and regulations in the manner prescribed by law as may be necessary for the administration of the provisions of this section.

Sec. 11. K.S.A. 2010 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; ~~and~~ (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) ~~if the voter is a first-time voter as described in subsection (h) of~~

~~this section, request valid identification from the voter unless such voter has previously submitted current and valid identification in the county where registered; 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) A first-time voter shall provide to the election board a form of valid identification such as a current and valid Kansas driver's license, non-driver's identification card, utility bill, bank statement, paycheck, government check or other government document unless such voter has previously submitted current and valid identification in the county where registered. The document provided in accordance with this section shall contain the voter's current name and address as indicated on the registration book or poll book.~~

~~(e)~~ (d) If a ~~first-time~~ voter is unable or refuses to provide current and valid identification ~~at the polling place, or if the,~~ *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 (d)(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.*

~~(f)~~ (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.

~~(g)~~ (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.

~~(h) For the purposes of this section, “first-time voter” means a registered voter who has not previously voted in any election in the county in which the voter desires to vote. First-time voter includes a person whose name was removed from the county registration list in accordance with K.S.A. 25-2316c, and amendments thereto, and has re-registered.~~

~~(i)~~ (g) The secretary of state may adopt rules and regulations *in order to implement the provisions of this section and defined* defining 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.*

~~(2) If the address on the submitted form of identification is not current, the person may submit any one of the following documents in addition to the identification above to establish the person’s current address: a utility bill, bank statement, paycheck, government check or other government document. Documents provided in accordance with this section shall contain the voter’s current name and address as indicated on the registration book or poll book.~~

~~(3)~~ (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.*

Sec. 12. K.S.A. 2010 Supp. 25-3002 is hereby amended to read as follows: 25-3002. (a) The rules prescribed in this section shall apply to:

(1) The original canvass by election boards.

(2) Intermediate and final canvasses by county boards of canvassers.

(3) Final canvass by the state board of canvassers.

(4) All election contests.

(5) All other officers canvassing or having a part in the canvass of any election.

(b) Rules for canvassers:

(1) No ballot, or any portion thereof, shall be invalidated by any technical error unless it is impossible to determine the voter's intention. Determination of the voter's intention shall rest in the discretion of the board canvassing in the case of a canvass and in the election court in the case of an election contest.

(2) The occurrences listed in this subpart (2) shall not invalidate the whole ballot but shall invalidate that portion, and that portion only, in which the occurrence appears. The votes on such portion of the ballot shall not be counted for any candidate listed or written in such portion, but the remainder of the votes in other portions of the ballot shall be counted. The occurrences to which this subpart (2) shall apply are:

(A) Whenever a voting mark shall be made in the square at the left of the name of more than one candidate for the same office, except when the ballot instructs that more than one candidate is to be voted.

(B) Whenever a voting mark is placed in the square at the left of a space where no candidate is listed.

(3) When a registered voter has cast a provisional ballot intended for a precinct other than the precinct in which the voter resides but located within the same county, the canvassers shall count the votes for those offices or issues which are identical in both precincts. The canvassers shall not count the votes for those offices or issues which differ from the offices or issues appearing on the ballot used in the precinct in which the voter resides.

(4) A write-in vote for those candidates for the offices of governor and lieutenant governor shall not be counted unless the pair of candidates have filed an affidavit of candidacy pursuant to K.S.A. 25-305, and amendments thereto, and:

(A) Both candidates' names are written on the ballot; or

(B) only the name of the candidate for governor is written on the ballot.

(5) A write-in vote for those candidates for the offices of president and vice-president shall not be counted unless the pair of candidates have filed an affidavit of candidacy pursuant to K.S.A. 25-305, and amendments thereto, and:

(A) Both candidates' names are written on the ballot; or

(B) only the name of the candidate for president is written on the ballot.

(6) A write-in vote for candidates for state offices elected on a statewide basis other than offices subject to paragraph (4) shall not be counted unless the candidate has filed an affidavit of candidacy pursuant to K.S.A. 25-305, and amendments thereto.

(7) Any advance voting or mail ballot whose envelope containing the voter's written declaration is unsigned, shall be wholly void and no vote thereon shall be counted.

(8) ~~No ballot cast by a first-time voter as defined by K.S.A. 25-1122, and amendments thereto, or K.S.A. 25-2908, and amendments thereto, shall be counted if the voter fails to provide valid identification as defined by K.S.A. 25-2908, and amendments thereto.~~

Sec. 13. K.S.A. 2010 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. 2010 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 meeting the voter registration requirements of K.S.A. 25-2309, and amendments thereto. Such person 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.*

~~(3)~~ (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.

~~(4)~~ (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. 2010 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.

New Sec. 14. The secretary of state shall provide advance notice of the personal identification requirements of this act in a manner calculated to inform the public generally of the requirements for forms of personal identification as provided in this act. Such advance notice shall include, at a minimum, the use of advertisements and public service announcements in print, broadcast television, radio and cable television media, as well as the posting of information on the opening pages of the official internet websites of the secretary of state and governor.

New Sec. 15. The boards of county commissioners shall designate a county office or department to provide assistance at no charge to any person applying for a birth certificate from the state registrar of vital statistics for the purpose of registering to vote. Such county departments shall transmit the necessary forms to the state registrar's office at no cost to the person applying for the birth certificate.

Sec. 16. K.S.A. 25-208a is hereby amended to read as follows: 25-208a. (a) Within 10 days, Saturdays, Sundays and holidays not included, from the date of the filing of nomination petitions or a declaration of intention to become a candidate for United States senator or representative or for state office, the secretary of state shall determine the validity of such petitions or declaration.

The secretary of state shall send a copy of all petitions to the county election officer of the county of the district in which the nomination petition was passed. The county election officer shall check the petitions only for valid signatures and certify the results of such check to the secretary of state within 10 days, ~~Saturdays, Sundays and holidays not included~~, of the date the petitions were filed with the secretary. The secretary of state upon receipt of the validated petition from the county election officer shall notify the candidate of the validity of the petition.

(b) Within three days from the date of the filing of nomination petitions or a declaration of intention to become a candidate for county or township office or for precinct committeeman or committeewoman, the county election officer shall determine the validity of such petitions or declaration.

(c) If any nomination petitions or declarations are found to be invalid, the secretary of state or the county election officer, as the case may be, shall notify the candidate on whose behalf the petitions or declaration was filed that such nomination petitions or declaration have been found to be invalid and the reason for the finding. Such candidate may make objection to the finding of invalidity by the secretary of state or the county election officer in accordance with K.S.A. 25-308, and amendments thereto.

Sec. 17. K.S.A. 25-3203 is hereby amended to read as follows: 25-3203. If the secretary of state fails to receive the final abstract of the intermediate canvass of any national or state election from any county by the second Tuesday next after any election, the secretary shall dispatch a special messenger to obtain a copy of the same, and the county election officer shall immediately, on demand of such messenger, make out and deliver to such messenger the copy required. Thereupon, the messenger shall deliver such copy to the secretary of state without delay. The expenses of such messenger shall be paid by the secretary of state, and the secretary of state shall be reimbursed therefor by such county.

*Any county conducting a recount pursuant to K.S.A. 25-3107, and amendments thereto, shall notify the secretary of state of the recount and shall set a date, subject to approval by the secretary of state, when the county election officer shall submit the intermediate abstract of the county to the secretary of state.*

Sec. 18. K.S.A. 2010 Supp. 25-3104 is hereby amended to read as follows: 25-3104. The original canvass of every election shall be performed by the election boards at the voting places. The county election officer shall present the original returns, together with the ballots, books and any other records of the election, for the purpose of canvass, to the county board of canvassers at any time between ~~8:00~~ 8 a.m. and ~~10:00~~ 10 a.m. on the ~~Friday~~ *Monday* next following any election held on a Tuesday, except that the county election officer may move the canvass to the ~~Monday~~ *second Thursday* following the election if notice is published prior to the canvass in a newspaper with general circulation in the county. For elections not held on a Tuesday, the canvass by the county board of canvassers shall be held on a day and hour designated by it, and not later than the fifth day following the day of such election.

Sec. 19. K.S.A. 2010 Supp. 25-3107 is hereby amended to read as follows: 25-3107. (a) At the time of commencement of any canvass by the county board of canvassers the county election officer shall present to the county board of canvassers the preliminary abstracts of election returns, together with the ballots and records returned by the election boards. The county board of canvassers shall inspect and check the records presented by the county election officer and shall hear any questions which the county election officer believes appropriate for determination of the board. The county board of canvassers shall do what is necessary to obtain an accurate

and just canvass of the election and shall finalize the preliminary abstract of election returns by making any needed changes, and certifying its authenticity and accuracy. The certification of the county board of canvassers shall be attested by the county election officer. Neither the county board of canvassers nor the county election officer shall open or unseal sacks or envelopes of ballots, except as is required by K.S.A. 25-409, 25-1136 and 25-1337, and amendments thereto, or other specific provision of law or as is authorized to carry out a recount under subsection (b).

(b) If a majority of the members of the county board of canvassers shall determine that there are manifest errors appearing on the face of the poll books of any election board, which might make a difference in the result of any election, or if any candidate shall request the recount of the ballots cast in all or in only specified voting areas for the office for which such person is a candidate, or if any registered elector who cast a ballot in a question submitted election requests a recount in all or only specified voting areas to determine the result of the election, the county board of canvassers shall cause a special election board appointed by the county election officer to meet under the supervision of the county election officer and recount the ballots with respect to any office or question submitted specified by the county board of canvassers or requested by such candidate or elector. If a recount is required in a county that uses optical scanning systems as defined in K.S.A. 25-4601 et seq., and amendments thereto, or electronic or electromechanical voting systems, as defined in K.S.A. 25-4401, and amendments thereto, the method of conducting the recount shall be at the discretion of the person requesting such recount. The county election officer shall not be a member of such special election board. Before the special election board meets to recount the ballots upon a properly filed request, the party who makes the request shall file with the county election officer a bond, with security to be approved by the county or district attorney, conditioned to pay all costs incurred by the county in making such recount. In the event that the candidate requesting the recount is declared the winner of the election as a result of the recount, or if as a result of the recount a question submitted is overturned, no action shall be taken on the person's bond and the county shall bear the costs incurred for the recount. Any recount must be requested in writing and filed with the county election officer not later than ~~12:00 noon on the Monday following the election or, if the canvass is held on Monday, not later than 5:00 p.m. on the Tuesday next following the election~~ *5 p.m. on the day following the meeting of the county board of canvassers.* The request shall specify which voting areas are to be recounted. The county election officer shall immediately notify any candidate involved in the election for which such recount is requested, or shall notify the county chairperson of each candidate's party. Any such recount shall be initiated not later than the following day and shall be completed not later than ~~5:00-5 p.m. on Friday of such week or, if the recount request is made on the Tuesday after the election because of a Monday canvass, not later~~

~~than 5:00 p.m. the next following Monday~~ *the fifth day following the filing of the request for a recount, including Saturdays, Sundays and holidays.* Upon completion of any recount under this subsection, the election board shall package and reseal the ballots as provided by law and the county board of canvassers shall complete its canvass. The members of the special election board shall be paid as prescribed in K.S.A. 25-2811, and amendments thereto, for time actually spent making the recount.

(c) (1) The provisions of this subsection shall apply to candidates at any election for:

- (A) Any state or national office elected on a statewide basis;
- (B) the office of president or vice president of the United States;
- (C) the office of members of United States house of representatives;
- (D) office of members of state senate or house of representative whose district is located in two or more counties; and
- (E) office of members of state board of education.

(2) Any candidate may request a recount in one or more counties. Any such recount must be requested in writing and filed with the secretary of state not later than ~~12:00 noon on the Monday following the election or, if the canvass in one or more counties in the district is held on Monday, not later than 5:00 p.m. on the Tuesday next following the election~~ *5 p.m. on the second Friday following the election.* The request shall specify which counties are to be recounted. If a recount is required in a county that uses optical scanning systems as defined in K.S.A. 25-4601, and amendments thereto, or electronic or electromechanical voting systems, as defined in K.S.A. 25-4401, and amendments thereto, the method of conducting the recount shall be at the discretion of the person requesting such recount. Except as provided by this subsection and subsection (d), the person requesting the recount shall file with the secretary of state a bond, with security to be approved by the secretary of state, conditioned to pay all costs incurred by the counties and the secretary of state in making such recount. The amount of the bond shall be determined by the secretary of state. A candidate described in paragraphs (D) and (E) of subsection (c)(1) may post a bond as provided by subsection (b) in lieu of the bond required by this subsection. In the event that the candidate requesting the recount is declared the winner of the election as a result of the recount, no action shall be taken on the candidate's bond and the counties shall bear the costs incurred for the recount.

(3) The secretary of state immediately shall notify each county election officer affected by the recount and any candidate involved in the election for which such recount is requested. If the candidate cannot be reached, then the secretary of state shall notify the state chairperson of such candidate's party. Any such recount shall be conducted under the supervision of the county election officers at the direction of the secretary of state, and shall be initiated not later than the following day and shall be completed not later than ~~5:00~~ *5 p.m. on Friday of such week or, if the request is made*

~~on the Tuesday after the election because of a Monday canvass, not later than 5:00 p.m. on the next following Monday~~ *the fifth day following the filing of the request for a recount, including Saturdays, Sundays and holidays.* Each county election officer involved in the recount shall appoint a special election board to recount the ballots. The members of the special election board shall be paid as prescribed in K.S.A. 25-2811, and amendments thereto, for time actually spent making the recount. Upon completion of any recount under this subsection, the special election board in each county shall package and reseal the ballots as provided by law and the county board of canvassers shall complete its canvass. The county election officer in each county immediately shall certify the results of the recount to the secretary of state.

(d) (1) The provisions of this subsection shall apply to candidates at general elections for:

- (A) Any state or national office elected on a statewide basis;
- (B) the office of president or vice president of the United States;
- (C) the office of members of United States house of representatives;
- (D) office of members of state senate or house of representative; and
- (E) office of members of state board of education.

(2) Whenever the election returns reflect that a candidate for office was defeated by ~~one-half~~  $\frac{1}{2}$  of ~~one percent~~ 1% or less of the total number of votes cast and if such candidate requests a recount in one or more counties of the ballots, the state shall bear the cost of any recount performed using the method by which such ballots were counted originally.

(3) Not later than 60 days following a recount conducted pursuant to this subsection, the board of county commissioners of each county in which the recount occurred shall certify to the secretary of state the amount of all necessary direct expenses incurred by the county. Payment for such expenses shall be made to the county treasurer of the county upon warrants of the director of accounts and reports pursuant to vouchers approved by the secretary of state. Upon receipt of such payment and reimbursements, the county treasurer shall deposit the entire amount thereof in the county election fund, if there is one and if there is not then to the county general fund.

(4) The secretary of state, with the advice of the director of accounts and reports, shall determine the correctness of each amount certified under this section and adjust any discrepancies discovered before approving vouchers for payment to any county.

Sec. 20. If any provision of this act is held to be unconstitutional under the United States or Kansas constitutions, that provision shall be severed from the act, and the other provisions of this act shall remain valid and in effect.

Sec. 21. K.S.A. 25-208a, 25-2203, 25-2352 and 25-3203 and K.S.A. 2010 Supp. 8-1324, 25-1122, 25-1122d, 25-1123, 25-1124, 25-1128, 25-

2309, 25-2320, 25-2908, 25-3002, 25-3104, 25-3107 and 65-2418 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after January 1, 2012, and its publication in the statute book.

Approved April 18, 2011.

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## CHAPTER 57

### SENATE BILL No. 80

AN ACT concerning alcoholic beverages; amending K.S.A. 2010 Supp. 41-102, 41-308b and 41-2703 and repealing the existing sections.

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

Section 1. K.S.A. 2010 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 ~~8%~~ 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 or a farm winery.

(p) “Microbrewery” means a brewery licensed by the director to manufacture, store and sell domestic beer.

(q) “Minor” means any person under 21 years of age.

(r) “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) “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) “Person” means any natural person, corporation, partnership, trust or association.

(u) “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) (1) “Retailer” means a person who sells at retail, or offers for sale at retail, alcoholic liquors.

(2) “Retailer” does not include a microbrewery or a farm winery.

(w) “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) “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) “Secretary” means the secretary of revenue.

(z) (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) “To sell” includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

(bb) “Sleeve” means a package of two or more 50-milliliter (3.2-fluid-ounce) containers of spirits.

(cc) “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) “Supplier” means a manufacturer of alcoholic liquor or cereal malt beverage or an agent of such manufacturer, other than a salesperson.

(ee) “Temporary permit” has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(ff) “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. 2. K.S.A. 2010 Supp. 41-308b is hereby amended to read as follows: 41-308b. (a) A microbrewery license shall allow:

(1) The manufacture of not less than 100 nor more than 15,000 barrels of domestic beer during the license year and the storage thereof;

(2) the sale to beer distributors of beer, 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 beer 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 beer 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 domestic beer and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act; and

(6) if the licensee is also licensed as a caterer, the sale of domestic beer 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 microbrewery licensee, the director may issue not to exceed one microbrewery packaging and warehousing facility license to the microbrewery licensee. A microbrewery packaging and warehousing facility license shall allow:

(1) The transfer, from the licensed premises of the microbrewery to the licensed premises of the microbrewery packaging and warehousing facility, of beer manufactured by the licensee, for the purpose of packaging or storage, or both; and

(2) the transfer, from the licensed premises of the microbrewery packaging and warehousing facility to the licensed premises of the microbrewery, of beer manufactured by the licensee; or

(3) the removal from the licensed premises of the microbrewery packaging and warehousing facility of beer manufactured by the licensee for the purpose of delivery to a licensed beer wholesaler.

(c) A microbrewery may sell domestic beer 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 microbrewery may serve samples of domestic beer and serve and sell domestic beer 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 brewers a permit to import into this state small quantities of beer. Such beer shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such beer 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 beer to be imported, the quantity to be imported, the tasting programs for which the beer is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of beer pursuant to this subsection and the conduct of tasting programs for which such beer is imported.

(e) A microbrewery license or microbrewery packaging and warehousing-

ing 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 microbrewery 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 microbrewery 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.

Sec. 3. K.S.A. 2010 Supp. 41-2703 is hereby amended to read as follows: 41-2703. (a) After examination of an application for a retailer's license, the board of county commissioners or the director shall, if they approve the same, issue a license to the applicant. The governing body of the city shall, if the applicant is qualified as provided by law, issue a license to such applicant.

(b) No retailer's license shall be issued to:

(1) A person who is not a resident of the county in which the place of business covered by the license is located, has not been a resident of such county for at least six months or has not been a resident in good faith of the state of Kansas.

(2) A person who has not been a resident of this state for at least one year immediately preceding application for a retailer's license.

(3) A person who is not of good character and reputation in the community in which the person resides.

(4) A person who is not a citizen of the United States.

(5) A person who, within two years immediately preceding the date of application approval, has been convicted of, released from incarceration for or released from probation or parole for a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

(6) A partnership, unless all the members of the partnership are otherwise qualified to obtain a license.

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such

corporation, would be ineligible to receive a license hereunder for any reason other than the citizenship and residency requirements.

(8) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications of a licensee.

(9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection (b)(9) shall not apply in determining eligibility for a renewal license.

(10) A person 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.

(c) After examination of an application for a retailer's license, the board of county commissioners or the governing body of a city may deny a license to a person, partnership or corporation if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager, director or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which has:

(1) Had a retailer's license revoked under K.S.A. 41-2708, and amendments thereto; or

(2) been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(d) Retailers' licenses shall be issued either on an annual basis or for the calendar year. If such licenses are issued on an annual basis, the board of county commissioners or the governing body of the city shall notify the distributors supplying the county or city on or before April 1 of the year if a retailer's license is not renewed.

(e) *In addition to, and consistent with the requirements of K.S.A. 41-2701 et seq., and amendments thereto, the board of county commissioners of any county or the governing body of any city may provide by resolution or ordinance for the issuance of a special event retailers' permit which shall allow the permit holder to offer for sale, sell and serve cereal malt beverage for consumption on unpermitted premises, which may be open to the public, subject to the following:*

(1) *A special event retailers' permit shall specify the premises for which the permit is issued;*

(2) *a special event retailers' permit shall be issued for the duration of the special event, the dates and hours of which shall be specified in the permit;*

(3) *no more than four special event retailers' permits may be issued to any one applicant in a calendar year; and*

(4) *a special event retailers' permit shall not be transferable or assignable.*

(f) *A special event retailers' permit holder shall not be subject to the provisions of the beer and cereal malt beverage keg registration act, K.S.A. 41-2901 et seq., and amendments thereto.*

Sec. 4. K.S.A. 2010 Supp. 41-102, 41-308b and 41-2703 are hereby repealed.

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

Approved April 18, 2011.

Published in the *Kansas Register* April 28, 2011.

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## CHAPTER 58

### SENATE BILL No. 210\*

AN ACT providing for assessments on providers of home and community-based services developmental disability waiver program; prescribing powers, duties and functions for the Kansas health policy authority; creating the quality based community assessment fund; providing for implementation and administration.

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

Section 1. (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) "Entity" means individual, corporation, partnership, limited liability company, joint venture or other legal entity.

(4) "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) "Quality based community fee 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) “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) “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) “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 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 shall collect any and all assessment pursuant to the provisions of this section. The authority 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 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 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. 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 or the authority'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 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 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 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 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 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 per-

missible 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 shall implement and administer the provisions of subsections (a) through (e) in a manner consistent with applicable federal laws and regulations. The authority 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 approval 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. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 18, 2011.

Published in the *Kansas Register* April 28, 2011.

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## CHAPTER 59

### SENATE BILL No. 136\*

AN ACT concerning insurance; relating to the recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured motor vehicle.

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

Section 1. (a) Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain personal injury protection benefits coverage mandated by the Kansas automobile injury reparations act, article 31 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, shall have no cause of action for recovery of noneconomic loss sustained as a result of an accident while operating an uninsured automobile. The provisions of this subsection shall not apply and a cause of action for noneconomic loss may be maintained if the court finds by clear and convincing evidence that the person bringing the cause of action did not knowingly at the time of the accident drive a motor vehicle that was without personal injury protection benefits coverage mandated by the Kansas automobile injury reparations act. The provisions of this subsection shall not apply to any person who at the time of an automobile accident has failed to maintain coverage for a period of 45 days or less and who had maintained continuous coverage for at least one year immediately prior to such failure to maintain coverage.

(b) Any person who is convicted of, or pleads guilty to, a violation of K.S.A. 8-1014 or 8-1567, and amendments thereto, or a similar violation of law in another state or an ordinance of any city, or resolution of any county, in connection with an accident, shall have no cause of action for recovery of noneconomic loss sustained as a result of the accident.

(c) The provisions of this section shall apply to a cause of action arising on and after 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 May 12, 2011.

## CHAPTER 60

## House Substitute for SENATE BILL No. 23

AN ACT concerning children and minors; relating to grandparents as interested parties; relating to jury trials; relating to high school diplomas for children in the custody of the secretary and children in the custody of the commissioner; amending K.S.A. 2010 Supp. 38-2241, 38-2344 and 38-2357 and repealing the existing sections.

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

New Section 1. (a) The board of education of a school district shall award a high school diploma to any person requesting a diploma if such person: (1) Is at least 17 years of age; (2) is enrolled or resides in such school district; (3) is or has been a child in the custody of the secretary at any time on or after such person's 14th birthday; and (4) has achieved at least the minimum high school graduation requirements adopted by the state board of education.

(b) This section shall be part of and supplemental to the revised Kansas code for care of children.

New Sec. 2. (a) The board of education of a school district shall award a high school diploma to any person requesting a diploma if such person: (1) Is at least 17 years of age; (2) is enrolled or resides in such school district; (3) is or has been a child in the custody of the commissioner at any time on or after such person's 14th birthday; and (4) has achieved at least the minimum high school graduation requirements adopted by the state board of education.

(b) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

Sec. 3. K.S.A. 2010 Supp. 38-2241 is hereby amended to read as follows: 38-2241. (a) *Jurisdiction of the court.* Parties and interested parties in a child in need of care proceedings are subject to the jurisdiction of the court.

(b) *Rights of parties.* Subject to the authority of the court to rule on the admissibility of evidence and provide for the orderly conduct of the proceedings, the rights of parties to participate in a child in need of care proceeding include, but are not limited to:

(1) Notice in accordance with K.S.A. 2010 Supp. 38-2236 and 38-2239, and amendments thereto;

(2) present oral or written evidence and argument, to call and cross-examine witnesses; and

(3) representation by an attorney in accordance with K.S.A. 2010 Supp. 38-2205, and amendments thereto.

(c) *Grandparents as interested parties.* (1) A grandparent of the child shall be ~~made~~ an interested party to a child in need of care proceeding ~~if the grandparent notifies the court of such grandparent's desire to become an interested party. Notification may be made in writing, orally or by ap-~~

~~pearance at the initial or a subsequent hearing on the child in need of care petition.~~

(2) ~~Grandparents with interested party status~~ shall have the participatory rights of parties pursuant to subsection (b), except that the court may restrict those rights if the court finds that it would be in the best interests of the child. A grandparent may not be prevented under this paragraph from attending the proceedings, having access to the child's official file in the court records or making a statement to the court.

(d) *Persons with whom the child has been residing as interested parties.* (1) Any person with whom the child has resided for a significant period of time within six months of the date the child in need of care petition is filed shall be made an interested party, if such person notifies the court of such person's desire to become an interested party. Notification may be made in writing, orally or by appearance at the initial or a subsequent hearing on the child in need of care petition.

(2) Persons with interested party status under this subsection shall have the participatory rights of parties pursuant to subsection (b), except that the court may restrict those rights if the court finds that it would be in the best interests of the child.

(e) *Other interested parties.* (1) Any person with whom the child has resided at any time, who is within the fourth degree of relationship to the child, or to whom the child has close emotional ties may, upon motion, be made an interested party if the court determines that it is in the best interests of the child.

(2) Any other person or Indian tribe seeking to intervene that is not a party may, upon motion, be made an interested party if the court determines that the person or tribe has a sufficient relationship with the child to warrant interested party status or that the person's or tribe's participation would be beneficial to the proceedings.

(3) The court may, upon its own motion, make any person an interested party if the court determines that interested party status would be in the best interests of the child.

(f) *Procedure for determining, denying or terminating interested party status.* (1) Upon the request of the court, the secretary shall investigate the advisability of granting interested party status under this section and report findings and recommendations to the court.

(2) The court may deny or terminate interested party status under this subsection if the court determines, after notice and a hearing, that a person does not qualify for interested party status or that there is good cause to deny or terminate interested party status.

(3) A person who is denied interested party status or whose status as an interested party has been terminated may petition for review of the denial or termination by the chief judge of the district in which the court having jurisdiction over the child in need of care proceeding is located, or a judge designated by the chief judge. The chief judge or the chief judge's designee

shall review the denial or termination within 30 days of receiving the petition. The child in need of care proceeding shall not be stayed pending resolution of the petition for review.

Sec. 4. K.S.A. 2010 Supp. 38-2344 is hereby amended to read as follows: 38-2344. (a) When the juvenile appears without an attorney in response to a complaint, the court shall inform the juvenile of the following:

- (1) The nature of the charges in the complaint;
- (2) the right to hire an attorney of the juvenile's own choice;
- (3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile or parent; and
- (4) that the court may require the juvenile or parent to pay the expense of a court appointed attorney.

Upon request the court shall give the juvenile or parent an opportunity to hire an attorney. If no request is made or the juvenile or parent is financially unable to hire an attorney, the court shall forthwith appoint an attorney for the juvenile. The court shall afford the juvenile an opportunity to confer with the attorney before requiring the juvenile to plead to the allegations of the complaint.

(b) When the juvenile appears with an attorney in response to a complaint, the court shall require the juvenile to plead guilty, *nolo contendere* or not guilty to the allegations stated in the complaint, unless there is an application for and approval of an immediate intervention program. Prior to making this requirement, the court shall inform the juvenile of the following:

- (1) The nature of the charges in the complaint;
- (2) the right of the juvenile to be presumed innocent of each charge;
- (3) the right to *jury* trial without unnecessary delay ~~and~~;
- (4) *the right* to confront and cross-examine witnesses appearing in support of the allegations of the complaint;
- ~~(4)~~ (5) the right to subpoena witnesses;
- ~~(5)~~ (6) the right of the juvenile to testify or to decline to testify; and
- ~~(6)~~ (7) the sentencing alternatives the court may select as the result of the juvenile being adjudicated a juvenile offender.

(c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads *nolo contendere*, the court shall determine, before accepting the plea and entering a sentence: (1) That there has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4), ~~and~~ (5) and (6); and (2) that there is a factual basis for the plea.

(d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial to the court.

(e) First appearance may be conducted 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. 5. K.S.A. 2010 Supp. 38-2357 is hereby amended to read as follows: 38-2357. ~~In all cases involving offenses committed by a juvenile which, if done by an adult, would make the person liable to be arrested and prosecuted for the commission of a felony, the judge may upon motion, order that the juvenile be afforded a trial by jury. Upon the juvenile being adjudged to be a juvenile offender, the court shall proceed with sentencing.~~

*(a) Method of trial. A juvenile is entitled to a trial by one of the following means:*

*(1) The trial of a felony or misdemeanor case shall be to the court unless the juvenile requests a jury trial in writing within 30 days from the date of the juvenile's entry of a plea of not guilty. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such a time requirement would cause undue hardship or prejudice to the juvenile.*

*(A) A jury in a felony case shall consist of 12 members. However, the parties may agree in writing, at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12.*

*(B) A jury in a misdemeanor case shall consist of six members.*

*(C) When the trial is to a jury, questions of law shall be decided by the court and issues of fact shall be determined by the jury.*

*(D) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in misdemeanor cases.*

*(2) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to the court.*

*(b) Selection of jury panel. (1) When a jury trial is held, the judge shall summon from the source and in the manner provided for the summoning of other petit jurors in the district court in the county. A sufficient number of jurors shall be called so that after the exercise of peremptory challenges, as provided in this section, there will remain a sufficient number of jurors to enable the court to cause 12 jurors to be sworn in felony cases and six jurors to be sworn in misdemeanor cases. When drawn, a list of prospective jurors and their addresses shall be filed in the office of the clerk of the court and shall be a public record. The qualifications of jurors and grounds for exemption from jury service in civil cases shall be applicable in juvenile trials, except as otherwise provided by law. An exemption from service on a jury is not a basis for challenge, but is the privilege of the person exempted.*

*(2) The county or district attorney and the juvenile's attorney shall conduct the examination of prospective jurors. The court may conduct an ad-*

*ditional examination. The court may limit the examination by the juvenile's attorney or the county or district attorney if the court believes such examination to be harassment, is causing unnecessary delay or serves no useful purpose.*

*(3) Each party may challenge any prospective juror for cause. All challenges for cause must be made before the jury is sworn to try the case. Challenges for cause shall be tried by the court. A juror may be challenged for cause on any of the following grounds:*

*(A) The juror is related to the juvenile, or a person alleged to have been injured by the offense charged or the person on whose complaint the adjudication was begun, by consanguinity within the sixth degree, or is the spouse of any person so related.*

*(B) The juror is the attorney, client, employer, employee, landlord, tenant, debtor, creditor or a member of the household of the juvenile or a person alleged to have been injured by the offense charged or the person on whose complaint the adjudication was instituted.*

*(C) The juror is or has been a party adverse to the juvenile or the juvenile's parents in a civil action, or has complained against the juvenile in an adjudication or been accused by the juvenile in a criminal prosecution.*

*(D) The juror has served on a public body which has inquired into the events that are the subject of the adjudication or on any other investigatory body which inquired into the facts of the offense charged.*

*(E) The juror was a witness to the act or acts alleged to constitute the offense.*

*(F) The juror occupies a fiduciary relationship to the juvenile or the juvenile's parents or a person alleged to have been injured by the offense or the person on whose complaint the adjudication was instituted.*

*(G) The juror's state of mind with reference to the case or any of the parties is such that the court determines there is doubt that the juror can act impartially and without prejudice to the substantial rights of any party.*

*(4) Peremptory challenges shall be allowed as follows:*

*(A) Each juvenile charged with an offense which, if committed by an adult, would constitute:*

*(i) An off-grid felony or a nondrug or drug felony ranked at severity level 1 shall be allowed 12 peremptory challenges;*

*(ii) a nondrug felony ranked at severity level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2 or 3, shall be allowed eight peremptory challenges;*

*(iii) an unclassified felony, a nondrug severity level 7, 8, 9 or 10, or a drug severity level 4 felony, shall be allowed six peremptory challenges; and*

*(iv) a misdemeanor shall be allowed three peremptory challenges.*

*(B) The state shall be allowed the same number of peremptory challenges as all juveniles.*

(C) *The most serious penalty offense charged against each juvenile furnishes the criterion for determining the allowed number of peremptory challenges for that juvenile.*

(D) *Additional peremptory challenges shall not be allowed when separate counts are charged in the complaint.*

(5) *After the parties have interposed all of their challenges to jurors, or have waived further challenges, the jury shall be sworn to try the case.*

(6) *A trial judge may empanel one or more alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Such jurors shall be selected in the same manner, have the same qualifications and be subject to the same examination and challenges and take the same oath and have the same functions, powers and privileges as the regular jurors. Such jurors may be selected at the same time as the regular jurors or after the jury has been empaneled and sworn, in the judge's discretion. Each party shall be entitled to one peremptory challenge to such alternate jurors. Such alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend at all times upon the trial of the cause in company with the other jurors. They shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors also shall be kept in confinement with the other jurors. Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror shall be discharged from jury service in any such action prior to the jury reaching its verdict, the court shall draw the name of an alternate juror who shall replace the juror so discharged and be subject to the same rules and regulations as though such juror had been selected as one of the original jurors.*

(7) *Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least five days prior to the date set for trial if the names and addresses of the panel members and the grounds for objection thereto are known to the parties or can be learned by an inspection of the records of the clerk of the district court at that time; in other cases the motion must be made prior to the time when the jury is sworn to try the case. For good cause shown, the court may entertain the motion at any time thereafter. The motion shall be in writing and shall state facts which, if true, show that the jury panel was improperly selected or drawn. If the motion states facts which, if true, show that the jury panel was improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant. If the court finds that the jury*

*panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.*

*(8) If a juror has personal knowledge of any fact material to the case, the juror must inform the court and shall not speak of such fact to other jurors out of court. If a juror has personal knowledge of a fact material to the case, gained from sources other than evidence presented at trial and shall speak of such fact to other jurors without the knowledge of the court or the juvenile, the juror may be adjudged in contempt and punished accordingly.*

*(c) View of place of offense. Whenever in the opinion of the court it is proper for the jurors to have a view of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. They may be accompanied by the juvenile, the juvenile's attorney and the county or district attorney. While the jurors are thus absent, no person other than the officer and the person appointed to show them the place shall speak to them on any subject connected with the trial. The officer or person appointed to show them the place shall speak to the jurors only to the extent necessary to conduct them to and identify the place or thing in question.*

*(d) Submission of case to the jury. (1) At the close of the evidence, or at such earlier time during the trial as the judge reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests.*

*(A) The judge shall instruct the jury at the close of the evidence before argument and the judge, in the judge's discretion, after the opening statements, may instruct the jury on such matters as in the judge's opinion will assist the jury in considering the evidence as it is presented.*

*(B) The judge shall instruct the jury as to the offense charged and any lesser included offense in cases where there is some evidence which would reasonably justify an adjudication for some lesser included offense that is:*

- (i) A lesser degree of the same offense;*
- (ii) an offense where all elements of the lesser offense are identical to some of the elements of the offense charged;*
- (iii) an attempt to commit the offense charged; or*
- (iv) an attempt to commit an offense defined under subsection (d)(1)(B)(i) or (ii).*

*(C) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed or refuse to do so, or give the requested instruction with modification. All instructions given or requested must be filed as a part of the record of the case. The court reporter shall record all objections to the instructions given or refused by the court, together with modifications made, and the rulings of the court. No party may assign as error the giving or failure to give an instruction,*

*including a lesser included offense instruction, unless the party objects thereto before the jury retires to consider its verdict. The attorney making the objection shall specify the matter to which the party objects and the basis of the objection unless the instruction or the failure to give an instruction is clearly erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.*

*(2) When the jury has been instructed, unless the case is submitted to the jury on either side or on both sides without argument, the county or district attorney may commence and may conclude the argument. If there is more than one alleged juvenile offender, the court shall determine their relative order in presentation of evidence and argument. In arguing the case, comment may be made upon the law of the case as given in the instructions, as well as upon the evidence.*

*(e) Motion for judgment of acquittal. (1) The court on motion of a juvenile or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the complaint after the evidence on either side is closed if the evidence is insufficient to sustain a finding of guilt for such offense or offenses. If a juvenile's motion for judgment of acquittal at the close of the evidence offered by the county or district attorney is not granted, the juvenile may offer evidence without having reserved the right.*

*(2) If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.*

*(3) If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within seven days after the jury is discharged or within such further time as the court may fix during the seven-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.*

*(f) Jury deliberation. (1) When the case is finally submitted to the jury, they shall retire for deliberation. They must be kept together in some convenient place under charge of a duly sworn officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer in charge of the jury shall not communicate to the jury, or allow any communications to be made to them, unless by order of the court; and before their verdict is rendered, the officer in charge of the jury shall not communicate to any person the state of their deliberations, or the verdict agreed upon. No person other than members of the jury shall be present in the jury room during deliberations.*

(2) *If the jury is permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or allow themselves to be addressed by any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them, and that such admonition shall apply to every subsequent separation of the jury.*

(3) *After the jury has retired for deliberation, if they desire to be informed as to any part of the law or evidence arising in the case, they may request the officer to conduct them to the court, where the information on the point of the law shall be given, or the evidence shall be read or exhibited to them in the presence of the juvenile, unless the juvenile is voluntarily absent, and the juvenile's attorney, after notice to the county or district attorney.*

(4) *The jury may be discharged by the court on account of the sickness of a juror or other accident or calamity, or other necessity to be found by the court requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.*

(g) *Verdict, procedure. The verdict shall be written, signed by the presiding juror and read by the clerk to the jury, and the inquiry made whether it is the jury's verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement is expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If the verdict is defective in form only, it may be corrected by the court, with the assent of the jury, before it is discharged.*

(h) *Mistrials. (1) The trial court may terminate the trial and order a mistrial at any time that the court finds termination is necessary because:*

(A) *It is physically impossible to proceed with the trial in conformity with the law;*

(B) *there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law and the juvenile requests or consents to the declaration of a mistrial;*

(C) *prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the juvenile or the state;*

(D) *the jury is unable to agree upon a verdict;*

(E) *false statements of a juror on voir dire prevent a fair trial; or*

(F) *the trial has been interrupted pending a determination of the juvenile's competency to stand trial.*

(2) *When a mistrial is ordered, the court shall direct that the case be retained on the docket for trial or such other proceedings as may be proper and that the juvenile may be held in custody pending such further proceedings pursuant to this code.*

Sec. 6. K.S.A. 2010 Supp. 38-2241, 38-2344 and 38-2357 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 12, 2011.

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## CHAPTER 61

### HOUSE BILL No. 2076

AN ACT concerning insurance; municipal pools; relating to certain filings with the insurance commissioner; relating to certain records of the insurance department's anti-fraud division; relating to surplus lines insurance; relating to the surplus lines insurance multi-state compliance compact; amending K.S.A. 12-2620, 40-246c, 40-246e and 44-584 and K.S.A. 2010 Supp. 12-2618 and 40-246b and repealing the existing sections; also repealing K.S.A. 2010 Supp. 40-2,118.

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

Section 1. From and after July 1, 2011, K.S.A. 2010 Supp. 12-2618 is hereby amended to read as follows: 12-2618. Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than ~~30~~ 60 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) Designation of the initial board of trustees and administrator. When there is a change in the membership of the board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(c) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(d) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000 for each of the categories described in subparagraphs (1) through (4) of this subsection: (1) All property insurance under article 9 of chapter 40 of the Kansas Statutes Annotated except motor vehicle physical damage; (2) motor vehicle liability and physical damage insurance; (3) workers' compensation and employers' liability insurance; (4) all casualty insurance under article 11 of chapter 40 of the Kansas Statutes Annotated except insurance under categories (2) and (3) above; (5) group sickness and accident insurance if at the date of issue the annual gross

premium for such coverage will be not less than \$1,000,000; and (6) group life insurance if at the date of issue the coverage will insure at least 60% of the eligible participants or the total number of persons covered will exceed 600. The pool shall notify the commissioner within 30 days if the minimum premium qualification or participation requirement is less than that specified in this subsection for any of the above categories of insurance.

(e) An agreement binding the group and each member thereof to comply with the provisions of the workers compensation act if such coverage is to be provided by the pool. For all lines of coverage, all members of the pool shall be jointly liable for the payment of claims to the extent of the assets of the pool.

(f) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and, with respect to the categories identified in subsection (d)(1) through (4), safety engineering.

(g) A copy of the procedures adopted by the pool to provide claims adjusting and accumulation of income and expense and loss data.

(h) A confirmation that specific and aggregate excess insurance provided by an insurance company holding a Kansas certificate of authority or reinsurance approved by the commissioner is or will be in effect concurrent with the assumption of risk by the pool, as selected by the board of trustees of the pool, or adequate surplus funds as approved by the commissioner, in the pool. The pool shall notify the commissioner within 30 days of any change in the specific or aggregate excess insurance or reinsurance carried by the pool. For the purposes hereof, "surplus funds" shall mean retained earnings of the pool after reserves have been established for all known and incurred but not reported losses of the pool and after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets. The term "adequate surplus funds" shall mean the amount necessary for the pool to fund its self-insured obligations.

(i) After evaluating the application the commissioner shall notify the applicant if the plan submitted is inadequate, fully explaining to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 10 days to make an application for hearing by the commissioner after the denial notice is received. A record shall be made of such hearing, and the cost thereof shall be assessed against the applicant requesting the hearing.

(j) Any other relevant factors the commissioner may deem necessary.

Sec. 2. From and after July 1, 2011, K.S.A. 12-2620 is hereby amended to read as follows: 12-2620. (a) All certificates granted hereunder shall be perpetual unless sooner suspended or revoked by the commissioner or the attorney general.

(b) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and the financial condition of any pool, except that once every five years the

commissioner shall conduct an examination of the affairs and the financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than ~~90~~ 150 days after the end of the fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. Any pool which does not use rates developed by an approved rating organization shall file with the commissioner an actuarial certification that such rates are actuarially sound. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner may require any of the actions allowed under K.S.A. 40-222b and amendments thereto or suspend the certificate of authority for such pool until its ability to pay current and future claims shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the ability to pay claims of such pool and in complying with the law or if rehabilitation or corrective action taken under K.S.A. 40-222b and amendments thereto is unsuccessful, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

(c) On an annual basis, or within 30 days of any change thereto, each pool shall supply to the commissioner the name and qualifications of the designated administrator of the pools and the terms of the specific and aggregate excess insurance contracts of the pool.

New Sec. 3. From and after July 1, 2011, (a) For purposes of this act a “fraudulent insurance act” means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain mate-

rially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

(b) An insurer that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed shall provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may require.

(c) Any other person that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed may provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may request.

(d) (1) Each insurer shall have antifraud initiatives reasonably calculated to detect fraudulent insurance acts. Antifraud initiatives may include: Fraud investigators, who may be insurer employees or independent contractors; or an antifraud plan submitted to the commissioner no later than July 1, 2007. Each insurer that submits an antifraud plan shall notify the commissioner of any material change in the information contained in the antifraud plan within 30 days after such change occurs. Such insurer shall submit to the commissioner in writing the amended antifraud plan.

The requirement for submitting any antifraud plan, or any amendment thereof, to the commissioner shall expire on the date specified in paragraph (2) of this subsection unless the legislature reviews and reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229, and amendments thereto.

(2) Any antifraud plan, or any amendment thereof, submitted to the commissioner for informational purposes only shall be confidential and not be a public record and shall not be subject to discovery or subpoena in a civil action unless following an in camera review, the court determines that the antifraud plan is relevant and otherwise admissible under the rules of evidence set forth in article 4 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto. The provisions of this paragraph shall expire on July 1, 2016, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2016.

(e) Except as otherwise specifically provided in K.S.A. 21-3718, and amendments thereto, and K.S.A. 44-5,125, and amendments thereto, a fraudulent insurance act shall constitute a severity level 6, nonperson felony if the amount involved is \$25,000 or more; a severity level 7, nonperson felony if the amount is at least \$5,000 but less than \$25,000; a severity level 8, nonperson felony if the amount is at least \$1,000 but less than \$5,000; and a class C nonperson misdemeanor if the amount is less than \$1,000. Any combination of fraudulent acts as defined in subsection (a) which occur in a period of six consecutive months which involves \$25,000

or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block.

(f) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(g) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.

Sec. 4. From and after July 1, 2011, K.S.A. 2010 Supp. 44-584 is hereby amended to read as follows: 44-584. (a) The application for a new certificate shall be signed by the trustees of the trust fund created by the pool. Any application for a renewal of an existing certificate shall meet at least the standards established in subsections (a)(6) through (a)(14) of K.S.A. 44-582, and amendments thereto. After evaluating the application the commissioner shall notify the applicant that the plan submitted is approved or conversely, if the plan submitted is inadequate, the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 15 days to make an application for hearing by the commissioner after service of the denial notice. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) An approved certificate of authority shall remain in full force and effect until such certificate is suspended or revoked by the commissioner. An existing pool operating under an approved certificate of authority must file with the commissioner, within 120 days following the close of the pool's fiscal year, a current financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the worker compensation act and confirmation of specific and aggregate excess insurance as required by law for the pool. If an existing pool's certificate of authority is suspended or revoked, such pool shall have the same rights to a hearing by the commissioner as for applicants for new certificates of authority as set forth in subsection (a) above.

(c) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and financial condition of any pool in accordance with K.S.A. 40-222 and 40-223, and amendments thereto, except that once every five years the commissioner shall conduct an examination of the affairs and financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than ~~90~~ 150 days after the end of the pool's fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the commissioner

shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the solvency of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid the compensation in the amount, manner and time due as provided for in the Kansas workers compensation act, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing in accordance with the provisions of the Kansas administrative procedure act, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers compensation pools.

New Sec. 5. Sections 5 through 7, and amendments thereto, may be cited as the Surplus Lines Insurance Multi-State Compliance Compact.

#### PREAMBLE

WHEREAS, with regard to Non-Admitted Insurance policies with risk exposures located in multiple states, the 111th United States Congress, has stipulated in Title V, Subtitle B the Non-Admitted and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, hereafter, the NRRRA, that:

(A) The placement of Non-Admitted Insurance shall be subject to the statutory and regulatory requirements solely of the insured's Home State, and

(B) Any law, regulation, provision, or action of any State that applies or purports to apply to Non-Admitted Insurance sold to, solicited by, or negotiated with an insured whose Home State is another State shall be preempted with respect to such application; except that any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a Non-Admitted Insurer shall not be preempted.

WHEREAS, in compliance with NRRRA, no State other than the Home State of an insured may require any Premium Tax payment for Non-Admitted Insurance; and no State other than an insured's Home State may require a Surplus Lines Broker to be licensed in order to sell, solicit, or negotiate Non-Admitted Insurance with respect to such insured;

WHEREAS, the NRRA intends that the States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's Home State; and that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for Non-Admitted Insurance;

WHEREAS, after the expiration of the two-year period beginning on the date of the enactment of the NRRA, a State may not collect any fees relating to licensing of an individual or entity as a Surplus Lines Licensee in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of Surplus Lines Licensees and the renewal of such licenses;

WHEREAS, a need exists for a system of regulation that will provide for Surplus Lines Insurance to be placed with reputable and financially sound Non-Admitted Insurers, and that will permit orderly access to Surplus Lines Insurance in this state and encourage insurers to make new and innovative types of insurance available to consumers in this state;

WHEREAS, protecting the revenue of this state and other Compacting States may be accomplished by facilitating the payment and collection of Premium Tax on Non-Admitted Insurance and providing for allocation of Premium Tax for Non-Admitted Insurance of Multi-State Risks among the States in accordance with Uniform Allocation Formulas;

WHEREAS, the efficiency of the surplus lines market may be improved by eliminating duplicative and inconsistent tax and regulatory requirements among the States, and by promoting and protecting the interests of Surplus Lines Licensees who assist such insureds and Non-Admitted Insurers, thereby ensuring the continued availability of Non-Admitted Insurance to consumers;

WHEREAS, regulatory compliance with respect to Non-Admitted Insurance placements may be streamlined by providing for exclusive single-state regulatory compliance for Non-Admitted Insurance of Multi-State Risks, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including but not limited to insureds, regulators, Surplus Lines Licensees, other insurance producers, and Surplus Lines Insurers;

WHEREAS, coordination of regulatory resources and expertise between State insurance departments and other State agencies, as well as State surplus lines stamping offices, with respect to Non-Admitted Insurance will be improved;

NOW, THEREFORE, in consideration of the foregoing, the State of Kansas and the various other States do hereby solemnly covenant and agree, each with the other as follows:

## ARTICLE I

## Purpose

The purposes of this Compact are:

1. To implement the express provisions of the NRRA.
2. To protect the Premium Tax revenues of the Compacting States through facilitating the payment and collection of Premium Tax on Non-Admitted Insurance; and to protect the interests of the Compacting States by supporting the continued availability of such insurance to consumers; and to provide for allocation of Premium Tax for Non-Admitted Insurance of Multi-State Risks among the States in accordance with uniform Allocation Formulas to be developed, adopted, and implemented by the Commission.
3. To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the States; and promote and protect the interest of Surplus Lines Licensees who assist such insureds and Surplus Lines Insurers, thereby ensuring the continued availability of Surplus Lines Insurance to consumers.
4. To streamline regulatory compliance with respect to Non-Admitted Insurance placements by providing for exclusive single-state regulatory compliance for Non-Admitted Insurance of Multi-State Risks, in accordance with Rules to be adopted by the Commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including but not limited to insureds, regulators, Surplus Lines Licensees, other insurance producers, and Surplus Lines Insurers.
5. To establish a Clearinghouse for receipt and dissemination of Premium Tax and Clearinghouse Transaction Data related to Non-Admitted Insurance of Multi-State Risks, in accordance with Rules to be adopted by the Commission.
6. To improve coordination of regulatory resources and expertise between State insurance departments and other State agencies, as well as State surplus lines stamping offices, with respect to Non-Admitted Insurance.
7. To adopt uniform Rules to provide for Premium Tax payment, reporting, allocation, data collection and dissemination for Non-Admitted Insurance of Multi-State Risks and Single-State Risks, in accordance with Rules to be adopted by the Commission, thereby promoting the overall efficiency of the Non-Admitted Insurance market.
8. To adopt uniform mandatory Rules with respect to regulatory compliance requirements for:
  - (i) foreign Insurer Eligibility Requirements;
  - (ii) surplus lines Policyholder Notices;
9. To establish the Surplus Lines Insurance Multi-State Compliance Compact Commission.
10. To coordinate reporting of Clearinghouse Transaction Data on Non-

Admitted Insurance of Multi-State Risks among Compacting States and Contracting States.

11. To perform these and such other related functions as may be consistent with the purposes of the Surplus Lines Insurance Multi-State Compliance Compact.

## ARTICLE II

### Definitions

For purposes of this Compact the following definitions shall apply:

1. “Admitted Insurer” means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the Home State; for purposes of this Compact “Admitted Insurer” shall not include a domestic surplus lines insurer as may be defined by applicable State law.

2. “Affiliate” means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

3. “Allocation Formula” means the uniform methods promulgated by the Commission by which insured risk exposures will be apportioned to each State for the purpose of calculating Premium Taxes due.

4. “Bylaws” means those bylaws established by the Commission for its governance, or for directing or controlling the Commission’s actions or conduct.

5. “Clearinghouse” means the Commission’s operations involving the acceptance, processing, and dissemination, among the Compacting States, Contracting States, Surplus Lines Licensees, insureds and other persons, of Premium Tax and Clearinghouse Transaction Data for Non-Admitted Insurance of Multi-State Risks, in accordance with this Compact and Rules to be adopted by the Commission.

6. “Clearinghouse Transaction Data” means the information regarding Non-Admitted Insurance of Multi-State Risks required to be reported, accepted, collected, processed, and disseminated by Surplus Lines Licensees for Surplus Lines Insurance and insureds for Independently Procured Insurance under this Compact and Rules to be adopted by the Commission. Clearinghouse Transaction Data includes information related to Single-State Risks if a state elects to have the Clearinghouse collect taxes on Single-State Risks for such state.

7. “Compacting State” means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.

8. “Commission” means the “Surplus Lines Insurance Multi-State Compliance Compact Commission” established by this Compact.

9. “Commissioner” means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator or their designees.

10. “Contracting State” means any State which has not enacted this

Compact legislation but has entered into a written contract with the Commission to utilize the services of and fully participate in the Clearinghouse.

11. “Control” An entity has “control” over another entity if:

(A) The entity directly or indirectly or acting through one or more other persons own, controls, or has the power to vote 25% or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

12. “Home State”

(A) IN GENERAL. Except as provided in subparagraph (B), the term “Home State” means, with respect to an insured:

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100% of the insured risk is located out of the State referred to in subparagraph (A)(i), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS. If more than one insured from an affiliated group are named insureds on a single Non-Admitted Insurance contract, the term “Home State” means the Home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

13. “Independently Procured Insurance” means insurance procured by an insured directly from a Surplus Lines Insurer or other Non-Admitted Insurer as permitted by the laws of the Home State.

14. “Insurer Eligibility Requirements” means the criteria, forms and procedures established to qualify as a Surplus Lines Insurer under the law of the Home State provided that such criteria, forms and procedures are consistent with the express provisions of the NRRRA on and after July 21, 2011.

15. “Member” means the person or persons chosen by a Compacting State as its representative or representatives to the Commission provided that each Compacting State shall be limited to one vote.

16. “Multi-State Risk” means a risk with insured exposures in more than one State.

17. “Non-Compacting State” means any State which has not adopted this Compact.

18. “Non-Admitted Insurance” means Surplus Lines Insurance and Independently Procured Insurance.

19. “Non-Admitted Insurer” means an insurer that is not authorized or admitted to transact the business of insurance under the law of the Home State.

20. “NRRRA” means the Non-Admitted and Reinsurance Reform Act which is Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

21. “Policyholder Notice” means the disclosure notice or stamp that is

required to be furnished to the applicant or policyholder in connection with a Surplus Lines Insurance placement.

22. "Premium Tax" means with respect to Non-Admitted Insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

23. "Principal Place of Business" means with respect to determining the Home State of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured.

24. "Purchasing Group" means any group formed pursuant to the Liability Risk Retention Act which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations and is domiciled in any State.

25. "Rule" means a statement of general or particular applicability and future effect promulgated by the Commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure or practice requirements of the Commission which shall have the force and effect of law in the Compacting States.

26. "Single-State Risk" means a risk with insured exposures in only one State.

27. "State" means any state, district or territory of the United States of America.

28. "State Transaction Documentation" means the information required under the laws of the Home State to be filed by Surplus Lines Licensees in order to report Surplus Lines Insurance and verify compliance with surplus lines laws, and by insureds in order to report Independently Procured Insurance.

29. "Surplus Lines Insurance" means insurance procured by a Surplus Lines Licensee from a Surplus Lines Insurer or other Non-Admitted Insurer as permitted under the law of the Home State; for purposes of this Compact "Surplus Lines Insurance" shall also mean excess lines insurance as may be defined by applicable State law.

30. "Surplus Lines Insurer" means a Non-Admitted Insurer eligible under the law of the Home State to accept business from a Surplus Lines Licensee; for purposes of this Compact "Surplus Lines Insurer" shall also mean an insurer which is permitted to write Surplus Lines Insurance under the laws of the state where such insurer is domiciled.

31. "Surplus Lines Licensee" means an individual, firm or corporation licensed under the law of the Home State to place Surplus Lines Insurance.

## ARTICLE III

## Establishment of the Commission and Venue

1. The Compacting States hereby create and establish a joint public agency known as the Surplus Lines Insurance Multi-State Compliance Compact Commission.

2. Pursuant to Article IV, the Commission will have the power to adopt mandatory Rules which establish exclusive Home State authority regarding Non-Admitted Insurance of Multi State Risks, Allocation Formulas, Clearinghouse Transaction Data, a Clearinghouse for receipt and distribution of allocated Premium Tax and Clearinghouse Transaction Data, and uniform rulemaking procedures and Rules for the purpose of financing, administering, operating and enforcing compliance with the provisions of this Compact, its Bylaws and Rules.

3. Pursuant to Article IV, the Commission will have the power to adopt mandatory Rules establishing foreign Insurer Eligibility Requirements and a concise and objective Policyholder Notice regarding the nature of a surplus lines placement.

4. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.

5. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

6. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

## ARTICLE IV

## Authority to Establish Mandatory Rules

The Commission shall adopt mandatory Rules which establish:

1. Allocation Formulas for each type of Non-Admitted Insurance coverage, which Allocation Formulas must be used by each Compacting State and Contracting State in acquiring Premium Tax and Clearinghouse Transaction Data from Surplus Lines Licensees and insureds for reporting to the Clearinghouse created by the Compact Commission. Such Allocation Formulas will be established with input from Surplus lines Licensees and be based upon readily available data with simplicity and uniformity for the Surplus Line Licensee as a material consideration.

2. Uniform Clearinghouse Transaction Data reporting requirements for all information reported to the Clearinghouse.

3. Methods by which Compacting States and Contracting States require Surplus Lines Licensees and insureds to pay Premium Tax and to report Clearinghouse Transaction Data to the Clearinghouse, including but not limited to processing Clearinghouse Transaction Data through State stamp-

ing and service offices, State insurance departments, or other State designated agencies or entities.

4. That Non-Admitted Insurance of Multi-State Risks shall be subject to all of the regulatory compliance requirements of the Home State exclusively. Home State regulatory compliance requirements applicable to Surplus Lines Insurance shall include but not be limited to, (i) person(s) required to be licensed to sell, solicit, or negotiate Surplus Lines Insurance; (ii) Insurer Eligibility Requirements or other approved Non-Admitted Insurer requirements; (iii) Diligent Search; (iv) State Transaction Documentation and Clearinghouse Transaction Data regarding the payment of Premium Tax as set forth in this Compact and Rules to be adopted by the Commission. Home State regulatory compliance requirements applicable to Independently Procured Insurance placements shall include but not be limited to providing State Transaction Documentation and Clearinghouse Transaction Data regarding the payment of Premium Tax as set forth in this Compact and Rules to be adopted by the Commission.

5. That each Compacting State and Contracting State may charge its own rate of taxation on the premium allocated to such State based on the applicable Allocation Formula provided that the state establishes one single rate of taxation applicable to all Non-Admitted Insurance transactions and no other tax, fee assessment or other charge by any governmental or quasi governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.

6. That any change in the rate of taxation by any Compacting State or Contracting State be restricted to changes made prospectively on not less than 90 days advance notice to the Compact Commission.

7. That each Compacting State and Contracting State shall require Premium Tax payments either annually, semi-annually, or quarterly utilizing one or more of the following dates only: March 1, June 1, September 1, and December 1.

8. That each Compacting State and Contracting State prohibit any other State agency or political subdivision from requiring Surplus Lines Licensees to provide Clearinghouse Transaction Data and State Transaction Documentation other than to the insurance department or tax officials of the Home State or one single designated agent thereof.

9. The obligation of the Home State by itself, through a designated agent, surplus lines stamping or service office, to collect Clearinghouse Transaction Data from Surplus Line Licensees and from insureds for Independently Procured Insurance, where applicable, for reporting to the Clearinghouse.

10. A method for the Clearinghouse to periodically report to Compacting States, Contracting States, Surplus Lines Licensees and insureds who independently procure insurance, all Premium Taxes owed to each of the Compacting States and Contracting States, the dates upon which payment

of such Premium Taxes are due and a method to pay them through the Clearinghouse.

11. That each Surplus Line Licensee is required to be licensed only in the Home State of each insured for whom Surplus Lines Insurance has been procured.

12. That a policy considered to be Surplus Lines Insurance in the insured's Home State shall be considered Surplus Lines Insurance in all Compacting States and Contracting States, and taxed as a Surplus Lines transaction in all states to which a portion of the risk is allocated. Each Compacting State and Contracting State shall require each Surplus Lines Licensee to pay to every other Compacting State and Contracting State Premium Taxes on each Multi-State Risk through the Clearinghouse at such tax rate charged on surplus lines transactions in such other Compacting States and Contracting States on the portion of the risk in each such Compacting State and Contracting State as determined by the applicable uniform Allocation Formula adopted by the Commission. A policy considered to be Independently Procured Insurance in the insured's Home State shall be considered Independently Procured Insurance in all Compacting States and Contracting States. Each Compacting State and Contracting State shall require the insured to pay every other Compacting State and Contracting State the Independently Procured Insurance Premium Tax on each Multi-State Risk through the Clearinghouse pursuant to the uniform Allocation Formula adopted by the Commission.

13. Uniform foreign Insurer Eligibility Requirements as authorized by the NRRA.

14. A uniform Policyholder Notice.

15. Uniform treatment of Purchasing Group Surplus Lines Insurance placements.

## ARTICLE V

### Powers of the Commission

The Commission shall have the following powers:

1. To promulgate Rules and operating procedures, pursuant to Article VIII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State insurance department to sue or be sued under applicable law shall not be affected;

3. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided however, the Commission is not empowered to demand or subpoena records or data from Non-Admitted Insurers;

4. To establish and maintain offices including the creation of a Clearinghouse for the receipt of Premium Tax and Clearinghouse Transaction Data

regarding Non-Admitted Insurance of Multi-State Risks, Single-State Risks for states which elect to require Surplus Lines Licensees to pay Premium Tax on Single State Risks through the Clearinghouse and tax reporting forms;

5. To purchase and maintain insurance and bonds;

6. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State or stamping office, pursuant to an open, transparent, objective competitive process and procedure adopted by the Commission;

7. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications, pursuant to an open, transparent, objective competitive process and procedure adopted by the Commission; and to establish the Commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel, and other related personnel matters;

8. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

9. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

10. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed;

11. To provide for tax audit Rules and procedures for the Compacting States with respect to the allocation of Premium Taxes including:

a. Minimum audit standards, including sampling methods,

b. Review of internal controls,

c. Cooperation and sharing of audit responsibilities between Compacting States,

d. Handling of refunds or credits due to overpayments or improper allocation of Premium Taxes,

e. Taxpayer records to be reviewed including a minimum retention period,

f. Authority of Compacting States to review, challenge, or re-audit taxpayer records.

12. To enforce compliance by Compacting States and Contracting States with Rules, and Bylaws pursuant to the authority set forth in Article XIV;

13. To provide for dispute resolution among Compacting States and Contracting States;

14. To advise Compacting States and Contracting States on tax-related issues relating to insurers, insureds, Surplus Lines Licensees, agents or bro-

kers domiciled or doing business in Non-Compacting States, consistent with the purposes of this Compact;

15. To make available advice and training to those personnel in State stamping offices, State insurance departments or other State departments for record keeping, tax compliance, and tax allocations; and to be a resource for State insurance departments and other State departments;

16. To establish a budget and make expenditures;

17. To borrow money;

18. To appoint and oversee committees, including advisory committees comprised of Members, State insurance regulators, State legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this Compact and the Bylaws;

19. To establish an Executive Committee of not less than seven (7) nor more than fifteen (15) representatives, which shall include officers elected by the Commission and such other representatives as provided for herein and determined by the Bylaws. Representatives of the Executive Committee shall serve a one year term. Representatives of the Executive Committee shall be entitled to one vote each. The Executive Committee shall have the power to act on behalf of the Commission, with the exception of rulemaking, during periods when the Commission is not in session. The Executive Committee shall oversee the day to day activities of the administration of the Compact, including the activities of the Operations Committee created under this Article and compliance and enforcement of the provisions of the Compact, its Bylaws, and Rules, and such other duties as provided herein and as deemed necessary.

20. To establish an Operations Committee of not less than seven (7) and not more than fifteen (15) representatives to provide analysis, advice, determinations and recommendations regarding technology, software, and systems integration to be acquired by the Commission and to provide analysis, advice, determinations and recommendations regarding the establishment of mandatory Rules to be adopted to be by the Commission.

21. To enter into contracts with Contracting States so that Contracting States can utilize the services of and fully participate in the Clearinghouse subject to the terms and conditions set forth in such contracts;

22. To adopt and use a corporate seal; and

23. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of the business of insurance.

## ARTICLE VI

### Organization of the Commission

#### 1. Membership, Voting and Bylaws

a. Each Compacting State shall have and be limited to one Member. Each State shall determine the qualifications and the method by which it selects

a Member and set forth the selection process in the enabling provision of the legislation which enacts this Compact. In the absence of such a provision the Member shall be appointed by the governor of such Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists.

b. Each Member shall be entitled to one (1) vote and shall otherwise have an opportunity to participate in the governance of the Commission in accordance with the Bylaws.

c. The Commission shall, by a majority vote of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact including, but not limited to:

- i. Establishing the fiscal year of the Commission;
- ii. Providing reasonable procedures for holding meetings of the Commission, the Executive Committee and the Operations Committee;
- iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;
- iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consist of a majority of Commission Members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and Surplus Lines Licensees' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the Commission must make public: (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;
- v. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;
- vi. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar 18 laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;
- vii. Promulgating a code of ethics to address permissible and prohibited activities of Commission Members and employees;
- viii. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

d. The Commission shall publish its Bylaws in a convenient form and

file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.

2. Executive Committee, Personnel and Chairperson

a. An Executive Committee of the Commission (“Executive Committee”) shall be established. All actions, of the Executive Committee, including compliance and enforcement are subject to the review and ratification of the Commission as provided in the Bylaws. The Executive Committee shall have no more than fifteen (15) representatives, or one for each State if there are less than fifteen (15) Compacting States, who shall serve for a term and be established in accordance with the Bylaws.

b. The Executive Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:

i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;

ii. Establishing and overseeing an organizational structure within, and appropriate procedures for the Commission to provide for the creation of Rules and operating procedures.

iii. Overseeing the offices of the Commission; and

iv. Planning, implementing, and coordinating communications and activities with other State, federal and local government organizations in order to advance the goals of the Commission.

c. The Commission shall annually elect officers from the Executive Committee, with each having such authority and duties, as may be specified in the Bylaws.

d. The Executive Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other persons as may be authorized by the Commission.

3. Operations Committee

a. An Operations Committee shall be established. All actions of the Operations Committee are subject to the review and oversight of the Commission and the Executive Committee and must be approved by the Commission. The Executive Committee will accept the determinations and recommendations of the Operations Committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the Operations Committee shall be resolved by the majority vote of the Commission.

The Operations Committee shall have no more than fifteen (15) representatives or one for each State if there are less than fifteen (15) Compacting States, who shall serve for a term and shall be established as set forth in the Bylaws.

The Operations Committee shall have responsibility for:

i. Evaluating technology requirements for the Clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the Clearinghouse technology systems with state and state stamping office technology platforms and to minimize costs to the states, state stamping offices and the Clearinghouse.

ii. Making recommendations to the Executive Committee based on its analysis and determination of the Clearinghouse technology requirements and compatibility with existing state and state stamping office systems.

iii. Evaluating the most suitable proposals for adoption as mandatory Rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the Executive Committee its determinations and recommendations.

iv. Such other duties and responsibilities as are delegated to it by the Bylaws, the Executive Committee or the Commission.

b. All representatives of the Operations Committee shall be individuals who have extensive experience and/or employment in the Surplus Lines Insurance business including but not limited to executives and attorneys employed by Surplus Line Insurers, Surplus Line Licensees, Law Firms, State Insurance Departments and or State stamping offices. Operations Committee representatives from Compacting States which utilize the services of a state stamping office must appoint the Chief Operating Officer or a senior manager of the state stamping office to the Operations Committee.

#### 4. Legislative and Advisory Committees

a. A legislative committee comprised of State legislators or their designees shall be established to monitor the operations of and make recommendations to, the Commission, including the Executive Committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Executive Committee shall consult with and report to the legislative committee.

b. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

#### 5. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in accordance with the Bylaws.

#### 6. Qualified Immunity, Defense and Indemnification

a. The Members, officers, executive director, employees and representatives of the Commission, the Executive Committee and any other Committee of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising

out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person.

b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission, the Executive Committee or any other Committee of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act error or omission did not result from that person's intentional or willful or wanton misconduct.

c. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission, Executive Committee or any other Committee of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

## ARTICLE VII

### Meetings and Acts of the Commission

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

2. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

4. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or otherwise provided in the Compact.

5. The Commission shall promulgate Rules concerning its meetings con-

sistent with the principles contained in the “Government in the Sunshine Act,” 5 U.S.C., § 552b, as may be amended.

6. The Commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:

- a. Relate solely to the Commission’s internal personnel practices and procedures;
- b. Disclose matters specifically exempted from disclosure by federal and State statute;
- c. Disclose trade secrets or commercial or financial information which is privileged or confidential;
- d. Involve accusing a person of a crime, or formally censuring a person;
- e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- f. Disclose investigative records compiled for law enforcement purposes;
- g. Specifically relate to the Commission’s issuance of a subpoena, or its participation in a civil action or other legal proceeding.

7. For a meeting, or portion of a meeting, closed pursuant to this provision, the Commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission.

## ARTICLE VIII

### Rules and Operating Procedures: Rulemaking

#### Functions of the Commission

##### Rulemaking functions of the Commission:

1. Rulemaking Authority.—The Commission shall promulgate reasonable Rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force or effect.

2. Rulemaking Procedure.—Rules shall be made pursuant to a rulemaking process that substantially conforms to the “Model State Administrative Procedure Act,” of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Commission.

3. Effective Date—All Rules and amendments, thereto, shall become effective as of the date specified in each Rule, operating procedure or amendment.

4. Not later than thirty (30) days after a Rule is promulgated, any person may file a petition for judicial review of the Rule; provided that the filing of such a petition shall not stay or otherwise prevent the Rule from becoming effective unless the court finds that the Petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule to be unlawful if the Rule represents a reasonable exercise of the Commission's authority.

## ARTICLE IX

### Commission Records and Enforcement

1. The Commission shall promulgate Rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds or Surplus Lines Licensee trade secrets. State Transaction Documentation and Clearinghouse Transaction Data collected by the Clearinghouse shall be used for only those purposes expressed in or reasonably implied under the provisions of this Compact and the Commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets or personal data. The Commission may promulgate additional Rules under which it may make available to federal and State agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Member of the duty to disclose any relevant records, data or information to the Commission; provided that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is provided to any Member, and the Commission shall maintain the confidentiality of any information provided by a member that is confidential under that Member's State Law.

3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws and Rules. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws or Rules. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of non-

compliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.

## ARTICLE X

### Dispute Resolution

1. Before a Member may bring an action in a court of competent jurisdiction for violation of any provision, standard or requirement of the Compact, the Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more Compacting States, Contracting States or Non-Compacting States, and the Commission shall promulgate a Rule providing alternative dispute resolution procedures for such disputes.

2. The Commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or Surplus Lines Licensees concerning a tax calculation or allocation or related issues which are the subject of this Compact.

3. Any alternative dispute resolution procedures shall be utilized in circumstances where a dispute arises as to which State constitutes the Home State.

## ARTICLE XI

### Review of Commission Decisions

Regarding Commission decisions:

1. Except as necessary for promulgating Rules to fulfill the purposes of this Compact, the Commission shall not have authority to otherwise regulate insurance in the Compacting States.

2. Not later than thirty (30) days after the Commission has given notice of any Rule or Allocation Formula, any third party filer or Compacting State may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 6.

3. The Commission shall have authority to monitor, review and reconsider Commission decisions upon a finding that the determinations or allocations do not meet the relevant Rule. Where appropriate, the Commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in Section 2 above.

## ARTICLE XII

### Finance

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its

initial operations the Commission may accept contributions, grants, and other forms of funding from the State stamping offices, Compacting States and other sources.

2. The Commission shall collect a fee payable by the insured directly or through a Surplus Lines Licensee on each transaction processed through the Compact Clearinghouse, to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

3. The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VIII of this Compact.

4. The Commission shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by any State or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.

5. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but not less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an annual report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner, the controller, or the stamping office of any Compacting State upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, shall remain confidential.

6. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

7. The Commission shall not make any political contributions to candidates for elected office, elected officials, political parties nor political action committees. The Commission shall not engage in lobbying except with respect to changes to this Compact.

## ARTICLE XIII

## Compacting States, Effective Date and Amendment

1. Any State is eligible to become a Compacting State.

2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two (2) Compacting States, provided the Commission shall become effective for purposes of adopting Rules, and creating the Clearinghouse when there are a total of ten (10) Compacting States and Contracting States or, alternatively, when there are Compacting States and Contracting States representing greater than forty percent (40%) of the Surplus Lines Insurance premium volume based on records of the percentage of Surplus Lines Insurance premium set forth in Appendix A hereto. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State. Notwithstanding the foregoing, the Clearinghouse operations and the duty to report Clearinghouse Transaction Data shall begin on the first January 1st or July 1st following the first anniversary of the Commission effective date. For States which join the Compact subsequent to the effective date, a start date for reporting Clearinghouse Transaction Data shall be set by the Commission provided Surplus Lines Licensees and all other interested parties receive not less than 90 days advance notice.

3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

## ARTICLE XIV

## Withdrawal, Default and Termination

1. Withdrawal

a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State, provided that a Compacting State may withdraw from the Compact (“Withdrawing State”) by enacting a statute specifically repealing the statute which enacted the Compact into law.

b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Commission.

c. The Member of the Withdrawing State shall immediately notify the Executive Committee of the Commission in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.

e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State, the Commission's determinations prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Commission.

f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

## 2. Default

a. If the Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules then after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

b. Decisions of the Commission that are issued on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this Article.

c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.

## 3. Dissolution of Compact

a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

b. Upon the dissolution of this Compact, the Compact becomes null and void and shall have no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Rules and Bylaws.

## ARTICLE XV

## Severability and Construction

1. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

3. Throughout this Compact the use of the singular shall include the plural and vice-versa.

4. The headings and captions of articles, sections and sub-sections used in this Compact are for convenience only and shall be ignored in construing the substantive provisions of this Compact.

## ARTICLE XVI

## Binding Effect of Compact and Other Laws

## 1. Other Laws

a. Nothing herein prevents the enforcement of any other law of a Compacting State except as provided in Paragraph b. of this section.

b. Decisions of the Commission, and any Rules, and any other requirements of the Commission shall constitute the exclusive Rule, or determination applicable to the Compacting States. Any law or regulation regarding Non-Admitted Insurance of Multi-State Risks that is contrary to Rules of the Commission, is preempted with respect to the following:

(i) Clearinghouse Transaction Data reporting requirements;

(ii) Allocation Formula;

(iii) Clearinghouse Transaction Data collection requirements;

(iv) Premium Tax payment time frames and Rules concerning dissemination of data among the Compacting States for Non-Admitted Insurance of Multi-State Risks and Single-State Risks;

(v) Exclusive compliance with surplus lines law of the Home State of the insured; and

(vi) Rules for reporting to a Clearinghouse for receipt and distribution of Clearinghouse Transaction Data related to Non-Admitted Insurance of Multi-State Risks;

(vii) Uniform foreign Insurers Eligibility Requirements;

(viii) Uniform Policyholder Notice; and

(ix) Uniform treatment of Purchasing Groups procuring Non-Admitted Insurance.

c. Except as stated in paragraph b, any Rule, Uniform Standard or other requirement of the Commission shall constitute the exclusive provision that a Commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to State courts; (ii) the availability of alternative dispute resolution under Article X of this Compact (iii) rem-

edies available under State law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations; (iv) State law relating to the construction of insurance contracts; or (v) the authority of the attorney general of the State, including but not limited to maintaining any actions or proceedings, as authorized by law.

2. Binding Effect of this Compact

a. All lawful actions of the Commission, including all Rules promulgated by the Commission, are binding upon the Compacting States, except as provided herein.

b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.

c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by Rule at the discretion of the Commission.

d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that State and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

**Surplus Line Insurance Premiums by State**

**Appendix A**

<b>State</b>	<b>Premiums based on taxes paid</b>	<b>Share of Total Premiums</b>
Alabama	445,746,000	1.47%
Alaska	89,453,519	0.29%
Arizona	663,703,267	2.18%
Arkansas	201,859,750	0.66%
California	5,622,450,467	18.49%
Colorado	543,781,333	1.79%
Connecticut	329,358,800	1.08%
Delaware	92,835,950	0.31%
Florida	2,660,908,760	8.75%
Georgia	895,643,150	2.95%
Hawaii	232,951,489	0.77%
Idaho	74,202,255	0.24%
Illinois	1,016,504,629	3.34%
Indiana	412,265,320	1.36%
Iowa	135,130,933	0.44%

Kansas	160,279,300	0.53%
Kentucky	167,996,133	0.55%
Louisiana	853,173,280	2.81%
Maine	60,111,200	0.20%
Maryland	434,887,600	1.43%
Massachusetts	708,640,225	2.33%
Michigan	703,357,040	2.31%
Minnesota	393,128,400	1.29%
Mississippi	263,313,175	0.87%
Missouri	404,489,860	1.33%
Montana	64,692,873	0.21%
Nebraska	92,141,167	0.30%
Nevada	354,271,514	1.17%
New Hampshire	102,946,250	0.34%
New Jersey	1,087,994,033	3.58%
New Mexico	67,608,458	0.22%
New York	2,768,618,083	9.11%
North Carolina	514,965,060	1.69%
North Dakota	36,223,943	0.12%
Ohio	342,000,000	1.12%
Oklahoma	319,526,400	1.05%
Oregon	312,702,150	1.03%
Pennsylvania	780,666,667	2.57%
Rhode Island	71,794,067	0.24%
South Carolina	412,489,825	1.36%
South Dakota	38,702,120	0.13%
Tennessee	451,775,240	1.49%
Texas	3,059,170,454	10.06%
Utah	142,593,412	0.47%
Vermont	41,919,433	0.14%
Virginia	611,530,667	2.01%
Washington	739,932,050	2.43%
West Virginia	130,476,250	0.43%
Wisconsin	248,758,333	0.82%
Wyoming	40,526,967	0.13%
Total	30,400,197,251	100.00%

This Data is 2005 Calendar Year Data excerpted from a study dated February 27, 2007 by Mackin & Company.

New Sec. 6. The commissioner of insurance shall represent this state on the surplus lines insurance multi-state compliance compact.

New Sec. 7. The member representing this state on the surplus lines insurance multi-state compliance compact may be represented thereon by an alternate designated by the commissioner of insurance. Any such alter-

nate shall be an assistant commissioner or a division director of the insurance department.

Sec. 8. K.S.A. 2010 Supp. 40-246b is hereby amended to read as follows: 40-246b. ~~The~~ (a) *Upon receipt of a proper application, the commissioner of insurance may issue to any duly licensed resident agent of this state, who has been licensed as a fire or casualty, or both, resident agent in this or any other state or combination thereof, for three consecutive years immediately prior to application for the type of license herein prescribed, upon proper application, an excess coverage license to negotiate an excess lines coverage license to any licensed property and casualty agent of this state or any other state. Any agent so licensed may negotiate for insureds whose home state is this state, the types of contracts of fire insurance enumerated in K.S.A. 40-901, and amendments thereto, and the type of casualty insurance contracts enumerated in K.S.A. 40-1102, and amendments thereto, or reinsurance, or to place risks, or to effect insurance or reinsurance for persons or corporations other than such agent, with insurers not authorized to do business in this state. An agent, as defined in K.S.A. 40-241e 2010 Supp. 40-4902, and amendments thereto, may place the kind or kinds of business specified in this act for which such agent is licensed pursuant to K.S.A. 40-240 and 40-241 2010 Supp. 40-4903 and subsection (d) of 40-4906, and amendments thereto, with an insurer not authorized to do business in this state by placing such business with a person licensed pursuant to the provisions of this act and may share in the applicable commissions on such business. Before any such license shall be issued, the applicant shall submit proper application on a form prescribed by the commissioner, which application shall be accompanied by a fee of \$50. Such license shall be renewable each year on May 1, upon the payment of a \$50 fee. Excess lines agents licensed by the department on the effective date of this act shall be exempt from the experience requirement.*

(b) The agent so licensed shall on or before March 1 of each year, file with the insurance department of this state, a sworn affidavit or statement to the effect that, after diligent effort, such agent has been unable to secure the amount of insurance required to protect the property, person, or firm described in such agent's affidavit or statement from loss or damage in regularly admitted companies during the preceding year. Mere rate differential shall not be grounds for placing a particular risk in a nonadmitted carrier when an admitted carrier would accept such risk at a different rate. The licensed excess coverage agent must, prior to placing insurance with an insurer not authorized to do business in this state, obtain the written consent of the prospective named insured and provide such insured the following information in a form promulgated by the commissioner:

(a) (1) A statement that the coverage will be obtained from an insurer not authorized to do business in this state;

(b) (2) a statement that the insurer's name appears on the list of com-

panies maintained by the commissioner pursuant to K.S.A. 40-246e, and amendments thereto;

(~~e~~) (3) a notice that the insurer's financial condition, policy forms, rates and trade practices are not subject to the review or jurisdiction of the commissioner;

(~~d~~) (4) a statement that the protection of the guaranty associations is not afforded to policyholders of the insurer; and

(~~e~~) (5) a statement or notice with respect to any other information deemed necessary by the commissioner pertinent to insuring with an insurer not authorized to do business in this state.

(c) In the event the insured desires that coverage be bound with an insurer not admitted to this state and it is not possible to obtain the written consent of the insured prior to binding the coverage, the excess lines agent may bind the coverage after advising the insured of the information set out above and shall obtain written confirmation that the insured desires that coverage be placed with an insurer not admitted to this state within 30 days after binding coverage.

(d) When business comes to a licensed excess lines agent *in which this state is the home state* for placement with an insurer not authorized to do business in this state from an agent not licensed as an excess lines agent, it shall be the responsibility of the licensed excess lines agent to ascertain that the insured has been provided the preceding information and has consented to being insured with an insurer not authorized to do business in this state. Each excess lines agent shall keep a separate record book in such agent's office showing the transactions of fire and casualty insurance and reinsurance placed in companies not authorized to do business in this state, the amount of gross premiums charged thereon, the insurer ~~in which~~ *with which the policy was placed*, the date, term and number of the policy, the location and nature of the risk, the name of the ~~assured~~ *insured* and such other information as the commissioner may require and such record shall be available at all times for inspection by the commissioner of insurance or the commissioner's authorized representatives. The commissioner may revoke or suspend any license issued pursuant to the provisions of this act in the same manner and for the same reasons prescribed by K.S.A. ~~40-242~~ *2010 Supp. 40-4909*, and amendments thereto.

Any policy issued under the provisions of this statute shall have stamped or endorsed in a prominent manner thereon, the following: This policy is issued by an insurer not authorized to do business in Kansas and, as such, the form, financial condition and rates are not subject to review by the commissioner of insurance and the insured is not protected by any guaranty fund.

If business is placed with a nonadmitted company that is subsequently determined to be insolvent, the excess lines agent placing such business with such company is relieved of any responsibility to the insured as it relates to such insolvency, if the excess lines agent has satisfactorily com-

plied with all requirements of this section pertaining to notification of the insured, has properly obtained the written consent of the insured and has used due diligence in selecting the insurer. It shall be presumed that due diligence was used in selecting the insurer if such insurer was on the list compiled pursuant to K.S.A. 40-246e, and amendments thereto, at the time coverage first became effective.

Sec. 9. K.S.A. 40-246c is hereby amended to read as follows: 40-246c. ~~Each licensed agent shall file with the commissioner on or before March 1 of each year a statement on a form prescribed by the commissioner, accounting for the gross premiums upon all policies written on risks situated in this state up to January 1 in each year for the year next preceding and the licensee shall transmit to the commissioner, with such affidavit or statement, a sum equal to 6% of the gross premiums upon all policies procured by such agent on risks situated in this state written under the provisions of this act. Any individual placing a policy with an insurer not authorized to do business in this state on a risk domiciled in a state other than this state, but also covering a risk or location in Kansas, shall file with the commissioner a statement in the form prescribed by the commissioner, describing the risk and shall pay to the commissioner a sum equal to 6% of the portion of the premium applicable to the risk located in Kansas within 120 days after writing the risk.~~

*(a) On March 1 of each year, each licensed agent shall collect and pay to the commissioner a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license. Where the insurance covers properties, risks or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on:*

*(1) An amount equal to 6% of that portion of the gross premiums allocated to this state; plus*

*(2) an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks or exposures located or to be performed outside of this state; less*

*(3) the amount of gross premiums allocated to this state and returned to the insured.*

*(b) The tax on any portion of the premium unearned at termination of insurance, if any, having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker. The surplus lines licensee is prohibited from rebating any part of the tax for any reason. To the extent that other states where portions of the properties, risks or exposures reside have failed to enter into a compact or reciprocal allocation procedure with this state, the net premium tax collected shall be retained by this state.*

*(c) The individual responsible for filing the statement shall be the agent*

who signs the policy or the agent of record with the company. The commissioner of insurance shall collect double the amount of tax herein provided from any licensee or other responsible individual as herein described who shall fail, refuse or neglect to transmit the required affidavit or statement or shall fail to pay the tax imposed by this section, to the commissioner within the period specified.

Sec. 10. K.S.A. 40-246e is hereby amended to read as follows: 40-246e. The commissioner shall maintain a list of insurers not authorized to do business in this state for review by any interested person. Only those insurers who have filed a certified copy of their most recent annual statement with the commissioner in the form prescribed by K.S.A. 40-225, and amendments thereto, or, if domiciled outside the United States, have filed their most recent annual statement with the national association of insurance commissioners may appear on the list. No excess lines agent shall place insurance on a Kansas domiciled risk with an insurer whose name does not appear on this list. No company shall appear on the list whose capital or surplus as shown on the annual statement does not equal or exceed ~~\$1,500,000~~ \$4,500,000. Individual unincorporated insurers not listed by the national association of insurance commissioners may appear on the list if they are authorized to transact an insurance business in at least one state of the United States, possess assets which are held in trust for the benefit of American policyholders in the sum of not less than \$50,000,000 and pay the filing fee required by this section. Insurance exchanges who issue contracts on behalf of their members and pay the filing fee required by this section may appear on the list if their individual members have a capital or surplus equal to or in excess of \$1,500,000 and the aggregate capital or surplus of all members of the exchange is at least \$15,000,000. A nonrefundable filing fee of \$200 shall be required of any insurer submitting its annual statement for review by the commissioner for inclusion on such list. The commissioner shall remove an insurer's name from the listing only when: (a) The insurer requests such removal; or (b) the insurer fails to file its latest annual statement and required filing fee prior to May 1 of each year as required by this section; or (c) the commissioner is notified by the insurance supervisory authority of any state of the United States that such insurer has had its authority to transact business restricted; or has been declared insolvent or placed in receivership, conservatorship, rehabilitation or any similar status wherein the business of the insurer is formally supervised by an insurance supervisory authority; or (d) the commissioner is notified by the N.A.I.C. that any insurer domiciled outside the United States has been declared insolvent or placed in receivership, conservatorship, rehabilitation or any similar status wherein the business of the insurer is formally supervised by an insurance supervisory authority pursuant to an order by any court of competent jurisdiction; or (e) the insurer has failed to effectuate reasonably prompt, fair and equitable payment of just losses

and claims in this state; or (f) the insurer encourages, promotes or rewards an agent to violate the provisions of K.S.A. 40-246b, and amendments thereto. There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner, the commissioner's employees, or the state of Kansas as a result of any insurer's name appearing or not appearing on the list required by this section if such list is constructed and maintained in good faith and without malice.

Sec. 11. K.S.A. 40-246c and 40-246e and K.S.A. 2010 Supp. 40-246b are hereby repealed.

Sec. 12. From and after July 1, 2011, K.S.A. 12-2620 and K.S.A. 2010 Supp. 12-2618, 40-2,118 and 44-584 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 12, 2011.

Published in the *Kansas Register* May 19, 2011.

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## CHAPTER 62

### HOUSE BILL No. 2147

AN ACT concerning adult care homes, relating to the definition of a home plus residence or facility; amending K.S.A. 2010 Supp. 39-923 and repealing the existing section.

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

Section 1. K.S.A. 2010 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, 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" 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 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* ~~seven-day-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~~ ~~eight~~ 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~~ ~~eight-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, 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, ~~in effect on October 27, 2003,~~ 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. 2. K.S.A. 2010 Supp. 39-923 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 12, 2011.

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## CHAPTER 63

### HOUSE BILL No. 2151\*

AN ACT concerning crimes, criminal procedure and punishment; relating to breach of privacy and blackmail; amending sections 64 and 171 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections.

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

Section 1. Section 171 of Chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 171. (a) Breach of privacy is knowingly and without lawful authority:

(1) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication;

(2) divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if such person illegally learned of the message in the course of employment with an agency in transmitting it;

(3) entering ~~into a private place~~ with intent to listen surreptitiously to private conversations *in a private place* or to observe the personal conduct of any other person or persons *entitled to privacy* therein;

(4) installing or using *outside or inside* a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible ~~outside~~ *without the use of such device*, without the consent of the person or persons entitled to privacy therein;

(5) installing or using any device or equipment for the interception of any telephone, telegraph or other wire *or wireless* communication without the consent of the person in possession or control of the facilities for such ~~wire~~ communication; ~~or~~

(6) installing or using a concealed camcorder, motion picture camera or photographic camera of any type, to secretly videotape, film, photograph or record by electronic *or other* means, another, identifiable person under or through the clothing being worn by that other person or another, identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy-; *or*

(7) *disseminating or permitting the dissemination of any videotape, photograph, film or image obtained in violation of subsection (a)(6).*

(b) Breach of privacy ~~is a class A nonperson misdemeanor.~~ *as defined in:*

(1) *Subsection (a)(1) through (a)(5) is a class A nonperson misdemeanor;*

(2) *subsection (a)(6) is a severity level 8, person felony; and*

(3) *subsection (a)(7) is a severity level 5, person felony.*

(c) Subsection (a)(1) shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.

(d) The provisions of this section shall not apply to an operator of a switchboard, or any officer, employee or agent of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility.

(e) As used in this section, "private place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance; ~~but does not include a place to which the public has lawful access.~~

Sec. 2. Section 64 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 64. (a) Blackmail is gaining or

attempting to gain anything of value or compelling or attempting to compel another to act against such person's will, by threatening to:

(1) Communicate accusations or statements; about any person that would subject such person or any other person to public ridicule, contempt or degradation; or

(2) disseminate any videotape, photograph, film, or image obtained in violation of subsection (a)(6) of section 171 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

~~(b) Blackmail is a severity level 7, nonperson felony.~~

(b) Blackmail as defined in:

(1) Subsection (a)(1) is a severity level 7, nonperson felony; and

(2) subsection (a)(2) is a severity level 4, person felony.

Sec. 3. Sections 64 and 171 of chapter 136 of the 2010 Session Laws of Kansas 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 12, 2011.

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## CHAPTER 64

### SENATE BILL No. 67

AN ACT concerning gubernatorial inauguration contributions; amending K.S.A. 25-4186 and repealing the existing section; and also repealing K.S.A. 25-4188.

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

Section 1. K.S.A. 25-4186 is hereby amended to read as follows: 25-4186. (a) Not later than 10 days after receiving any contribution or making any expenditure for a gubernatorial inauguration, the governor-elect shall appoint an inaugural treasurer. The name and address of such treasurer shall be reported to the secretary of state by the governor-elect not later than 10 days after the appointment.

(b) No person shall make any expenditure or make or receive any contribution or receipt, in kind or otherwise, for a gubernatorial inauguration except by or through the inaugural treasurer.

(c) The inaugural treasurer shall keep detailed accounts of all contributions and other receipts received, in kind or otherwise, and all expenditures made for a gubernatorial inauguration. Accounts of the treasurer may be inspected under conditions determined by the commission and shall be preserved for a period to be designated by the commission. Every person who receives a contribution or other receipt, in kind or otherwise, for an inaugural treasurer more than five days before the ending date of any period for which a report is required under this section, on demand of the treasurer,

or in any event on or before the ending date of the reporting period, shall remit the same and render to the treasurer an account thereof, including the name and address of the person, if known, making the contribution or other receipt and the date received. No contribution or other receipt received by the inaugural treasurer shall be commingled with personal funds of the governor-elect or inaugural treasurer.

(d) The inaugural treasurer shall file with the secretary of state a report on March 10 and July 10 following the inauguration. The report filed on March 10 shall be for the period ending on February 28 and the report filed on July 10 shall be for the period beginning on March 1 and ending on June 30. Each report shall contain the information required to be stated in a report pursuant to K.S.A. 25-4148 and 25-4148a, and amendments thereto, and a declaration as to the correctness of the report in the form prescribed by K.S.A. 25-4151, and amendments thereto. The July 10 report shall be a termination report which shall include full information as to the disposition of residual funds. If a report is sent by certified mail on or before the day it is due, the mailing shall constitute receipt by the secretary of state.

(e) The aggregate amount contributed, in kind or otherwise, by any person for a gubernatorial inauguration shall not exceed \$2,000. No person shall make a contribution in the name of another person, and no person knowingly shall accept a contribution made by one person in the name of another. No person shall give or accept any contribution in excess of \$10 unless the name and address of the contributor is made known to the individual receiving the contribution. The aggregate of contributions for which the name and address of the contributor is not known shall not exceed 50% of the amount one person may contribute.

(f) No person shall copy any name of a contributor from any report filed under this section and use such name for any commercial purpose, and no person shall use any name for a commercial purpose with knowledge that such name was obtained solely by copying information relating to contributions contained in any report filed under this section.

(g) In addition to other reports required by this section, the inaugural treasurer shall report the amount and nature of debts and obligations owed for the gubernatorial inauguration, at times prescribed by the commission, continuing until such debts and obligations are fully paid or discharged.

(h) No moneys received by any inaugural treasurer shall be used or be made available for the personal use of the governor-elect or governor and no such moneys shall be used by such governor-elect or governor except for legitimate gubernatorial inauguration expenses.

For the purpose of this subsection, expenditures for "personal use" shall include expenditures to defray normal living expenses and expenditures for personal benefit having no direct connection with or effect upon the inauguration.

(i) (1) Before the filing of a termination report in accordance with this

section, all residual funds not otherwise obligated for the payment of expenses incurred for the gubernatorial inauguration shall be remitted to the state treasurer who shall deposit the entire amount in the state treasury and credit:

~~(1) to the inaugural expense fund created by K.S.A. 25-4187, and amendments thereto; (A), in an amount equal to the amount certified to the director of accounts and reports by the adjutant general as the amount expended by the adjutant general for expenses incurred in connection with the gubernatorial inauguration; or (B), or if the amount of residual funds is less than the amount certified, the entire amount of the deposit; and or.~~

~~(2) to the governmental ethics commission fee fund created by K.S.A. 25-4119c, and amendments thereto, any remaining balance.~~

(2) Any residual funds not otherwise obligated shall either be:

(A) Donated to any charitable organization which qualifies as a 501(c)(3) not-for-profit corporation under the federal internal revenue code; or

(B) shall be remitted to the state treasurer who shall deposit the entire amount in the state treasury and credit such money to the executive mansion gifts fund for the purpose of funding expenditures relating to the governor's residence, historic properties or both. Such expenditures shall be subject to approval of the governor's residence advisory commission.

(j) (1) The commission shall send a notice by registered or certified mail to any inaugural treasurer who fails to file any report required by this section within the time period prescribed therefor. The notice shall state that the required report has not been filed with the office of the secretary of state. The notice also shall state that the treasurer shall have 15 days from the date such notice is deposited in the mail to comply with the reporting requirements before a civil penalty shall be imposed for each day that the required documents remain unfiled. If the treasurer fails to comply within the prescribed period, the treasurer shall pay to the state a civil penalty of \$10 per day for each day that the report remains unfiled, except that no such civil penalty shall exceed \$300. The commission may waive, for good cause, payment of any civil penalty imposed by this subsection.

(2) Civil penalties provided for by this subsection shall be paid to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the governmental ethics commission fee fund.

(3) If a person fails to pay a civil penalty provided for by this section, it shall be the duty of the commission to bring an action to recover such civil penalty in the district court of Shawnee county.

(k) Any violation of subsection (e), (f) or (h) or any intentional failure to file any report required by this section is a class A misdemeanor.

(l) Nothing in this section shall be construed to apply to expenditures of state moneys related to any inaugural activity.

(m) This section shall be part of and supplemental to the campaign finance act.

Sec. 2. K.S.A. 25-4186 and 25-4188 are hereby repealed.

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

Approved May 12, 2011.

Published in the *Kansas Register* May 19, 2011.

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## CHAPTER 65

### SENATE BILL No. 123

AN ACT concerning the department of wildlife and parks; amending K.S.A. 2010 Supp. 32-833 and repealing the existing section.

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

New Section 1. (a) The secretary of the department of wildlife and parks is authorized, with the approval of the Kansas wildlife and parks 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 department of wildlife and parks shall be exempt from the provisions of K.S.A. 77-415 through 77-437, and amendments thereto.

Sec. 2. K.S.A. 2010 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 shall not purchase any land unless:

(A) The secretary of wildlife and parks 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 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 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 ~~640~~ 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 owned by a private individual by the secretary if such purchase price is an amount which is less than such land's appraised valuation.~~

*(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 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. 3. K.S.A. 2010 Supp. 32-833 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 12, 2011.

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## CHAPTER 66

### SENATE BILL No. 213

AN ACT concerning lightweight roadable vehicles; relating to registration; uniform traffic code; property tax exemptions; amending K.S.A. 2010 Supp. 8-126, 8-1486 and 79-201k and repealing the existing sections.

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

New Section 1. "Lightweight roadable vehicle" means a multipurpose motor vehicle that is allowed to be driven on public roadways and is required to be registered with, and flown under the direction of, the federal aviation administration.

Sec. 2. K.S.A. 2010 Supp. 8-126 is hereby amended to read as follows: 8-126. The following words and phrases when used in this act shall have the meanings respectively ascribed to them herein:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting electric personal assistive mobility devices or devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor vehicle" means every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.

(c) "Truck" means a motor vehicle which is used for the transportation or delivery of freight and merchandise or more than 10 passengers.

(d) "Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term "tractor" as herein defined.

(e) "Truck tractor" means every motor vehicle designed and used pri-

marily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle or load so drawn.

(f) “Farm tractor” means every motor vehicle designed and used as a farm implement power unit operated with or without other attached farm implements in any manner consistent with the structural design of such power unit.

(g) “Road tractor” means every motor vehicle designed and used for drawing other vehicles, and not so constructed as to carry any load thereon independently, or any part of the weight of a vehicle or load so drawn.

(h) “Trailer” means every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

(i) “Semitrailer” means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

(j) “Pole trailer” means any two-wheel vehicle used as a trailer with bolsters that support the load, and do not have a rack or body extending to the tractor drawing the load.

(k) “Specially constructed vehicle” means any vehicle which shall not have been originally constructed under a distinctive name, make, model or type, or which, if originally otherwise constructed shall have been materially altered by the removal of essential parts, or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles.

(l) “Foreign vehicle” means every motor vehicle, trailer or semitrailer which shall be brought into this state otherwise than in ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.

(m) “Person” means every natural person, firm, partnership, association or corporation.

(n) “Owner” means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or in the event a vehicle is subject to a lease of 30 days or more with an immediate right of possession vested in the lessee; or in the event a party having a security interest in a vehicle is entitled to possession, then such conditional vendee or lessee or secured party shall be deemed the owner for the purpose of this act.

(o) “Nonresident” means every person who is not a resident of this state.

(p) “Manufacturer” means every person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

(q) “New vehicle dealer” means every person actively engaged in the business of buying, selling or exchanging new motor vehicles, travel trail-

ers, trailers or vehicles and who holds a dealer's contract therefor from a manufacturer or distributor and who has an established place of business in this state.

(r) "Used vehicle dealer" means every person actively engaged in the business of buying, selling or exchanging used vehicles, and having an established place of business in this state and who does not hold a dealer's contract for the sale of new motor vehicles, travel trailers, trailers or vehicles.

(s) "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel. The term "highway" shall not be deemed to include a roadway or driveway upon grounds owned by private owners, colleges, universities or other institutions.

(t) "Department" or "motor vehicle department" or "vehicle department" means the division of vehicles of the department of revenue, acting directly or through its duly authorized officers and agents. When acting on behalf of the department of revenue pursuant to this act, a county treasurer shall be deemed to be an agent of the state of Kansas.

(u) "Commission" or "state highway commission" means the director of vehicles of the department of revenue.

(v) "Division" means the division of vehicles of the department of revenue.

(w) "Travel trailer" means every vehicle without motive power designed to be towed by a motor vehicle constructed primarily for recreational purposes.

(x) "Passenger vehicle" means every motor vehicle, as herein defined, which is designed primarily to carry 10 or fewer passengers, and which is not used as a truck.

(y) "Self-propelled farm implement" means every farm implement designed for specific use applications with its motive power unit permanently incorporated in its structural design.

(z) "Farm trailer" means every trailer as defined in subsection (h) of this section and every semitrailer as defined in subsection (i) of this section, designed and used primarily as a farm vehicle.

(aa) "Motorized bicycle" means every device having two tandem wheels or three wheels, which may be propelled by either human power or helper motor, or by both, and which has:

- (1) A motor which produces not more than 3.5 brake horsepower;
- (2) a cylinder capacity of not more than 130 cubic centimeters;
- (3) an automatic transmission; and
- (4) the capability of a maximum design speed of no more than 30 miles per hour.

(bb) "All-terrain vehicle" means any motorized nonhighway vehicle 50 inches or less in width, having a dry weight of 1,500 pounds or less, traveling on three or more nonhighway tires, having a seat designed to be

straddled by the operator. As used in this subsection, nonhighway tire means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of 14 inches or less.

(cc) “Implement of husbandry” means every vehicle designed or adapted and used exclusively for agricultural operations, including feedlots, and only incidentally moved or operated upon the highways. Such term shall include, but not be limited to:

- (1) A farm tractor;
- (2) a self-propelled farm implement;
- (3) a fertilizer spreader, nurse tank or truck permanently mounted with a spreader used exclusively for dispensing or spreading water, dust or liquid fertilizers or agricultural chemicals, as defined in K.S.A. 2-2202, and amendments thereto, regardless of ownership;
- (4) a truck mounted with a fertilizer spreader used or manufactured principally to spread animal dung;
- (5) a mixer-feed truck owned and used by a feedlot, as defined in K.S.A. 47-1501, and amendments thereto, and specially designed and used exclusively for dispensing food to livestock in such feedlot.

(dd) “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.

(ee) “Oil well servicing, oil well clean-out or oil well drilling machinery or equipment” means a vehicle constructed as a machine used exclusively for servicing, cleaning-out or drilling an oil well and consisting in general of a mast, an engine for power, a draw works and a chassis permanently constructed or assembled for one or more of those purposes. The passenger capacity of the cab of a vehicle shall not be considered in determining whether such vehicle is an oil well servicing, oil well clean-out or oil well drilling machinery or equipment.

(ff) “Electric personal assistive mobility device” means a self-balancing two nontandem wheeled device, designed to transport only one person, with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

(gg) “Electronic certificate of title” means any electronic record of ownership, including any lien or liens that may be recorded, retained by the division in accordance with K.S.A. 2010 Supp. 8-135d, and amendments thereto.

(hh) “Work-site utility vehicle” means any motor vehicle which is not less than 48 inches in width, has an overall length, including the bumper, of not more than 135 inches, has an unladen weight, including fuel and fluids, of more than 800 pounds and is equipped with four or more low pressure tires, a steering wheel and bench or bucket-type seating allowing at least two people to sit side-by-side, and may be equipped with a bed or cargo box for hauling materials. “Work-site utility vehicle” does not include a micro utility truck or recreational off-highway vehicle.

(ii) “Micro utility truck” means any motor vehicle which is not less than 48 inches in width, has an overall length, including the bumper, of not more than 160 inches, has an unladen weight, including fuel and fluids, of more than 1,500 pounds, can exceed 40 miles per hour as originally manufactured and is manufactured with a metal cab. “Micro utility truck” does not include a work-site utility vehicle or recreational off-highway vehicle.

(jj) “Golf cart” means a motor vehicle that has not less than three wheels in contact with the ground, an unladen weight of not more than 1,800 pounds, is designed to be and is operated at not more than 25 miles per hour and is designed to carry not more than four persons including the driver.

(kk) “Recreational off-highway vehicle” means any motor vehicle 64 inches or less in width, having a dry weight of 2,000 pounds or less, traveling on four or more nonhighway tires, having a nonstraddle seat and steering wheel for steering control.

(ll) *“Lightweight roadable vehicle” means a multipurpose motor vehicle that is allowed to be driven on public roadways and is required to be registered with, and flown under the direction of, the federal aviation administration.*

Sec. 3. K.S.A. 2010 Supp. 8-1486 is hereby amended to read as follows: 8-1486. K.S.A. 8-1402a, 8-1414a, 8-1439c, 8-1458a, 8-1459a, 8-1475a, 8-1487, 8-1488, 8-1489 and 8-1490 and amendments thereto, and K.S.A. 2010 Supp. 8-1491, 8-1492, 8-1493, 8-1494, ~~and~~ 8-1495 *and section I*, and amendments thereto, shall be a part of, and supplemental to, the uniform act regulating traffic on highways.

Sec. 4. K.S.A. 2010 Supp. 79-201k is hereby amended to read as follows: 79-201k. (a) It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft and the use of aircraft in business and industry is vital to the continued economic growth of the state.

(b) The following described property, to the extent herein specified, is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

*First.* For all taxable years commencing after December 31, 2002, all aircraft used predominantly to earn income for the owner in the conduct of

the owner's business or industry. If the owner's business or industry is the leasing of aircraft, the lessee's use of the aircraft shall not be considered in determining this exemption. ~~For purposes of this provision, The term "pre-dominantly"~~ means: (1) At least 80% of the total use of the aircraft; or (2) utilization of the aircraft such that all of the aircraft costs are deductible for federal income tax purposes. *The term "aircraft" shall not include light-weight roadable vehicles, as defined by K.S.A. 8-126, and amendments thereto.*

Sec. 5. K.S.A. 2010 Supp. 8-126, 8-1486 and 79-201k 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 12, 2011.

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## CHAPTER 67

House Substitute for SENATE BILL No. 214

AN ACT concerning water; related to water obstructions; related to groundwater management districts; amending K.S.A. 2010 Supp. 82a-301 and 82a-1021 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 82a-301 is hereby amended to read as follows: 82a-301. (a) *Except as provided in subsection (c)*, without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: (1) Construct any dam or other water obstruction; (2) make, construct or permit to be made or constructed any change in any dam or other water obstruction; (3) make or permit to be made any change in or addition to any existing water obstruction; or (4) change or diminish the course, current, or cross section of any stream within this state. Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer. Jetties or revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

(b) As used in K.S.A. 82a-301 et seq., and amendments thereto, "dam" means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and also has the capacity to impound 50 or more acre feet. The height of a dam or barrier shall be determined as follows: (1) A barrier or dam that extends across the natural

bed of a stream or watercourse shall be measured from the down stream toe of the barrier or dam to the top of the barrier or dam; or (2) a barrier or dam that does not extend across a stream or watercourse shall be measured from the lowest elevation of the outside limit of the barrier or dam to the top of the barrier or dam.

(c) (1) *The prior written consent or permit of the chief engineer shall not apply to water obstructions that meet the following requirements:*

- (A) *The water obstruction is not a dam as defined in subsection (b);*
- (B) *the water obstruction is not located within an incorporated area;*
- (C) *every part of the water obstruction is located more than 300 feet from any property boundary; and*
- (D) *the watershed area above the water obstruction is 640 acres or less.*

(2) *If the water obstruction does not meet the requirements of subsection (c)(1)(C), but meets all other requirements of subsection (c)(1), such water obstruction may be exempted from the permitting requirements of subsection (a) if the chief engineer determines such water obstruction has minimal impact upon safety and property based upon a review of the information, to be provided by the owner, including:*

(i) *An aerial photo or topographic map depicting the location of the proposed project, the location of the stream, the layout of the water obstruction, the property lines and names and addresses of adjoining property owners; and*

(ii) *the principal dimensions of the project including, but not limited to, the height above streambed.*

(3) *Notwithstanding any other provision of this section, the chief engineer may require a permit for any water obstruction described in this subsection if the chief engineer determines such permit is necessary for the protection of life or property.*

Sec. 2. K.S.A. 2010 Supp. 82a-1021 is hereby amended to read as follows: 82a-1021. (a) ~~The following terms when used in this act shall have the limitations and meanings respectively ascribed to them~~ *As used in this section:*

~~(a)~~ (1) “Aquifer” means any geological formation capable of yielding water in sufficient quantities that it can be extracted for beneficial purposes.

~~(b)~~ (2) “Board” means the board of directors constituting the governing body of a groundwater management district.

~~(c)~~ (3) “Chief engineer” means the chief engineer of the division of water resources of the Kansas department of agriculture.

~~(d)~~ (4) “District” means a contiguous area which overlies one or more aquifers, together with any area in between, which is organized for groundwater management purposes under this act and acts amendatory thereof or supplemental thereto.

~~(e)~~ (5) “Eligible voter” means ~~any person who is a landowner or a~~

~~water user as defined in this act except as hereafter qualified. Every a natural person of the age of 18 years of age or upward shall be an eligible voter of a district under this act if older, or a public or private corporation, municipality or any other legal or commercial entity that:~~

~~(1) (A) the person~~ Is a landowner ~~who~~ that owns, of record, any land, or any interest in land, comprising 40 or more contiguous acres located within the boundaries of the district and not within the corporate limits of any municipality; or

~~(2) (B) the person~~ withdraws or uses groundwater from within the boundaries of the district in an amount of one acre-foot or more per year.

~~Except as is hereafter qualified, every public or private corporation shall be an eligible voter of a district under this act either (1) if it is a landowner who owns of record any land, or any interest in land, comprised of 40 or more contiguous acres located within the boundaries of the district and not within the corporate limits of any municipality, or (2) if it is a corporation that withdraws groundwater from within the district in an amount of one acre-foot or more per year.~~

(6) *“Land” means real property as that term is defined by the laws of the state of Kansas.*

(7) *“Landowner” means the person who is the record owner of any real estate within the boundaries of the district or who has an interest therein as contract purchaser of 40 or more contiguous acres in the district not within the corporate limits of any municipality. Owners of oil leases, gas leases, mineral rights, easements, or mortgages shall not be considered landowners by reason of such ownership.*

(8) *“Management program” means a written report describing the characteristics of the district and the nature and methods of dealing with groundwater supply problems within the district. It shall include information as to the groundwater management program to be undertaken by the district and such maps, geological information, and other data as may be necessary for the formulation of such a program.*

(9) *“Person” means any natural person, public or private corporation, municipality or any other legal or commercial entity.*

(10) *“Water right” shall have the meaning ascribed to that term in K.S.A. 82a-701, and amendments thereto.*

(11) *“Water user” means any person who is withdrawing or using groundwater from within the boundaries of the district in an amount not less than one acre-foot per year. If a municipality is a water user within the district, it shall represent all persons within its corporate limits who are not water users as defined above.*

(b) Each tract of land of 40 or more contiguous acres and each quantity of water withdrawn or used in an amount of one acre-foot or more per year shall be represented by but a single eligible voter. If the land is held by lease, under an estate for years, under contract, or otherwise, the fee owner shall be the one entitled to vote, unless the parties in interest agree other-

wise. If the land is held jointly or in common, the majority in interest shall determine which natural person or corporation shall be entitled to vote. Each ~~qualified~~ eligible voter, or such eligible voter's duly authorized representative, shall be entitled to cast only one vote *per eligible voter*. ~~A person duly authorized to act in a representative capacity for estates, trusts, municipalities, public corporations or private corporations may also cast one vote for each estate, trust, municipality, or public or private corporations so represented.~~ Nothing herein shall be construed to authorize proxy voting.

(c) Any landowner who is not a water user may have such landowner's land excluded from any district assessments and thereby abandon the right to vote on district matters by serving a written notice of election of exclusion with the steering committee or the board. Such a landowner may again become an eligible voter by becoming a water user or by serving a written notice of inclusion on the board stating that the landowner has elected to be reinstated as a voting member of the district and will be subject to district assessments.

(d) Any eligible voter who is ~~a landowner or water user as defined in this act, and also is~~ the owner of a tract or tracts of land comprising not less than 640 acres ~~in area~~, located within the boundaries of the district, on which no water is being used or from which no water is being withdrawn, ~~may have such tract or tracts of land on or from which no water is used or withdrawn,~~ excluded from district assessment in the manner described above.

(e) All notices of inclusion or exclusion of land shall be submitted to the board not later than January 1 of the effective year.

(f) ~~“Land” means real property as that term is defined by the laws of the state of Kansas.~~

(g) ~~“Landowner” means the person who is the record owner of any real estate within the boundaries of the district or who has an interest therein as contract purchaser of 40 or more contiguous acres in the district not within the corporate limits of any municipality. Owners of oil leases, gas leases, mineral rights, easements, or mortgages shall not be considered landowners by reason of such ownership.~~

(h) ~~“Management program” means a written report describing the characteristics of the district and the nature and methods of dealing with groundwater supply problems within the district. It shall include information as to the groundwater management program to be undertaken by the district and such maps, geological information, and other data as may be necessary for the formulation of such a program.~~

(i) ~~“Person” means any natural person, private corporation, or municipality, or other public corporation.~~

(j) ~~“Water right” shall have the meaning ascribed to that term in K.S.A. 82a-701, and amendments thereto.~~

(k) ~~“Water user” means any person who is withdrawing or using groundwater from within the boundaries of the district in an amount not~~

~~less than one acre-foot per year. If a municipality is a water user within the district, it shall represent all persons within its corporate limits who are not water users as defined above.~~

Sec. 3. K.S.A. 2010 Supp. 82a-301 and 82a-1021 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 12, 2011.

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## CHAPTER 68

### HOUSE BILL No. 2020

AN ACT concerning postsecondary educational institutions; relating to certain funds; authorizing interest earnings on Johnson county education research triangle authority funds; relating to fees imposed under the Kansas private and out-of-state postsecondary educational institution act; relating to certain veterinary practices by students; authorizing certain credits to housing system funds; amending K.S.A. 19-5003 and 47-1731 and K.S.A. 2010 Supp. 74-32,181 and 76-762 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 74-32,181a.

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

Section 1. On July 1, 2011, K.S.A. 19-5003 is hereby amended to read as follows: 19-5003. (a) If a majority of the electors voting at the election provided in K.S.A. 19-5002, and amendments thereto, shall approve such proposition to create the Johnson county education research triangle authority and to grant authority to impose a retailers' sales or levy an annual tax on real property within the county, or combination of both, the authority shall be created and the board of county commissioners shall provide by resolution for the imposition of the sales tax or levy of the annual tax on real property, or combination of both, and pledging the revenues received therefrom for such purposes as specified in this section. With regard to the retailers' sales tax, Johnson county shall utilize the services of the state department of revenue to administer, enforce and collect such tax. The sales tax shall be administered, enforced and collected in the same manner and by the same procedure as other countywide retailers' sales taxes are levied and collected and shall be in addition to any other sales tax authorized by law. Upon receipt of a certified copy of a resolution authorizing the levy of a countywide retailers' sales tax pursuant to this act, the state director of taxation shall cause such tax to be collected within and outside the boundaries of Johnson county at the same time and in the same manner provided for the collection of the state retailers' sales tax and local retailers' sales tax. All retailers' sales tax moneys collected by the director of taxation under the provisions of this act 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 Johnson county education research triangle authority retailers' sales tax fund which fund is hereby established in the state treasury. Any refund due on any retailers' sales tax collected pursuant to this act shall be paid out of the sales tax refund fund and reimbursed by the director of taxation from retailers' sales tax revenue collected pursuant to this act. All retailers' sales tax revenue collected within any county pursuant to this act shall be remitted at least quarterly by the state treasurer, on instruction from the director of taxation, to the treasurer of Johnson county.

(b) Any such sales tax imposed or tax levy on real property enacted by the voters of Johnson county shall be subject to voter recall upon proper petition and submission of the issue to a recall ballot in a general election.

(c) (1) *On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Johnson county education research triangle fund of the university of Kansas interest earnings based on: (A) The average daily balance of moneys in the Johnson county education research triangle fund of the university of Kansas for the preceding month; and (B) the net earnings rate for the pooled money investment portfolio for the preceding month.*

(2) *On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Johnson county education research triangle fund of Kansas state university interest earnings based on: (A) The average daily balance of moneys in the Johnson county education research triangle fund of Kansas state university for the preceding month; and (B) the net earnings rate for the pooled money investment portfolio for the preceding month.*

(3) *On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Johnson county education research triangle fund of the university of Kansas medical center interest earnings based on: (A) The average daily balance of moneys in the Johnson county education research triangle fund of the university of Kansas medical center for the preceding month; and (B) the net earnings rate for the pooled money investment portfolio for the preceding month.*

Sec. 2. K.S.A. 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 ~~who is a faculty member at the Kansas state university veterinary medical center. The spay or neuter program shall only be conducted at the surgery clinic at the Kansas state university medical center in Manhattan, Kansas. 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 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 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 commissioner shall promulgate rules and regulations as may be necessary to carry out the provisions of this section.

Sec. 3. On July 1, 2011, K.S.A. 2010 Supp. 74-32,181 is hereby amended to read as follows: 74-32,181. ~~(a) This section is subject to the provisions of K.S.A. 2010 Supp. 74-32,181a, and amendments thereto.~~

~~(b)(a)~~ The state board shall fix, charge and collect fees ~~for certificates of approval, registration of representatives and providing transcripts to students who attended an institution that has ceased operation~~ *not to exceed the following amounts* by adopting rules and regulations for such purposes; ~~subject to the following limitations:~~

(1) For institutions domiciled or having their principal place of business within the state of Kansas:

Initial issuance of certificate of approval nondegree granting not more than	\$1,700
Initial issuance of certificate of approval degree granting not more than	\$2,000
Renewal of certificate of approval nondegree granting not more than	\$1,200
Renewal of certificate of approval degree granting not more than	\$1,600
Initial registration of representative not more than	\$150
Annual renewal of registration of representative not more than	\$100
<i>Initial application fees:</i>	
Non-degree granting institution	\$2,000
Degree granting institution	\$3,000
<i>Initial evaluation fee (in addition to initial application fees):</i>	
Non-degree level	\$750
Associate degree level	\$1,000
Baccalaureate degree level	\$2,000
Master's degree level	\$3,000
Professional or doctoral degree level	\$4,000
<i>Renewal application fees:</i>	
Non-degree granting institution	2% of gross tuition, but not less than \$800, nor more than \$25,000
Degree granting institution	2% of gross tuition, but not less than \$1,600, nor more than \$25,000
<i>New program submission fees, for each new program:</i>	
Non-degree program	\$250
Associate degree program	\$500
Baccalaureate degree program	\$750
Master's degree program	\$1,000
Professional or doctoral degree program	\$2,000
Program modification fee, for each program	\$100
<i>Branch campus site fees, for each branch campus site:</i>	
Initial non-degree granting institution	\$1,500
Initial degree granting institution	\$2,500
<i>Renewal branch campus site fees, for each branch campus site:</i>	
Non-degree granting institution	2% of gross tuition, but not less than \$800, nor more than \$25,000
Degree granting institution	2% of gross tuition, but not less than \$1,600, nor more than \$25,000
Onsite branch campus review fee, for each site	\$250
<i>Representative fees:</i>	
Initial registration	\$200
Renewal of registration	\$150
Late submission of renewal of application fee	\$125
Student transcript copy fee	\$10
Returned check fee	\$50
<i>Changes in institution profile fees:</i>	
Change of institution name	\$100
Change of institution location	\$100
Change of ownership only	\$100

(2) For institutions domiciled or having their principal place of business outside the state of Kansas:

Initial issuance of certificate of approval nondegree granting not more than	\$3,400
Initial issuance of certificate of approval degree granting not more than	\$3,800
Renewal of certificate of approval nondegree granting not more than	\$2,400
Renewal of certificate of approval degree granting not more than	\$2,800
Initial registration of representative not more than	\$300

Annual renewal of registration of representative not more than .....	\$200
Student transcript from institution that has ceased operation not more than .....	\$10
<i>Initial application fees:</i>	
Non-degree granting institution .....	\$4,000
Degree granting institution .....	\$5,500
<i>Initial evaluation fee (in addition to initial application fees):</i>	
Non-degree level .....	\$1,500
Associate degree level .....	\$2,000
Baccalaureate degree level .....	\$3,000
Master's degree level .....	\$4,000
Professional or doctoral degree level .....	\$5,000
<i>Renewal application fees:</i>	
Non-degree granting institution .....	3% of gross tuition, but not less than \$2,400 nor more than \$25,000
Degree granting institution .....	3% of gross tuition, but not less than \$3,000 nor more than \$25,000
<i>New program submission fees, for each new program:</i>	
Non-degree program .....	\$500
Associate degree program .....	\$750
Baccalaureate degree program .....	\$1,000
Master's degree program .....	\$1,500
Professional or doctoral degree program .....	\$2,500
Program modification fee, for each program .....	\$100
<i>Branch campus site fees, for each branch campus site:</i>	
Initial non-degree granting institution .....	\$4,000
Initial degree granting institution .....	\$5,500
<i>Renewal branch campus site fees, for each branch campus site:</i>	
Non-degree granting institution .....	3% of gross tuition, but not less than \$2,400 nor more than \$25,000
Degree granting institution .....	3% of gross tuition, but not less than \$3,000 nor more than \$25,000
Onsite branch campus review fee, for each site .....	\$500
<i>Representative fees:</i>	
Initial registration .....	\$350
Renewal of registration .....	\$250
Late submission of renewal of application fee .....	\$125
Student transcript copy fee .....	\$10
Returned check fee .....	\$50
<i>Changes in institution profile fees:</i>	
Change of institution name .....	\$100
Change of institution location .....	\$100
Change of ownership only .....	\$100

~~(e)~~(b) Fees shall not be refundable.

~~(d)~~(c) If there is a change in the ownership of an institution and, if at the same time, there also are changes in the institution's programs of instruction, location, entrance requirements or other changes, the institution shall be required to submit an application for an initial certificate of approval and shall pay all applicable fees associated with an initial application.

~~(e)~~(d) An application for renewal shall be deemed late if the applicant fails to submit a completed application for renewal, or documentation requested by the state board to complete the renewal process, before the expiration date of the current certificate of approval.

~~(f)~~(e) The state board shall determine on or before June 1 of each year the amount of revenue which will be required to properly carry out and enforce the provisions of the Kansas private and out-of-state postsecondary educational institution act for the next ensuing fiscal year and shall fix the fees authorized for such year at the sum deemed necessary for such purposes within the limits of this section. Prior to adoption of any such fees, the state board shall afford the advisory commission an opportunity to make recommendations on the proposed fees.

~~(g)~~(f) Fees may be charged to conduct onsite reviews for degree granting and non-degree granting institutions or to review curriculum in content areas where the state board does not have expertise.

(g) *The provisions of this section shall expire on June 30, 2012.*

Sec. 4. On July 1, 2011, K.S.A. 2010 Supp. 76-762 is hereby amended to read as follows: 76-762. (a) There is hereby created in the custody of the state treasurer the following funds at each state educational institution from which the housing system shall be operated:

- (1) A housing system suspense fund;
- (2) a housing system operations fund; and
- (3) a housing system repairs, equipment and improvement fund.

(b) Payments received for rents and boarding fees and other charges in ~~connection with~~ the operation of the housing system 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 housing system suspense fund *or the housing system operations fund as directed by the state educational institution.*

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the housing system suspense fund, *the housing system operations fund and the housing system repairs, equipment and improvement fund* of each state educational institution interest earnings based on:

(1) The aggregate of (A) the average daily balance of moneys in the housing system suspense fund (B) the average daily balance of moneys in the housing system operations fund, and (C) the average daily balance of moneys in the housing system repairs, equipment and improvement fund of the state educational institution for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(d) The housing system operations fund shall be used to pay the expenses of operation of the housing systems and for the operation and maintenance of the system. ~~The state educational institution shall transfer-~~ *Transfers may be made* from the housing system suspense fund to the *housing system operations fund* in amounts needed for the operation and maintenance of the system *as determined by the state educational institu-*

tion. Each state educational institution shall establish such accounts within the housing system operations fund as are required for the efficient management of the system.

(e) The housing system repairs, improvements and equipment fund shall be used for repairs, equipment, improvements and expansion of the housing system that cannot be financed from the housing system operations fund. Transfers may be made to this fund from the housing system suspense fund or the housing system operations fund as determined by the state educational institution. Expenditures from this fund may be made for projects that have been approved by the state board of regents.

Sec. 5. On July 1, 2011, K.S.A. 19-5003 and K.S.A. 2010 Supp. 74-32,181, 74-32,181a and 76-762 are hereby repealed.

Sec. 6. K.S.A. 47-1731 is hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 12, 2011.

Published in the *Kansas Register* May 19, 2011.

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CHAPTER 69

HOUSE BILL No. 2105

AN ACT concerning children in need of care; relating to removal of a child from parent’s custody; amending K.S.A. 2010 Supp. 38-2255 and repealing the existing section; also repealing K.S.A. 2010 Supp. 38-2255a.

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

Section 1. K.S.A. 2010 Supp. 38-2255 is hereby amended to read as follows: 38-2255. (a) *Considerations.* Prior to entering an order of disposition, the court shall give consideration to:

- (1) The child’s physical, mental and emotional condition;
  - (2) the child’s need for assistance;
  - (3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;
  - (4) any relevant information from the intake and assessment process;
- and
- (5) the evidence received at the dispositional hearing.

(b) *Custody with a parent.* The court may place the child in the custody of either of the child’s parents subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including, but not limited to:

- (1) Supervision of the child and the parent by a court services officer;

(2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and

(3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

(c) *Removal of a child from custody of a parent.* The court shall not enter the initial order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

*The court shall not enter an order removing a child from the custody of a parent pursuant to this section based solely on the finding that the parent is homeless.*

(d) *Custody of a child removed from the custody of a parent.* If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to a relative of the child or to a person with whom the child has close emotional ties who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, to any other suitable person, to a shelter facility, to a youth residential facility or, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse, to the secretary. Custody awarded under this subsection shall continue until further order of the court.

(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and notify the court of the placement or proposed placement of the child within 10 days of the order awarding custody. After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

(2) The custodian designated under this subsection shall notify the court in writing at least 10 days prior to any planned placement with a parent. The written notice shall state the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare or best interest of

the child. Upon reviewing the notice, the court may allow the custodian to proceed with the planned placement or may set the date for a hearing to determine if the child shall be allowed to return home. If the court sets a hearing on the matter, the custodian shall not return the child home without written consent of the court.

(3) The court may grant any person reasonable rights to visit the child upon motion of the person and a finding that the visitation rights would be in the best interests of the child.

(4) The court may enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsection (a) of K.S.A. 2010 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(5) The court shall provide a copy of any orders entered within 10 days of entering the order to the custodian designated under this subsection.

(e) *Further determinations regarding a child removed from the home.* If custody has been awarded under subsection (d) to a person other than a parent, a permanency plan shall be provided or prepared pursuant to K.S.A. 2010 Supp. 38-2264, and amendments thereto. If a permanency plan is provided at the dispositional hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is not a viable alternative, whether the child should be placed for adoption or a permanent custodian appointed. In determining whether reintegration is a viable alternative, the court shall consider:

(1) Whether a parent has been found by a court to have committed one of the following crimes or to have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted, conspired or solicited the commission of one of these crimes: (A) Murder in the first degree, K.S.A. 21-3401, *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (B) murder in the second degree, K.S.A. 21-3402, *prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (C) capital murder, K.S.A. 21-3439, *prior to its repeal or section 36 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; (D) voluntary manslaughter, K.S.A. 21-3403, *prior to its repeal or section 39 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or (E) a felony battery that resulted in bodily injury;

(2) whether a parent has subjected the child or another child to aggravated circumstances;

(3) whether a parent has previously been found to be an unfit parent in proceedings under this code or in comparable proceedings under the laws of another state or the federal government;

- (4) whether the child has been in extended out of home placement;
- (5) whether the parents have failed to work diligently toward reintegration;
- (6) whether the secretary has provided the family with services necessary for the safe return of the child to the home; and
- (7) whether it is reasonable to expect reintegration to occur within a time frame consistent with the child's developmental needs.

(f) *Proceedings if reintegration is not a viable alternative.* If the court determines that reintegration is not a viable alternative, proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian shall be initiated unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child. If compelling reasons have not been documented, the county or district attorney shall file a motion within 30 days to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

(g) *Additional Orders.* In addition to or in lieu of any other order authorized by this section:

(1) The court may order the child and the parents of any child who has been adjudicated a child in need of care to attend counseling sessions as the court directs. The expense of the counseling may be assessed as an expense in the case. No mental health provider shall charge a greater fee for court-ordered counseling than the provider would have charged to the person receiving counseling if the person had requested counseling on the person's own initiative.

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, by the child, a parent of the child, or another person responsible for the care of the child, the court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations. If the evaluation is performed by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for the care of the child shall pay a fee not to exceed the fee established by that statute. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary.

(3) If child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the court shall

order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is subject to the jurisdiction of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2010 Supp. 38-2277, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2010 Supp. 38-2279, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Sec. 2. K.S.A. 2010 Supp. 38-2255 and 38-2255a 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 12, 2011.

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## CHAPTER 70

### HOUSE BILL No. 2104

AN ACT concerning mental health information; relating to access by law enforcement officers; amending K.S.A. 2010 Supp. 65-5603 and repealing the existing section.

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

Section 1. K.S.A. 2010 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; ~~or~~

(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 by a law enforcement officer, 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. 2010 Supp. 38-3202, and amendments thereto;*

(3) *"juvenile correctional facility" means the same as prescribed in K.S.A. 2010 Supp. 38-3202, and amendments thereto;*

(4) *"juvenile detention facility" means the same as prescribed in K.S.A. 2010 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.*

~~(b)~~(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. 2010 Supp. 65-5603 is hereby repealed.

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

Approved May 12, 2011.

Published in the *Kansas Register* May 19, 2011.

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## CHAPTER 71

### HOUSE BILL No. 2172

AN ACT concerning roads and highways; designating the Margaret Long interchange; Eisenhower/Truman Presidential highway; amending K.S.A. 68-1009 and repealing the existing section.

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

New Section 1. The junction of United States highway 24 and K-7 highway in Wyandotte county is hereby designated as the Representative Margaret Long interchange. The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the junction of United States highway 24 and K-7 highway is the Representative Margaret Long 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.

New Sec. 2. If the state of Missouri designates a portion of interstate highway 70 as the Truman/Eisenhower Presidential highway, or something substantially similar, then the portion of interstate highway 70 from the Missouri state line to the junction with highway K-15 shall be designated the Eisenhower/Truman Presidential highway. The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the highway is the Eisenhower/Truman Presidential 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. 3. K.S.A. 68-1009 is hereby amended to read as follows: 68-1009.

(a) The portion of United States highway No. 40 traversing this state where it crosses the Missouri-Kansas border on the east to the point where it leaves the state on the west at the Kansas-Colorado line, be and it is hereby designated as the official east-west Blue Star memorial highway in the state of Kansas.

(b) *If the state of Missouri designates a portion of interstate highway 70 as the Truman/Eisenhower Presidential highway, or something substantially similar, then the portion of United States highway No. 40 from where it crosses the Missouri-Kansas border, to the west city limits of Topeka, and then from the junction of highway K-15 with United States highway No. 40, then west on United States highway No. 40 to the point where it leaves the state at the Kansas-Colorado line, shall be designated as the official east-west Blue Star memorial highway in the state of Kansas.*

Sec. 4. K.S.A. 68-1009 is hereby repealed.

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

Approved May 12, 2011.

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## CHAPTER 72

Substitute for HOUSE BILL No. 2271

AN ACT concerning agriculture; relating to plant pest inspection and control; amending K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117, 2-2118, 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 2-2129 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 2-2113 is hereby amended to read as follows: 2-2113. As used in this act:

(a) “Plant pests” include any stage of development of any insect, nematode, arachnid, or any other invertebrate animal, or any bacteria, fungus, virus, weed or any other parasitic plant or microorganism, which can injure plants or plant products.

(b) “Secretary” means the secretary of the Kansas department of agriculture, or the authorized representative of the secretary.

(c) “Plants ~~and plant products~~” means trees, shrubs, grasses, vines, forage and cereal plants and all other plants; cuttings, grafts, scions, buds and all other parts of plants; ~~and~~.

(d) “Plant products” means fruit, vegetables, roots, bulbs, seeds, wood, lumber, grains and all other plant products.

~~(d)~~ (e) “Location” means any grounds or premises on or in which live plants are propagated, or grown, or from which live plants are removed for

sale, or any grounds or premises on or in which live plants are being fumigated, treated, packed, stored; or offered for sale.

~~(e)~~ (f) “Live plant dealer” means any person, unless excluded by rules and regulations of the secretary adopted hereunder, who engages in business in the following manner:

- (1) Grows live plants for sale or distribution;
- (2) buys or obtains live plants for the purpose of reselling or reshipping within this state;
- (3) plants, transplants or moves live plants from place to place within the state with the intent to plant such live plants for others and receives compensation for the live plants, for the planting of such live plants or for both live plants and plantings; or
- (4) gives live plants as a premium or for advertising purposes.

~~(f)~~ (g) “Person” means a corporation, company, society, association, partnership, governmental agency and any individual or combination of individuals.

~~(g)~~ (h) “Permit” means a document issued or authorized by the secretary to provide for the movement of regulated articles to restricted destinations for limited handling, utilization; or processing.

~~(h)~~ (i) “Host” means any plant or plant product upon which a plant pest is dependent for completion of any portion of its life cycle.

~~(i)~~ (j) “Regulated article” means any host or any article of any character as described in a quarantine or regulation carrying or being capable of carrying the plant pest against which the quarantine or regulation is directed.

~~(j)~~ (k) “Live plant” means any living plant, cultivated or wild, or any part thereof that can be planted or propagated unless specifically exempted by the rules or regulations of the secretary.

~~(k)~~ (l) “Quarantine pest” means a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

~~(l)~~ (m) “Regulated nonquarantine pest” means a nonquarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated.

~~(m)~~ (n) “Official control” means the active enforcement of mandatory ~~phytosanitary~~ phytosanitary regulations and the application of mandatory ~~phytosanitary~~ phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated nonquarantine pest.

~~(n)~~ (o) “Regulated area” means an area into which, within which ~~and~~ or from which plants, plant products and other regulated articles are subjected to ~~phytosanitary~~ phytosanitary regulations or procedures in order to prevent the introduction ~~and/or~~ or spread, ~~or both,~~ of quarantine pests or to limit the economic impact of regulated nonquarantine pests.

~~(p)~~ (p) “Bee” means a honey-producing insect of the genus *Apis* including all life stages of the insect.

~~(q)~~ (q) “Beekeeping equipment” means all hives, supers, frames or other devices used in the rearing or manipulation of bees or their brood.

~~(r)~~ “Bee pest” means any infectious, contagious or communicable disease or harmful parasite or insects affecting honey bees or their brood.

Sec. 2. K.S.A. 2010 Supp. 2-2115 is hereby amended to read as follows: 2-2115. (a) To effectuate the purposes of this act *and any rules or regulations adopted hereunder*, the secretary shall have the right to:

~~enter and inspect any property in this state, except private dwellings; or,~~

(1) *Enter any property in the state, except private dwellings, in order to:*

(A) *Inspect;*

(B) *monitor;*

(C) *place and inspect monitoring equipment; and*

(D) *obtain samples; and*

(2) ~~to~~ stop and inspect any means of conveyance moving within this state, upon ~~probable cause~~ *reasonable suspicion* to believe it contains or carries any plant pest or other article subject to this act.

(b) *If access to any property sought under the provisions of this section for the purposes authorized is denied, the secretary may apply to any court of competent jurisdiction for an order providing for such access. The court shall, upon proper application, issue an order providing for access to such property.*

Sec. 3. K.S.A. 2010 Supp. 2-2116 is hereby amended to read as follows: 2-2116. Wherever the secretary finds a plant, plant product or other regulated article that is infested by a plant pest or finds that a plant pest exists on any premises in this state or is in transit in this state, the secretary ~~may:~~

(a) Upon giving notice to the ~~owner or an agent of the owner in possession thereof~~ *person in possession thereof, or agent of such person, may* seize, quarantine, treat; or otherwise dispose of such plant pest in such manner as the secretary deems necessary to suppress, control, eradicate, ~~or~~ prevent or retard the spread of such plant pest; ~~or~~

(b) ~~the secretary may~~ order such ~~owner or agent~~ *person in possession thereof, or agent of such person* to so treat or otherwise dispose of ~~the~~ such plant pest. *If such person fails to comply with such order, the secretary may treat or otherwise dispose of such plant pest; or*

(c) *if such person is a live plant dealer, after notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may assess against such live plant dealer any reasonable expense incurred by the secretary in treating or otherwise disposing of such plant pest.*

Sec. 4. K.S.A. 2010 Supp. 2-2117 is hereby amended to read as follows: 2-2117. The secretary is authorized to quarantine this state or any portion

thereof when the secretary determines that such action is necessary to prevent or retard the spread of a plant pest and to quarantine any other state or portion thereof whenever the secretary determines that a plant pest exists therein and that such action is necessary to prevent or retard its spread into this state. Before promulgating the determination that a quarantine is necessary, the secretary, after *providing* due notice to interested parties, shall hold a public hearing at which any interested party may appear and be heard either in person or by attorney. The secretary may impose a temporary quarantine for a period not to exceed 90 days during which time a public hearing, as provided in this section, shall be held if it appears that a quarantine for more than the 90-day period will be necessary to prevent or retard the spread of the plant pest. The secretary may limit the application of the quarantine to the infested portion of the quarantined area and appropriate environs, to be known as the regulated area, and, without further hearing, may extend the regulated area to include additional portions of the quarantined area. Following the establishment of the quarantine, no person shall move the plant pest against which the quarantine is established or move any regulated article described in the quarantine, within, from, into or through this state contrary to the quarantine promulgated by the secretary. The quarantine may restrict the movement of the plant pest and any regulated articles from the quarantined or regulated area in this state into or through other parts of this state or other states and from the quarantined or regulated area in other states into or through this state. The secretary shall impose such inspection, disinfection, certification or permit and other requirements as the secretary shall deem necessary to effectuate the purposes of this act. The secretary is authorized to establish regulations defining pest freedom standards for live plants, plants and plant products or other regulated articles that pose risk of moving plant pests that may cause economic or environmental harm.

Sec. 5. K.S.A. 2010 Supp. 2-2118 is hereby amended to read as follows: 2-2118. Upon request the secretary may provide inspection services for any person who owns or possesses plants or plant products or for certification purposes of regulated articles intended for shipment ~~interstate or internationally~~. Upon payment of the appropriate fee as established by rule and regulation and as inspection personnel are available, the inspection shall be conducted and a report or certificate setting forth the inspection results shall be issued if requested. Inspection fees shall not exceed \$30 per hour. *The secretary shall may assess reasonable diagnostic and identification fees as established by rules and regulations adopted by the secretary.* Mileage incurred shall also be paid by the person requesting the inspection at the rate established by ~~rules and regulation~~ *regulations*. If certificate is requested an additional fee not to exceed \$50, *as established by rules and regulations*, plus any fee amount charged by the United States government for the acquisition of federal certificates shall be assessed. The fees for such

inspection and certificate in effect on the day preceding the effective date of this act shall continue in effect until the secretary adopts rules and regulations fixing a different fee therefor under this subsection. In any case where any intended receiving state or country requires or authorizes the certification of plants or plant products, bees or beekeeping equipment or other regulated articles to be based on origin, special handling, treatment or any other procedure in addition to or in lieu of actual visual inspection of such articles, the secretary may provide such certification. The secretary may refuse to perform any inspection if the regulated article to be inspected is found to be in such condition that it cannot be adequately inspected or the environs in which the regulated article is located present a danger to the health and safety of the inspection personnel.

Sec. 6. K.S.A. 2010 Supp. 2-2120 is hereby amended to read as follows: 2-2120. (a) Every live plant dealer, before selling or offering for sale or delivering any live plants in this state, shall procure from the secretary a live plant dealer's license for each location ~~and vehicle from which the~~ *such* live plant dealer ~~offers such live plants for sale~~ *engages in business as a live plant dealer.*

(b) Application for such license shall be made on a form furnished by the secretary; ~~and~~. The fee for each application shall be fixed by rules and regulations adopted by the secretary, except that such fee shall not exceed ~~\$60~~ *\$80, excluding the plant pest emergency fee, authorized pursuant to K.S.A. 2010 Supp. 2-2129, and amendments thereto. and shall not apply to live plant dealers whose total annual retail live plant sales are less than \$10,000. The application fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary adopts rules and regulations fixing a different application fee under this section.*

(c) *A live plant dealer shall not be required to obtain a license if such live plant dealer does not import or export plants into or from the state and the annual gross receipts of such live plant dealer's business is less than \$10,000.*

(d) ~~The~~ *Such live plant dealer's license shall expire on January 31, following date of issue, except that all valid certificates of nursery inspection and nursery dealer licenses issued by the secretary that are scheduled to expire in 2002 shall remain valid until January 31, 2003.*

(e) A live plant dealer may *only engage in the live plant business with* ~~sell only~~ live plants which are:

(1) In compliance with all quarantines and regulated nonquarantine pest freedom standards established by the secretary; or

(2) ~~live plants~~ accompanied by a valid certificate of inspection of a federal inspector or inspector of another state; stating that such live plants comply with all applicable quarantines and regulated nonquarantine pest freedom standards. ~~Except where restricted by a quarantine, live plants~~

~~transplanted on one contiguous property are exempt from the provisions of this act.~~

Sec. 7. K.S.A. 2010 Supp. 2-2122 is hereby amended to read as follows: 2-2122. ~~If it is found that any live plant dealer license issued by the secretary is being used in connection with live plants which do not meet the quarantines and regulated nonquarantine pest freedom standards established by the secretary, or other precautionary measures prescribed by the secretary under the provisions of this act and amendments thereto, or if it is found that any live plant dealer's license is being used by a person other than the one to whom it was issued, the secretary may revoke the live plant dealer's license after notice and opportunity for a hearing are given in accordance with the provisions of the Kansas administrative procedure act to show cause why the license should not be revoked.~~

*The secretary, after providing notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, may deny any application or revoke, suspend, modify or refuse to renew any license, permit or certificate issued pursuant to this act if such applicant or holder of such license, permit or certificate has:*

*(a) Failed to comply with any provision or requirement of this act or any rule or regulation adopted hereunder;*

*(b) failed to comply with any laws, rules or regulations of any other state, or the United States, related to the licensing of live plant dealers, plant pests, plants, plant products or commodity certification; or*

*(c) had any license, certificate or permit issued by any other state, or the United States, related to the licensing of live plant dealers, plant pests, plants or plant products revoked, suspended or modified.*

Sec. 8. K.S.A. 2010 Supp. 2-2123 is hereby amended to read as follows: 2-2123. ~~It shall be unlawful to deliver, transport or ship into or within this state live plants or other regulated articles which are not in compliance with the provisions of this act.~~

~~(a) Any such live plants intended for resale and any such live plants transported by public carrier sold, delivered, transported or shipped into or within this state by a live plant dealer shall have attached to each quantity or package shall be accompanied by a tag, or label, itemized bill of lading, receipt or other document on which shall appear the name and address of the consignor or shipper, a description of the contents and the place of origin.~~

~~(b) All live plants and regulated articles shipped or moved into this state shall be accompanied by a copy of a valid document documentation issued by the proper official of the state, territory, district or country from which it was shipped, sent, or brought or moved, showing that such live plants or regulated articles are in compliance with Kansas quarantines and regulated nonquarantine pest freedom standards as established by the secretary.~~

(c) Live plants brought into the state under a document, as required by this section, may be sold and moved under a valid Kansas live plant dealer license, and this shall not preclude inspection by the secretary at any time within the state.

(d) Electronic or mail order sales of live plants are subject to the provisions of this act. ~~All regulated articles shipped or moved into Kansas shall be accompanied by valid documentation issued by the proper official of the state, territory, district or county [country] from which it was shipped or moved showing that the regulated article is in compliance with Kansas quarantines or pest freedom standards, or both, established for such article.~~

Sec. 9. K.S.A. 2010 Supp. 2-2124 is hereby amended to read as follows: 2-2124. (a) It shall be a violation of this act for any person to:

~~(a)~~ (1) ~~To~~ Sell, barter, offer for sale, or move, transport, deliver, ship or offer for shipment into or within this state any plant pests in any living stage without first obtaining approval for such shipment from the secretary;

~~(b)~~ (2) ~~to~~ hinder or prevent the secretary from carrying out ~~his or her~~ duties under this act;

~~(c)~~ (3) ~~to~~ fail to carry out the treatment or destruction of any plant pest or regulated article in accordance with official notification from the secretary;

~~(d)~~ (4) ~~to~~ sell, transport, deliver, distribute, offer or expose for sale live plants which are not in compliance with the provisions of this act;

~~(e)~~ (5) ~~to use~~ engage in business as a live plant dealer and use an invalid, *suspended* or revoked certificate of inspection, *permit* or live plant dealer license, ~~in the sale or distribution of live plants;~~

~~(f)~~ (6) ~~to~~ fail to comply with any of the provisions of this act, or the rules and regulations ~~promulgated~~ *adopted* hereunder; and

~~(g)~~ (7) ~~to~~ knowingly move any regulated article into *or within* this state from a quarantined area ~~of any other state~~ when such article has not been treated or handled as provided by the requirements of said quarantine at the point of origin of such article.

(b) *Each day a violation of this act occurs or continues shall constitute a separate violation.*

(c) *The district court shall have jurisdiction over violations of this act or rules and regulations adopted hereunder. Such court may issue temporary restraining orders without first requiring proof that an adequate remedy at law does not exist. Any such orders shall be issued without bond. Such orders may be issued prior to the initiation of any criminal, administrative or civil penalty proceedings.*

Sec. 10. K.S.A. 2010 Supp. 2-2125 is hereby amended to read as follows: 2-2125. (a) Any person violating 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 less than \$25 nor more than \$500.

(b) The secretary, *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 or regulations adopted hereunder*, of not less than \$100 nor more than ~~\$1,000~~\$2,000 per offense. ~~In the case of a continuing offense, each day the violation continues may be deemed a separate 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. ~~Such assessment shall be made in accordance with the Kansas administrative procedure act.~~

Sec. 11. K.S.A. 2010 Supp. 2-2126 is hereby amended to read as follows: 2-2126. The secretary shall ~~promulgate~~ *adopt*, amend and repeal such rules and regulations as, in the discretion of the secretary, are necessary for the ~~efficient execution~~ *administration and enforcement* of the provisions of this act.

Sec. 12. K.S.A. 2010 Supp. 2-2128 is hereby amended to read as follows: 2-2128. (a) The secretary shall remit all moneys received by or for the secretary under article 21 of chapter 2 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 ~~entomology~~ *plant protection* 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 secretary ~~of agriculture or by a person or persons designated by the secretary.~~

(b) *The entomology fee fund is hereby redesignated the plant protection fee fund.*

Sec. 13. K.S.A. 2010 Supp. 2-2129 is hereby amended to read as follows: 2-2129. (a) There is hereby created a plant pest emergency response fund in the state treasury. Such fund shall be funded by a fee assessed in addition to the fees assessed a live plant dealer under article 21 of chapter 2 of the Kansas Statutes Annotated, *and amendments thereto*. The additional fee shall be fixed by ~~rule and regulation promulgated~~ *rules and regulations adopted* by the secretary of agriculture, except that such additional fee shall not exceed \$5 annually on each live plant dealer license. The secretary is authorized and empowered to collect the fees provided in this section. ~~When the total amount of fees deposited in the fund is equal to or exceeds \$15,000, the secretary shall not collect any such fees as provided in this section. When expenditures made from the fund result in the total amount of the fees deposited in the fund to be less than \$15,000, the secretary may resume the assessment and collection of such fees as provided in this section.~~

(b) The secretary is authorized and empowered to make expenditures from the plant pest emergency response fund and that in the discretion of

the secretary mitigate pests that have been identified by the secretary as high risk pests having the potential to damage agriculture, horticulture or the environment. Such expenditures may include the costs of enforcement to protect against high risk pests identified by the secretary. 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 ~~or by a designee of the secretary.~~

(c) The plant pest emergency response fund shall be a fund separate and distinct from the ~~entomology~~ *plant protection* fee fund referred to in K.S.A. 2-2128, and amendments thereto.

(d) The provisions of this section shall be part of and supplemental to this act.

Sec. 14. K.S.A. 2010 Supp. 2-2113, 2-2115, 2-2116, 2-2117, 2-2118, 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 2-2129 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 12, 2011.

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## CHAPTER 73

### HOUSE BILL No. 2282

AN ACT concerning lodging inspections; relating to lodging inspection fees; amending K.S.A. 2010 Supp. 36-502, 36-518 and 74-591 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 36-512.

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

New Section 1. 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. 2. K.S.A. 2010 Supp. 36-502 is hereby amended to read as follows: 36-502. (a) It shall be unlawful for any person to engage in the busi-

ness 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, 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.

(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 ~~\$3~~ \$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 ~~\$35~~ \$40 and for every additional 10 rooms therein, an additional fee of ~~\$5~~ \$10 shall be charged. All lodging establishments which are ~~new~~, newly constructed, *newly converted to use as a lodging facility establishment* or have a change of ownership shall pay an application fee which may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed ~~\$100~~ \$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.

Sec. 3. K.S.A. 2010 Supp. 36-518 is hereby amended to read as follows: 36-518. (a) 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 lodging establishment does not comply with the applicable standards promulgated*

*in the rules and regulations of the secretary.* ~~For such inspections~~ 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 rules and regulations of the secretary, the secretary shall give written notice to the owner, proprietor or agent in charge of such establishment of the changes or alterations necessary to comply with such standards.

(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.

(2) The notice also shall state that the license for such establishment shall be subject to suspension or revocation for failure to comply with the applicable standards within the time specified.

(3) The licensee 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.

(c) 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 rules and regulations of the secretary, the secretary 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) 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 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. 4. K.S.A. 2010 Supp. 74-591 is hereby amended to read as follows: 74-591. ~~(a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to~~

~~the powers, duties and functions transferred by this act are hereby transferred within the state treasury to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made. On and after October 1, 2004, all such balances shall be deposited in the food safety fee fund and may be used to carry out the responsibilities and duties of the division of food safety of the Kansas department of agriculture, as established by this act.~~

~~(b)~~(a) There is hereby created the food safety fee fund. The Kansas department of agriculture shall remit all moneys received by or for it from fees; ~~and charges or penalties from the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 74-581 and 74-5,104, and amendments thereto, except moneys deposited to the credit of the lodging fee fund in the state treasury 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 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 of agriculture or by a person or persons designated by the secretary.

*(b) On July 1, 2011, the director of accounts and reports shall transfer all moneys in the food service inspection reimbursement fund and the food inspection fee fund to the food safety fee fund. On July 1, 2011, all liabilities of the food service inspection reimbursement fund and the food inspection fee fund are hereby imposed on the food safety fee fund. The food inspection fee fund and the food service inspection reimbursement fund are hereby abolished. Upon the abolition of those funds, any reference to those funds of any designation thereof, in any statute, contract or other document shall mean the food safety fee fund.*

Sec. 5. K.S.A. 2010 Supp. 36-502, 36-512, 36-518 and 74-591 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 12, 2011.

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## CHAPTER 74

## SENATE SUBSTITUTE for HOUSE BILL No. 2133

AN ACT concerning state funds; relating to moneys recovered from water litigation; relating to funding for local health departments; amending K.S.A. 65-242, 82a-1801 and 82a-1802 and K.S.A. 2010 Supp. 82a-1803, 82a-1804 and 82a-1805 and repealing the existing sections.

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

Section 1. K.S.A. 65-242 is hereby amended to read as follows: 65-242. For the purpose of insuring that adequate public health services are available to all inhabitants of the state of Kansas, the state shall assist in the financing of the operation of local health departments. Subject to appropriations therefor, state financial assistance shall be distributed to local health departments as follows:

(a) First, each local health department shall, upon application therefor, receive \$7,000. If sufficient funds are not available to make this distribution, then the funds which are available shall be divided equally among those local health departments making application therefor.

(b) Second, if any funds are available after the distribution required in subsection (a), the secretary shall distribute such funds as follows:

(1) A figure equal to the total amount of state financial assistance available for distribution, before deduction for the distribution in subsection (a), shall be determined.

(2) The figure determined in paragraph (1) of this subsection shall be allocated to local health departments making application for assistance based on the proportion that the population of the county or counties comprising the local health department applying for such assistance bears to the total population of all counties comprising local health departments which have applied for such financial assistance.

(3) If any local health department making application for assistance would receive an amount equal to or less than \$7,000 using the formula in paragraph (2) of this subsection, then such department shall be paid in accordance with subsection (a) only. If any local health department making application for assistance would receive more than \$7,000 using the formula in paragraph (2) of this subsection, then such department shall be paid based on the proportion that the population served by the county or counties comprising such local health department bears to the total population of all counties comprising local health departments which have made application for assistance, except for departments receiving funds under subsection (a), except that in no case shall the assistance distributed under this subsection (b) to a local health department exceed the amount that the local health department receives from local tax revenues for the county fiscal year in which the state financial assistance is paid.

(c) If local tax revenues allotted to a local health department for a fiscal year fall below the level of local tax revenues allotted to the local health

department for the preceding fiscal year, the amount of state financial assistance under this act for which such local health department is eligible for the fiscal year shall be reduced by a ~~dollar amount~~ *percentage* equal to the ~~dollar amount~~ *percentage* of reduction in local tax revenue for that fiscal year.

Sec. 2. K.S.A. 82a-1801 is hereby amended to read as follows: 82a-1801. (a) ~~Amounts~~ *All moneys* recovered by the state of Kansas from a ~~settlement, judgment or decree in the litigation brought in 1985 by the state of Kansas against the state~~ *the states of Colorado or Nebraska* to resolve disputes arising under the Arkansas river compact *or the Republican river compact* shall be deposited in the state treasury and credited as follows:

(1) ~~Until the aggregate amount of moneys credited to the interstate water litigation fund equals the aggregate of all amounts certified by the attorney general under subsection (b), 100% shall be credited to the interstate water litigation fund~~ *All moneys received from the state of Colorado in any litigation arising under the Arkansas river compact shall be remitted 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 credit:*

(A) *To the interstate water litigation fund, the amount equal to the total of 5% of the aggregate moneys received from the state of Colorado in such litigation plus the amount equal to the aggregate of any expenses incurred by the state, which are attributable to the deposit from any such litigation arising under the Arkansas river compact;*

(B) *one-third of all moneys remaining recovered from the state of Colorado in such litigation to the state water plan fund for use for water conservation projects, with priority given to conservation projects that directly enhance the ability of the state of Kansas to remain in compliance with the Arkansas river compact; and*

(C) *two-thirds of all moneys remaining recovered from the state of Colorado in such litigation to the Arkansas river water conservation projects fund.*

(2) ~~When the aggregate amount of moneys credited to the interstate water litigation fund equals the aggregate of all amounts certified by the attorney general under subsection (b), 33 1/3% shall be credited to the state water plan fund for use for water conservation projects and 66 2/3% shall be credited to the water conservation projects fund~~ *All moneys received from the state of Nebraska in any litigation arising under the Republican river compact shall be remitted 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 credit:*

(A) *To the interstate water litigation fund, the amount equal to the total of 5% of the aggregate moneys received from the state of Nebraska in such litigation plus an amount equal to the aggregate of any expenses incurred*

*by the state, which are attributable to the deposit from any such litigation arising under the Republican river compact;*

*(B) one-third of all moneys remaining recovered from the state of Nebraska in such litigation to the state water plan fund for use for water conservation projects, with priority given to conservation projects that directly enhance the ability of the state of Kansas to remain in compliance with the Republican river compact; and*

*(C) two-thirds of all moneys remaining recovered from the state of Nebraska in such litigation to the Republican river water conservation projects—Nebraska moneys fund.*

*(3) All moneys received from the state of Colorado in any litigation arising under the Republican river compact shall be remitted 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 credit:*

*(A) To the interstate water litigation fund, the amount equal to the total of 5% of the aggregate moneys received from the state of Colorado in such litigation plus an amount equal to the aggregate of any expenses incurred by the state, which are attributable to the deposit from any such litigation arising under the Republican river compact;*

*(B) one-third of all moneys remaining recovered from the state of Colorado in such litigation to the state water plan fund for use for water conservation projects, with priority given to conservation projects that directly enhance the ability of the state of Kansas to remain in compliance with the Republican river compact; and*

*(C) two-thirds of all moneys remaining recovered from the state of Colorado in such litigation to the Republican river water conservation projects—Colorado moneys fund.*

*(b) The attorney general shall certify to the director of accounts and reports any expenses incurred by the state in ~~the~~ any litigation brought ~~in~~ 1985 by the state of Kansas against the ~~state~~ states of Colorado or Nebraska to resolve disputes arising under the Arkansas river compact or the Republican river compact and in preparation for such litigation.*

Sec. 3. K.S.A. 82a-1802 is hereby amended to read as follows: 82a-1802. (a) There is hereby established in the state treasury the interstate water litigation fund, to be administered by the attorney general.

(b) Revenue from the following sources shall be credited to the interstate water litigation fund:

(1) Amounts provided for by K.S.A. 82a-1801, *and amendments thereto*; and

(2) moneys received from any source by the state in the form of gifts, grants, reimbursements or appropriations for use for the purposes of the fund.

(c) From the moneys first credited to the interstate water litigation fund,

persons or entities that contributed moneys to the court cost fund account of the office of the attorney general for use in the litigation described in subsection (b)(1) shall be reimbursed the amount contributed. The balance of moneys credited to the fund shall be expended only for the purpose of paying expenses incurred by the state in:

(1) Current or future litigation or preparation for future litigation with another state, the federal government or an Indian nation to resolve a dispute concerning water; or

(2) monitoring or enforcing compliance with the terms of an interstate water compact or a settlement, judgment or decree in past or future litigation to resolve a dispute with another state, the federal government or an Indian nation concerning water.

(d) Interest attributable to moneys in the interstate water litigation fund shall be credited to the state general fund as provided by K.S.A. 75-4210a, and amendments thereto.

(e) All expenditures from the interstate water litigation 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 attorney general or a person designated by the attorney general.

~~(f) Unless the attorney general certifies to the director of accounts and reports as of June 30, 2001, that there is on-going litigation or preparation for litigation between the state of Kansas and another state, the federal government or an Indian nation to resolve a dispute concerning water, on July 1, 2001: (1) The director of accounts and reports shall transfer and credit all moneys in the interstate water litigation fund to the state general fund; and (2) the interstate water litigation fund shall thereupon be abolished.~~

Sec. 4. K.S.A. 2010 Supp. 82a-1803 is hereby amended to read as follows: 82a-1803. (a) There is hereby established in the state treasury the water conservation projects fund, to be administered by the director of the Kansas water office. *The water conservation projects fund is hereby redesignated as the Arkansas river water conservation projects fund.*

(b) Revenue from the following sources shall be credited to the *Arkansas river* water conservation projects fund:

(1) Amounts provided for by K.S.A. 82a-1801, *and amendments thereto*; and

(2) moneys received from any source by the state in the form of gifts, grants, reimbursements or appropriations for use for the purposes of the fund.

(c) Moneys credited to the *Arkansas river* water conservation projects fund ~~may shall~~ be expended only for the purpose of paying all or a portion of the costs of the following water management, conservation, administration ~~conservation projects, utilization efficiency, administrative requirements~~ and delivery projects, and similar types of projects, in those areas of

the state lying in the upper Arkansas river basin and directly impacted by the provisions of the Arkansas river compact between this state and the state of Colorado:

*(d) The types of projects that may be funded under subsection (a)(1) of K.S.A. 82a-1801, and amendments thereto, include:*

(1) Efficiency improvements to canals or laterals owned by a ditch company or projects to improve the operational efficiency or management of such canals or laterals;

(2) water use efficiency devices, tailwater systems or irrigation system efficiency upgrades;

(3) water measurement flumes, meters, gauges, data collection platforms or related monitoring equipment;

(4) artificial recharge or purchase of water rights for stream recovery or aquifer restoration;

(5) maintenance of the Arkansas river channel; or

(6) monitoring and enforcement of Colorado's compliance with the Arkansas river compact.

Moneys credited to the fund may be expended to reimburse costs of projects described by this subsection that were required by the division of water resources and commenced on or after July 1, 1994.

~~(d) Any person or entity may apply to the director of the Kansas water office for the expenditure of moneys in the water conservation projects fund for the purposes provided by this section. The director of the Kansas water office and the chief engineer of the division of water resources of the Kansas department of agriculture shall review and approve each proposed project for which moneys in the fund will be expended. In reviewing and approving proposed projects, the director and the chief engineer shall give priority to: (1) Projects that achieve the greatest water conservation efficiency for the general good; and (2) projects that have been required by the division of water resources. Upon such review and approval, the director of the Kansas water office shall request the legislature to appropriate, as a line item, moneys from the fund to pay all or a portion of the costs of the specific project, except that any project for which an aggregate of less than \$10,000 will be expended from the fund shall not require a line item appropriation.~~

~~(e) Interest attributable to moneys in the water conservation projects fund shall be credited to the state general fund as provided by K.S.A. 75-4210a and amendments thereto.~~

~~(f) All expenditures from the water conservation projects 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 of the Kansas water office or a person designated by the director of the Kansas water office.~~

Sec. 5. K.S.A. 2010 Supp. 82a-1804 is hereby amended to read as follows: 82a-1804. (a) Moneys recovered by the state of Kansas from the

~~states of Nebraska or Colorado to resolve disputes arising under the Republican river compact shall be deposited in the state treasury and credited as follows:~~

~~(1) 100% of moneys from both Nebraska and Colorado shall be credited to the interstate water litigation fund created by K.S.A. 82a-1802, and amendments thereto. Whenever moneys are credited to the interstate water litigation fund pursuant to this subsection (a)(1), the director of accounts and reports shall transfer all such moneys from the interstate water litigation fund to the interstate water litigation reserve account of the state general fund until the balance in the interstate water litigation reserve account of the state general fund equals \$20,000,000. The attorney general shall certify to the director of accounts and reports any expenses incurred by the state in any litigation brought by the state of Kansas against the states of Nebraska or Colorado to resolve disputes arising under the Republican river compact and in preparation for such litigation.~~

~~(2) Once the balance in the interstate water litigation reserve account of the state general fund equals \$20,000,000, all moneys remaining recovered from Nebraska shall be credited to the Republican river water conservation projects—Nebraska moneys fund as directed by subsection (b) of this section, and all moneys remaining recovered from Colorado shall be credited to the Republican river water conservation projects—Colorado moneys fund as directed by subsection (c) of this section.~~

~~(b)(a) There is hereby established in the state treasury the Republican river water conservation projects—Nebraska moneys fund to be administered by the director of the Kansas water office.~~

~~(1) One-third of the money deposited to this fund shall be credited to the state water plan fund for use for water conservation projects, with priority given to conservation projects that directly enhance the ability of the state of Kansas to remain in compliance with the Republican river compact; and~~

~~(b) Revenue from the following sources shall be credited to the Republican river water conservation projects—Nebraska moneys fund:~~

~~(1) Amounts provided for by K.S.A. 82a-1801, and amendments thereto; and~~

~~(2) moneys received from any source by the state in the form of gifts, grants, reimbursements or appropriations for use for the purposes of the fund.~~

~~(2)(c) two-thirds of the money deposited in this Money credited to the Republican river water conservation projects—Nebraska moneys fund shall be expended only for conservation projects, utilization efficiency, administrative requirements and delivery projects, and similar types of projects set forth in subsection (d) (g), in those areas of the state lying in the lower Republican river basin between the Kansas/Nebraska border and Milford dam in all or parts of Clay, Cloud, Dickinson, Geary, Jewell, Mitchell, Republic, Riley, Smith and Washington counties.~~

~~(e)~~(d) There is hereby established in the state treasury the Republican river water conservation projects—Colorado moneys fund to be administered by the director of the Kansas water office.

~~(1) One-third of the money deposited to this fund shall be credited to the state water plan fund for use for water conservation projects; and~~

(e) Revenue from the following sources shall be credited to the Republican river water conservation projects—Colorado moneys fund:

(1) Amounts provided for by K.S.A. 82a-1801, and amendments thereto; and

(2) moneys received from any source by the state in the form of gifts, grants, reimbursements or appropriations for use for purposes of the fund.

~~(2)(f) two-thirds of the money deposited in this~~ Moneys credited to the Republican river water conservation projects—Colorado moneys fund shall be expended only for conservation projects, utilization efficiency, administrative requirements and delivery projects, and similar types of projects set forth in subsection ~~(d)~~(g), in those areas of the state lying in the upper Republican river basin in northwest Kansas in all or parts of Cheyenne, Decatur, Norton, Phillips, Rawlins, Sheridan, Sherman and Thomas counties.

~~(d)~~(g) The types of projects that may be funded under ~~subsections (b) and (c)~~ paragraphs (2) and (3) of subsection (a) of K.S.A. 82a-1801, and amendments thereto, include:

(1) Efficiency improvements to canals or laterals managed and paid for by an irrigation district or projects to improve the operational efficiency or management of such canals or laterals;

(2) water use efficiency upgrades;

(3) implementation of water conservation of irrigation and other types of water uses;

(4) implementation of water management plans or actions by water rights holders;

(5) water measurement flumes, meters, gauges, data collection platforms or related monitoring equipment and upgrades;

(6) artificial recharge, funding a water transition assistance program; the purchase of water rights for stream recovery or aquifer restoration and cost share for state or federal conservation programs that save water;

(7) maintenance of the channel and the tributaries of the Republican river;

(8) reservoir maintenance or the purchase, lease, construction or other acquisition of existing or new storage space in reservoirs;

(9) purchase, lease or other acquisition of a water right; and

(10) expenses incurred to construct and operate off-stream storage.

Sec. 6. K.S.A. 2010 Supp. 82a-1805 is hereby amended to read as follows: 82a-1805. (a) (1) Any person or entity may apply to the director of the Kansas water office for expenditure of moneys in the Arkansas river

*water conservation projects fund for the purposes set forth in paragraph (1) of subsection (a) of K.S.A. 82a-1801, and amendments thereto.*

(2) Any person or entity may apply to the director of the Kansas water office for expenditure of moneys in the Republican river water conservation projects—Nebraska moneys fund and the Republican river water conservation projects—Colorado moneys fund for the purposes set forth in ~~subsection (b) and (e) paragraphs (2) and (3) of subsection (a)~~ of K.S.A. ~~2010 Supp. 82a-1804~~ *82a-1801*, and amendments thereto.

(b) The director of the Kansas water office and the chief engineer of the Kansas department of agriculture, division of water resources shall review and approve each proposed project for which moneys in either fund will be expended. In reviewing and approving proposed projects the director and the chief engineer shall give priority to: (1) Projects needed to achieve or maintain compliance with the *Arkansas river compact or the Republican river compact*; (2) projects that achieve greatest water conservation efficiency for the general good; and (3) projects that have been required by the division of water resources. Upon such review and approval, the director of the Kansas water office shall request the legislature to appropriate, as a line item, moneys from either fund to pay all or a portion of the costs for a specific project, except that any project which an aggregate of less than \$10,000 will be expended from either fund shall not require a line item appropriation.

~~(b)~~(c) Interest attributable to moneys in the *Arkansas river water conservation projects fund*, Republican river water conservation projects—Nebraska moneys fund and the Republican river water conservation projects—Colorado moneys fund shall be credited to the state general fund as provided by K.S.A. 75-4210a, and amendments thereto.

~~(e)~~(d) All expenditures from the *Arkansas river water conservation projects fund*, Republican river water conservation projects—Nebraska moneys fund and the Republican river water conservation projects—Colorado moneys 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 of the Kansas water office or a designee of the director of the Kansas water office.

Sec. 7. K.S.A. 65-242, 82a-1801 and 82a-1802 and K.S.A. 2010 Supp. 82a-1803, 82a-1804 and 82a-1805 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 12, 2011.

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## CHAPTER 75

## SENATE BILL No. 170\*

AN ACT enacting the portable electronics insurance act.

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

Section 1. Sections 1 through 9 shall be known and may be cited as the portable electronics insurance act.

Sec. 2. For purposes of this act:

(a) “Commissioner” means the commissioner of insurance.

(b) “Covered customer” means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics devices.

(c) “Customer” means a person who purchases or leases portable electronics devices or services.

(d) “Insurance producer” shall have the meaning ascribed to it in K.S.A. 2010 Supp. 40-4902, and amendments thereto.

(e) “Location” means any physical location in the state of Kansas.

(f) “Portable electronic device” means an electronic device that is portable in nature. The term portable electronic device also includes any accessory for such device and any service related to the use of such portable electronic device that is sold to a customer.

(g) “Portable electronic devices” does not mean devices used exclusively by communication companies or commercial entities to provide service to a customer.

(h) (1) “Portable electronics insurance” means insurance providing coverage for the repair or replacement of portable electronics devices which may provide coverage for portable electronics devices against any one or more of the following causes of loss: loss, theft, are inoperable due to mechanical failure, malfunction, damage or other similar causes of loss.

(2) “Portable electronics insurance” does not include:

(A) Any service contract as defined by K.S.A. 2010 Supp. 40-201a, and amendments thereto;

(B) any policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty; or

(C) any homeowner’s, renter’s, private passenger automobile, commercial multiperil, or similar policy.

(i) “Portable electronics transaction” means:

(1) The sale or lease of portable electronics device by a vendor to a customer; or

(2) the sale of a service related to the use of portable electronics device by a vendor to a customer.

(j) “Supervising entity” means a business entity that is a licensed insurance producer or insurer.

(k) “Vendor” means a person in the business of engaging in portable electronics transactions directly or indirectly.

Sec. 3. (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.

(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. 4. (a) At every location where portable electronics insurance is offered to customers, brochures or other written material shall be made available to a prospective customer which:

- (1) discloses that portable electronics insurance may provide a duplication of coverage already provided by a customer’s homeowner’s insurance policy, renter’s insurance policy or other source of coverage;
- (2) states that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics devices or services;
- (3) summarizes the material terms of the insurance coverage, including:
  - (A) The identity of the insurer;
  - (B) the identity of the supervising entity;
  - (C) the amount of any applicable deductible and how it is to be paid;
  - (D) benefits of the coverage; and
  - (E) key terms and conditions of coverage such as whether portable electronics devices may be repaired or replaced with similar make and model, reconditioned, or repaired with nonoriginal manufacturer parts or equipment.
- (4) Summarizes the process for filing a claim, including a description of how to return portable electronics devices and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements.

(5) States that the customer may cancel enrollment for coverage under

a portable electronics insurance policy at any time and receive any applicable unearned premium refund.

(b) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial policy issued to a vendor of portable electronics devices under which individual customers may elect to enroll for coverage.

(c) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

Sec. 5. (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 transactions 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 section 4, 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. 6. If a supervising entity, vendor of portable electronics, or employee or authorized representative of a vendor violates any provision of this act, K.A.R. 40-1-34, K.S.A. 40-2404 or 40-4909, and amendments thereto, the commissioner may: (a) Impose on the supervising entity or vendor any or all of the penalties authorized under chapter 40 of the Kansas Statutes Annotated, and amendments thereto, for those violations; and

(b) suspend or revoke the ability of individual employees or authorized representatives to act under the license of the vendor.

Sec. 7. 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) 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.

Sec. 8. If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 9. The commissioner may adopt rules and regulations necessary to implement this act.

Sec. 10. This act shall take effect and be in force from and after January 1, 2012, and its publication in the statute book.

Approved May 12, 2011.

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## CHAPTER 76

## HOUSE BILL No. 2392

AN ACT concerning setoff against certain debtors; relating to federal department of the treasury, agreements, procedure and fees; amending K.S.A. 75-6204 and repealing the existing section.

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

New Section 1. (a) The director may enter into one or more agreements with the federal department of the treasury or its successor that provide for offsetting federal and state payments, as authorized by federal law and K.S.A. 75-6204, and amendments thereto, except that other setoffs under K.S.A. 75-6201 et seq., and amendments thereto, occur prior to the setoffs authorized under this section.

(b) Any agreement entered into by the director pursuant to subsection (a) may provide that the federal department of the treasury or its successor may deduct a fee from each administrative setoff and state payment setoff. For purposes of this subsection: (1) "Administrative setoff" means any offset of federal payments to collect state tax and nontax obligations; and

(2) "state payment setoff" means any offset of state payments to collect federal nontax obligations.

(c) The director is authorized to deduct a fee in an amount authorized under subsection (b) of K.S.A 75-6210, and amendments thereto.

(d) Notwithstanding any provision of law prohibiting disclosure by the department of administration of the contents of debtor records or information, and notwithstanding any confidentiality statute of any state agency, all information exchanged between the department of administration, the federal department of the treasury and the debtor necessary to accomplish and effectuate the intent of this act is lawful.

Sec. 2. K.S.A. 75-6204 is hereby amended to read as follows: 75-6204.

(a) Subject to the limitations provided in this act, if a debtor fails to pay to the state of Kansas or any state agency, foreign state agency, ~~or a~~ municipality *or the federal department of the treasury* an amount owed, the director may setoff such amount against any money held for, or any money owed to, such debtor by the state or any state agency.

(b) The director may enter into an agreement with a municipality for participation in the setoff program for the purpose of assisting in the collection of a debt as defined by K.S.A. 75-6202, and amendments thereto. The director shall include in any such agreement a provision requiring the municipality to certify that the municipality has made at least three attempts to collect a debt prior to submitting such debt to setoff pursuant to this act.

Sec. 3. K.S.A. 75-6204 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 12, 2011.

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CHAPTER 77

HOUSE BILL No. 2119

AN ACT concerning *political subdivisions; pertaining to accident response service fees; pertaining to marking of motor vehicles; amending K.S.A. 8-305 and repealing the existing section.*

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

New Section 1. (a) As used in this section:

(1) “Municipality” means a city, county, township, fire district or any other political and taxing subdivisions in this state.

(2) “Accident response service fee” means any fee imposed on the driver or owner of a motor vehicle, an insurance company or any other person, for the response to or investigation of a motor vehicle accident, but does not include the usual and customary charges for providing ambulance and emergency services when immediate action is required to save life, prevent suffering or disability or to protect and save property.

(3) “Emergency services” includes the actual costs of police, fire, technical rescue situations, including, but not limited to, vehicle extrication, trench rescue, high-angle rescue, confined-space rescue and swift-water rescue and emergency medical service personnel and equipment deemed appropriate by the municipality to address reasonably anticipated needs including, but not limited to, unknown number of injured persons and possible environmental and health threats involving hazardous material.

(b) No municipality shall charge an accident response service fee to persons receiving emergency services inside or outside of such municipality, except for actual costs of providing such emergency services in response to a motor vehicle accident.

Sec. 2. K.S.A. 8-305 is hereby amended to read as follows: 8-305. All motor vehicles owned or leased by any political subdivision of the state of Kansas shall bear the name of the political subdivision owning or leasing such vehicle plainly printed on both sides thereof. This act shall not apply to the following:

- (a) Municipal fire apparatus, police patrols and ambulances;
- (b) passenger vehicles used by plain clothes police officers, *county or district attorney investigators* or community corrections personnel working in the employ of any political subdivision; and
- (c) motor vehicles owned or leased by any municipal university.

Sec. 3. K.S.A. 8-305 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 12, 2011.

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## CHAPTER 78

### HOUSE BILL No. 2240

AN ACT concerning cemetery corporations; relating to cemetery merchandise trust contracts; relating to the permanent maintenance fund; amending K.S.A. 16-320, 16-321, 16-322, 16-323, 16-325, 16-328, 16-329, 16-331, 16-332, 16-333, 16-334, 17-1311, 17-1311a, 17-1312, 17-1312a, 17-1312d, 17-1312e, 17-1312g and 17-1366 and repealing the existing sections; also repealing K.S.A. 16-324.

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

New Section 1. (a) Except as provided by this section, all information which the secretary of state shall gather or record in making an investigation and examination of any cemetery corporation, or the reporting by the cemetery corporation or the trustee, shall be deemed to be confidential information, and shall not be disclosed by the secretary of state, any assistant, examiner or employee thereof, except to: (1) Officers and the members of the board of directors of the cemetery corporation being audited; (2) the attorney general, when in the opinion of the secretary of state the same should be disclosed; and (3) the appropriate official for the municipality in which the cemetery resides when in the opinion of the secretary of state the same should be disclosed.

(b) Upon request, the secretary of state may disclose to any person whether a cemetery corporation maintains a cemetery merchandise trust fund under K.S.A. 16-322, and amendments thereto, and whether such funds are maintained in compliance with the provisions of such laws.

(c) The provisions of subsection (a) shall expire on July 1, 2016, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2016.

(d) This section shall be part of and supplemental to article 3 of chapter 16 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 2. The following definitions shall apply to this act:

(a) "Cemetery corporation" means any individual or entity required to maintain permanent maintenance funds under the provisions of K.S.A. 17-1312f, and amendments thereto.

(b) "Funding requirement" means that portion of the purchase price equal to 15% of the purchase price, but not less than \$25, of a burial space, as defined in K.S.A. 17-1311, and amendments thereto.

(c) "Permanent maintenance fund" means a certificate of deposit, a

business savings account, or an irrevocable trust fund whose proceeds are derived from not less than 15% of the purchase price of the following: Grave lots, grave spaces, burial or interment rights, and developed or existing lawn crypts, mausoleum spaces, or niches. The total amount of the deposit shall not be less than \$25 per burial space.

(d) “Purchase price” means the gross amount, less sales tax, if any, to be paid for cemetery burial space. The purchase price does not include finance charges or charges for credit life insurance.

(e) “Trustee” means:

(1) A bank, savings and loan association, savings bank or credit union organized under the laws of this state with the authority to provide trust services;

(2) a federally chartered bank, savings and loan association, savings bank or credit union having a physical location within the state of Kansas and the authority to provide trust services; or

(3) a trust company organized under the laws of this state.

(f) “Trustor” means the cemetery corporation responsible for making deposits in permanent maintenance fund, which is subject of a trust.

(g) This section shall be part of and supplemental to article 13 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 3. (a) All funds held in a permanent maintenance fund shall not be subject to attachment, garnishment or other legal process, nor be seized, taken, appropriated or applied to pay any debt or liability of the cemetery corporation, buyer or beneficiary, by any legal or equitable process or by operation of law.

(b) This section shall be part of and supplemental to article 13 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 4. (a) There is hereby created the cemetery maintenance and merchandise fee fund in the state treasury. The secretary of state shall remit all moneys received from fees and charges under this section, 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 cemetery maintenance and merchandise fee fund.

(b) All expenditures from the cemetery maintenance and merchandise fee fund shall be in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of state or by a person or persons designated by the secretary.

Sec. 5. K.S.A. 16-320 is hereby amended to read as follows: 16-320. The following definitions shall apply to this act:

(a) “*Preneed* cemetery merchandise” means burial vaults, grave liners, grave boxes, urns, memorials, markers, vases, memorial vases, tombstones, lawn crypts, niches and mausoleum spaces and ~~all~~ any merchandise ~~com-~~

~~only~~ sold, ~~or~~ used in, *or delivered* to cemeteries. Caskets; grave lots, grave spaces; burial or interment rights; and developed or existing lawn crypts, mausoleum spaces or niches are not *preneed* cemetery merchandise.

(b) “Purchase price” means the gross amount, ~~less sales tax, if any,~~ to be paid for *preneed* cemetery merchandise, *preneed burial products or services* under the provisions of a ~~prepaid~~ *preneed* merchandise contract. The purchase price does not include finance charges, sales tax, charges for real property interests or charges for credit life insurance.

(c) “~~Prepaid~~ *Preneed* merchandise contract” means any agreement for the sale of *preneed* cemetery merchandise *or preneed burial products or services* by a cemetery corporation which requires payment of the purchase price, in whole or in part, prior to delivery of the *preneed* cemetery merchandise *or preneed burial products or services*, which agreement is entered into from and after the effective date of this act.

(d) “Cemetery corporation” means any individual or entity required to maintain permanent maintenance funds under the provisions of K.S.A. 17-1312f, and amendments thereto.

(e) “~~Minimum~~ Funding requirement” means that portion of the purchase price equal to ~~110% of the wholesale~~ 50% of the retail cost price f.o.b. to the cemetery corporation of ~~the~~ *preneed* cemetery merchandise, as defined in subsection (a) of this section, ~~covered~~ described in a ~~prepaid~~ *preneed* merchandise contract, and 100% of the retail price of any *preneed* burial product or service, as defined in subsection (f) of this section, including distributable earnings. ~~Wholesale costs shall be determined by the cemetery corporation on the basis of such quotations and price lists as are available to the cemetery.~~

(f) “*Preneed burial products or services*” means any casket or service incidental to the burial of a body or the placement of a memorial, marker, vase, or tombstone.

(g) “Cemetery merchandise trust fund” means a special purpose trust fund required to administer payments received from the sale of *preneed* cemetery merchandise, *preneed* burial products or services.

(h) “Distributable earnings” means income and capital gains, less any reasonable costs incurred in serving as trustee, including a reasonable fee for services and applicable taxes and costs.

(i) “Trustee” means:

(1) A bank, savings and loan association, savings bank or credit union organized under the laws of this state with the authority to provide trust services;

(2) a federally chartered bank, savings and loan association, savings bank or credit union having a physical location within the state of Kansas and the authority to provide trust services; or

(3) a trust company organized under the laws of this state.

Sec. 6. K.S.A. 16-321 is hereby amended to read as follows: 16-321.

(a) Any cemetery corporation entering into any ~~prepaid~~ *preneed* merchandise contract shall establish and maintain a cemetery merchandise trust fund under K.S.A. 16-322, and amendments thereto. ~~All prepaid merchandise contracts shall be in writing.~~ *The primary purpose of the cemetery merchandise trust fund is to maintain the corpus of the trust fund with the goal that the growth of the corpus will be at least equal to the wholesale costs of the preneed cemetery merchandise or preneed burial products or services, at the time of delivery or need.*

(b) *All preneed cemetery merchandise contracts shall be in writing.*

~~(b) (c)~~ (c) A cemetery corporation entering into a ~~prepaid~~ *preneed* merchandise contract *that allows the purchaser to make installment payments shall be entitled to retain all purchaser payments until of the purchase price under the prepaid merchandise contract until it has received an amount equal to 25% of the purchase price of preneed cemetery merchandise is received, and thereafter, shall deposit 100% of each payment into of the cemetery merchandise sold in a prepaid merchandise contract. trust fund until the funding requirement has been deposited.*

~~(c) (d)~~ (d) *Deposits to the cemetery merchandise trust fund shall be made within 15 days following the end of each calendar month after the moneys are received. After the cemetery corporation has received the amounts it is entitled to receive under subsection (b) of this section, all payments of the purchase price to the cemetery corporation under a prepaid merchandise contract shall be deposited by the cemetery corporation in a cemetery merchandise trust fund until such time as the requirements of subsection (d) of this section have been satisfied or delivery is made of the cemetery merchandise. Thereafter, all payments of the purchase price in excess of the minimum funding requirements may be retained by the cemetery corporation. Deposits shall be made within 10 business days after the moneys are received.*

~~(d) (e)~~ (e) *Within 30 days following the end of each quarter, the cemetery corporation shall provide the trustee and the secretary of state a report detailing the transactions of the previous quarter. The report shall be in a form and manner approved by the secretary of state and shall include the following:*

(1) *All sales of preneed cemetery merchandise, preneed burial products and preneed services.*

(2) *All verified deliveries of preneed cemetery merchandise, preneed burial products and preneed services along with any request for distribution from the trustee.*

(3) *If no sales or deliveries transpired during the reporting quarter, the report shall be filed showing zero sales or zero deliveries. ~~as of December 31,~~ each cemetery corporation shall determine the wholesale cost for all cemetery merchandise covered by a prepaid merchandise contract for which funds are then held in a cemetery merchandise trust or in an individual merchandise account. If the amounts held with respect to a prepaid mer-*

~~chandise contract exceed the minimum funding requirement the excess shall be paid by the trustee of the cemetery merchandise trust to the cemetery corporation. In such event, no further deposit shall be required with respect to the prepaid merchandise contract until such time as the amounts held no longer exceed the minimum funding requirement. If the minimum funding requirement is not satisfied, no amount shall be paid to or withdrawn by the cemetery corporation and the cemetery corporation shall continue or shall resume, as the case may be, making the deposits required by subsection (c) of this section.~~

*(f) Within 30 days following the end of each quarter, the trustee shall provide the secretary of state a report of all deposits to and distributions from the cemetery merchandise trust fund. The report shall be in a form and manner approved by the secretary of state and shall include the total amount of the deposits, distributions and the name and contact information of the trust officer in charge of the account.*

*(g) At least annually, as of December 31, the trustee of the merchandise trust fund shall allocate the distributable earnings to all preneed cemetery merchandise, preneed burial products or services for which funds are then held in a cemetery merchandise trust fund. The trustee may, at the request of the cemetery, allocate the distributable earnings on a regular basis more often than annually and in which case the calculation of the distributable earnings shall be filed quarterly on December 31, March 31, June 30 and September 30 of each year in a form and manner approved by the secretary of state.*

*(h) The cemetery corporation shall provide the secretary of state a copy of all trust instruments. The cemetery corporation shall obtain prior written approval from the secretary of state before the trust instrument shall be terminated, transferred or amended. The cemetery corporation shall provide the secretary of state copies of any amendments to the trust instrument before the amendments shall become effective.*

*(i) Fees not to exceed \$30 may be charged and collected by the secretary of state on each preneed merchandise contract for preneed cemetery merchandise, preneed burial products or services sold on or after January 1, 2011. Any such fees shall be forwarded on a quarterly basis to the secretary of state, in a form and manner approved by the secretary. The secretary of state shall promulgate rules and regulations fixing the fees to be charged and collected. On and after the effective date of this act any such fees collected shall be deposited in the cemetery maintenance and merchandise fee fund in the state treasury.*

Sec. 7. K.S.A. 16-322 is hereby amended to read as follows: 16-322.

~~(a) The cemetery corporation shall establish and maintain a cemetery merchandise trust fund must be maintained with a bank, trust company or savings and loan association having trust powers. with a trustee as defined in K.S.A. 16-320, and amendments thereto. A copy of each contract or a writ-~~

~~ten notice containing all relevant information regarding such prepaid merchandise contract for which deposits are made shall be furnished financial institutions. The institutions shall serve as trustees for the purposes of this act. The trustee may appoint one or more agents to provide administrative or investment advisory services, provided the trustee shall not assign or delegate the liability and fiduciary responsibilities owed to the cemetery merchandise trust fund to another financial institution or agent. Nothing in this act shall prohibit a trustee, as defined in K.S.A. 16-320, and amendments thereto, from entering into a co-trustee relationship with another trustee, who would not independently satisfy the requirements of that section provided the co-trustee: (1) Is authorized to do business in Kansas; and (2) submits personally to the jurisdiction of the courts of this state. Under no circumstances shall any trustee assign or delegate their liability or fiduciary responsibilities under the cemetery merchandise trust act. Both trustees and co-trustees are jointly and severally liable for the actions of the trustee. All contractual agreements shall be subject to, governed by, and construed according to the laws of the state of Kansas. Deposits to such fund shall be carried in the name of the cemetery corporation and the amounts deposited therein may be commingled, but provided that the accounting records shall establish a separate account for each prepaid item of preneed merchandise contract, and shall show the amounts deposited, and the income or loss accruing thereon, with respect to each prepaid merchandise contract. Subject to the requirements of subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto, the trustee shall invest the trust funds. The trustee shall reimburse the cemetery corporation for all income taxes and costs incurred with respect to the operation of such fund, and the trustee may recover shall be reimbursed from the earnings of such the cemetery merchandise trust fund for all reasonable costs incurred in serving as trustee, including a reasonable fee for its services. The taxes and costs shall may be paid from earnings of the fund prior to the allocation of earnings to the individual accounts: preneed cemetery merchandise or preneed burial products or services.~~

(b) No part of the moneys required by K.S.A. 16-321, and amendments thereto, to be held under a ~~prepaid preneed~~ merchandise contract shall ever be used for any purpose other than investment ~~as authorized by K.S.A. 16-324, and amendments thereto~~, until delivery of the merchandise is made. With respect to any cemetery merchandise which is not affixed to real property, delivery shall occur when physical possession is tendered to the purchaser, and a bill of sale, *storage* or similar instrument of title is delivered to the purchaser. With respect to cemetery merchandise which is affixed to realty, delivery shall occur when construction or permanent installation of the merchandise has been completed. Upon delivery of the *preneed* cemetery merchandise; *or preneed burial products or services*, the cemetery corporation shall present the trustee with a verified statement, *in a form and manner approved by the secretary of state under subsection (e) of*

K.S.A. 16-321, and amendments thereto, that delivery has been made. Upon such presentation the trustee shall pay to the cemetery corporation the amount of any funds equal to the market value allocated to preneed cemetery merchandise or preneed burial products or services held in trust with respect to the cemetery merchandise delivered, and no further deposits shall be made with respect to such cemetery merchandise.

(c) The trust instrument shall be effective upon written approval by the secretary of state and compliance with this section, unless it is determined by a court of law that the underlying trust instrument is in conflict with Kansas statutes, then that portion of the underlying trust instrument becomes null and void and shall be of no further force or effect. The trust instrument is in compliance with this section if the following is provided to the secretary of state:

(1) The names of the trustee and the cemetery corporation as trustor.

(2) The trustee shall submit a quarterly report to the secretary of state. The report shall be in a form and manner prescribed by the secretary of state and shall contain the following:

(A) Deposits;

(B) withdrawals;

(C) all interest, dividends, and income earned; and

(D) capital gains or capital losses.

(3) Within 60 days following December 31 of each year, the trustee shall report the allocation of distributable earnings to the secretary of state in a form and manner prescribed by the secretary of state.

(4) The trustee shall use deposit and withdrawal forms approved by the secretary of state.

(5) The trustee shall invest the trust funds subject to the requirements of subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto. Control of the trust funds by the trustor is prohibited.

(6) By accepting the trusteeship of the cemetery merchandise trust fund, the trustee submits personally to the jurisdiction of the courts of this state. All contractual agreements shall be subject to, governed by, and construed according to the laws of the state of Kansas.

(7) The trustee shall sign an affirmation under penalty of perjury, declaring the trustee has read, understands, and agrees to comply with the requirements of K.S.A. 16-320 et seq., and amendments thereto.

Sec. 8. K.S.A. 16-323 is hereby amended to read as follows: 16-323. ~~Any person who violates any provision of this act shall be deemed guilty of a class A misdemeanor.~~(a) Misuse of the cemetery merchandise trust fund or any money belonging thereto is knowingly using, investing, lending or permitting another to use moneys in the fund in a manner not authorized by law.

(b) Misuse of the cemetery merchandise trust fund is a severity level 7, nonperson felony.

Sec. 9. K.S.A. 16-325 is hereby amended to read as follows: 16-325. (a) The secretary of state, or the secretary's representative, shall, while auditing each cemetery corporation, pursuant to K.S.A. 17-1312a, and amendments thereto, audit the cemetery merchandise trusts required by this act, and approve the ~~cemetery's trustee's~~ determination of the ~~wholesale costs distributable earnings period.~~ ~~under subsection (d) of K.S.A. 16-321, and amendments thereto.~~ For such purposes, the secretary of state or the secretary's representative, is authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any cemetery corporation. Such examination may be reduced to writing by the person taking it and the examiner may make findings as to the condition of each trust fund examined. For the purposes of such audits, the secretary of state may ~~also require any officer of a cemetery corporation~~ *the trustee* to furnish and submit the books, records, papers and instruments of such cemetery corporation. ~~to the examination.~~ *The secretary of state shall be authorized to obtain trust accounting records from the trustee.*

(b) *The secretary of state shall promulgate rules and regulations for the purpose of oversight and audit of the cemetery merchandise trust fund.*

Sec. 10. K.S.A. 16-328 is hereby amended to read as follows: 16-328. ~~In the absence of fraud,~~ All funds held in a cemetery merchandise trust shall not be subject to attachment, garnishment or other legal process, nor be seized, taken, appropriated or applied to pay any debt or liability of the cemetery corporation, buyer or beneficiary, by any legal or equitable process or by operation of law.

Sec. 11. K.S.A. 16-329 is hereby amended to read as follows: 16-329. No cemetery corporation shall enter into any ~~prepaid~~ *preneed* merchandise contract until such corporation has filed with the secretary of state a notification of its intention to sell and engage in such ~~prepaid~~ *preneed* merchandise contracts. Such notice shall include the name of the cemetery corporation, its principal place of business and the name and address of the trustee or trustees to be utilized under the provisions of this act.

Accounting records and information required by this act shall be maintained in a ~~format~~ *form and manner* approved by the secretary of state. A report of the merchandise trust ~~account~~ *fund* shall be required ~~of the cemetery corporation annually~~ as part of the corporation's ~~annual~~ *monthly* report on a form provided or approved by the secretary of state.

Sec. 12. K.S.A. 16-331 is hereby amended to read as follows: 16-331. Any cemetery corporation which refuses or neglects to establish or maintain a cemetery merchandise trust fund, in accordance with the requirements of this act for a period of ~~90~~ *60* days after *written* demand to do so is made upon it by the secretary of state, shall be deemed to have forfeited its ~~corporate franchise.~~ *cemetery corporation.* The attorney general, upon the request of the secretary of state, shall then begin an action for the appointment of a receiver for such cemetery corporation and to dissolve the same.

Sec. 13. K.S.A. 16-332 is hereby amended to read as follows: 16-332. Any cemetery corporation entering into a ~~prepaid~~ *preneed cemetery merchandise contract* shall provide in such contract that:

(a) A purchaser, under a ~~prepaid~~ *preneed cemetery merchandise contract* covered in this act who permanently moves to another state in the United States, may direct that the merchandise, so long as the same is not a part of nor affixed to real estate, be delivered to a cemetery in the state of the purchaser's residence, except that the purchaser may be required to pay the additional transportation costs which exceed those the cemetery would have incurred to provide and deliver the merchandise to the seller cemetery; or

(b) a purchaser who has entered into a ~~prepaid~~ *preneed cemetery merchandise contract* covered by this act may, upon the purchaser permanently changing residence to a place more than 150 miles from the cemetery, cancel the contract upon written notice to the cemetery, which notice shall then be forwarded by the cemetery to the trustee of the cemetery merchandise trust fund. Upon receipt of such notice, the ~~prepaid~~ *preneed cemetery merchandise contract* shall be cancelled, and the trustee, after deducting that contract's share of applicable costs and taxes provided for in K.S.A. 16-322, *and amendments thereto*, shall pay to the purchaser not less than 85% of the funds held in trust for the contract pursuant to this act. The balance shall be paid to the cemetery corporation and the trustee shall be discharged from further obligation as to such contract.

Sec. 14. K.S.A. 16-333 is hereby amended to read as follows: 16-333. Sales of *preneed cemetery merchandise contracts or preneed burial products or services* subject to this act shall be exempt from the provisions of K.S.A. 16-301 through 16-309, inclusive, and ~~any~~ amendments thereto.

Sec. 15. K.S.A. 16-334 is hereby amended to read as follows: 16-334. (a) Cemetery corporations subject to ~~an audit by the secretary of state pursuant to K.S.A. 16-325, and amendments thereto~~, *this act* shall file, in the office of the secretary of state, a copy of the agreement or document which establishes the trust between the cemetery corporation and the trustee.

(b) *The trust agreement shall acknowledge all contractual agreements and shall be subject to, governed by, and construed according to K.S.A. 16-320 et seq., and amendments thereto.*

Sec. 16. K.S.A. 17-1311 is hereby amended to read as follows: 17-1311. (a) A cemetery corporation shall maintain, ~~in a trust company located within the state of Kansas, a state or national bank located within the state of Kansas, a state or federally chartered savings and loan association located within the state of Kansas or a federally chartered savings bank located within the state of Kansas~~ *a permanent maintenance fund with a trustee*, a percentage of the purchase price of each burial ~~lot~~ *space* sold by it, or any payment on such burial ~~lot~~ *space*, not less than 15% of such purchase price, for the permanent maintenance of the cemetery within which the burial ~~lot~~

*space* lies, but the total amount set aside shall not be less than \$25 for each burial ~~lot~~ *space* at the time of conveyance of such ~~lot~~ *space*. Deposits to the permanent maintenance fund shall be made within ~~45~~ 15 days of receipt of moneys following each calendar month end, after the moneys are received. ~~for which deposits are required to be made.~~ Moneys placed in such fund under the provisions of K.S.A. 17-1308, and amendments thereto, shall be credited for the purposes of fulfilling such requirement. Moneys in such fund may be held and invested *subject* to the same extent as is provided in requirements of subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto, but the total amount of money invested in any mortgage upon real property shall not exceed an amount equal to 75% of the market value of such property at the time of such investment. ~~The income of the permanent maintenance fund shall be used exclusively for the maintenance of the cemetery.~~ No part of the principal of the fund shall ever be used for any purpose except for such investment. In no event shall any loan of the funds be made to any stockholder, officer or employee of such cemetery corporation, or to any person related, by blood or marriage, to a stockholder, officer or employee. The treasurer of such corporation may deposit, to the credit of such fund, donations or bequests for the fund and may retain property so acquired without limitation as to time and without regard to its suitability for original purchase. ~~As used in this section, the term "burial lot" means a plotted space for one grave. Such maintenance shall include, but not be limited to, mowing, road maintenance and landscaping, but shall not include administrative costs, expense of audits or the portion of any capital expense for equipment used to maintain portions of a cemetery not sold for burial purposes or in use for grave sites.~~

(b) *The primary purpose of the permanent maintenance fund is to maintain the corpus of the fund. The income earned from the permanent maintenance fund may be dispersed to the cemetery. All capital gains shall be allocated to principal.*

(c) *The cemetery corporation shall obtain prior written approval from the secretary of state before the trust instrument shall be terminated, transferred, or amended. The cemetery corporation shall provide the secretary of state copies of any amendments to the trust instrument before the amendments shall become effective.*

Sec. 17. K.S.A. 17-1311a is hereby amended to read as follows: 17-1311a. (a) Misuse of the permanent maintenance fund or any money belonging thereto is *knowingly* using, lending or permitting another to use; moneys in the fund in a manner not authorized by law; ~~by a custodian or other person having charge or control of such fund or moneys by virtue of his position.~~

(b) Misuse of the permanent maintenance fund is a severity level 7, nonperson felony.

Sec. 18. K.S.A. 17-1312 is hereby amended to read as follows: 17-

1312. (a) ~~The permanent maintenance fund required to be established by K.S.A. 17-1311, and amendments thereto, shall at all times be in the custody of a trust company located within the state of Kansas, a state or national bank located within the state of Kansas, a state or federally chartered savings and loan association located within the state of Kansas or a federally chartered savings bank located within the state of Kansas. Each cemetery corporation shall establish a trust for moneys deposited in the permanent maintenance fund in accordance with this section. If the market value of the trust permanent maintenance fund is less than \$45,000 \$100,000, the trust permanent maintenance fund may have an individual trustee so long as the trust's assets be held in a Kansas financial institution, in either certificates of deposit or a business savings account which is insured by the federal deposit insurance corporation, provided that the fund assets are maintained in a segregated account. If the cemetery's permanent maintenance fund has a market value of less than \$100,000, the cemetery corporation shall comply with the reporting requirements of this act.~~

(b) (1) *Unless otherwise authorized by subsection (a), each cemetery corporation shall establish and maintain a permanent maintenance fund. If the market value of the trust permanent maintenance fund is \$45,000 \$100,000 or more, the trustee shall be a trust company located within the state of Kansas, a state or national bank located within the state of Kansas, a state or federally chartered savings and loan association located within the state of Kansas or a federally chartered savings bank located within the state of Kansas. Any such trust company, bank, savings and loan association or federally chartered savings bank with which the custody of a permanent maintenance fund has been entrusted may invest, reinvest, exchange, retain, sell and manage the moneys within such fund. If the treasurer of any cemetery corporation shall entrust the custody of the permanent maintenance fund to a savings and loan association or associations or federally chartered savings bank or banks, the amount of moneys in the custody of any such association or savings bank shall not exceed the amount for which deposits in such savings and loan association or savings bank are insured by the federal savings and loan insurance corporation or other insurer approved by the state commissioner of insurance. If the treasurer of any cemetery corporation shall entrust the custody of the permanent maintenance fund to a bank or banks or federally chartered savings bank or banks, the amount of money in the custody of any such bank or savings bank shall not exceed the amount for which deposits in such bank or savings bank are insured by the federal deposit insurance corporation or other insurer approved by the state bank commissioner. Such trust company, bank, savings and loan association, federally chartered savings bank or individual trustee may serve without bond and may be reasonably compensated for its services out of the income of the fund. It shall be a provision of any such trust agreement that no moneys, other than income from the trust, shall be paid over to the cemetery corporation by the trustee, except upon the written permission of*

~~the secretary of state.~~ cemetery corporation shall establish and maintain the permanent maintenance fund in an irrevocable trust with a trustee. The trustee may appoint one or more agents to provide administrative or investment advisory services, provided the trustee shall not assign or delegate the liability and fiduciary responsibilities owed to the permanent maintenance fund to another financial institution or agent. The trustee may invest, reinvest, exchange, retain, sell, and manage the moneys within such fund, pursuant to subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto. Such trustee may be reasonably compensated for its services out of the income of the fund. It shall be a provision of any such trust agreement that no moneys, other than income from the trust, shall be paid over to the cemetery corporation by the trustee, except upon the written permission of the secretary of state. Nothing in this act shall prohibit a trustee, as defined in K.S.A. 16-320, and amendments thereto, from entering into a co-trustee relationship with another trustee, who would not independently satisfy the requirements of that section provided the co-trustee: (A) Is authorized to do business in Kansas; and (B) submits personally to the jurisdiction of the courts of this state. Under no circumstances shall any trustee assign or delegate their liability or fiduciary responsibilities under the provisions of this act. Both trustees and co-trustees are jointly and severally liable for the actions of the trustee. All contractual agreements shall be subject to, governed by, and construed according to the laws of the state of Kansas.

(2) The trustee may recover from the earnings of the permanent maintenance fund for all reasonable costs incurred in serving as trustee, including a reasonable fee for its services. The taxes and costs may be paid from earnings of the fund prior to the distribution of the income. If all income is exhausted, any remaining capital gains tax liability may be paid out of the realized capital gains before the balance reverts to principal.

(3) The trustee shall be solely responsible for the investment of the moneys held under a cemetery permanent maintenance fund. The trust instrument must state that control of the trust funds by the trustor is prohibited.

(c) The trust instrument shall be effective upon written approval by the secretary of state and compliance with this section, unless it is determined by a court of law that the underlying trust instrument is in conflict with Kansas statutes, then that portion of the underlying trust instrument becomes null and void and shall be of no further force or effect. The trust instrument is in compliance with this section if the following is provided to the secretary of state:

(1) The names of the trustee, the cemetery corporation as trustor and the date the trust instrument shall become effective.

(2) The trustee shall submit a quarterly report to the secretary of state. The report shall be in a form and manner approved by the secretary of state and shall contain the following:

- (A) *Deposits to principal;*
  - (B) *any withdrawals from principal;*
  - (C) *all interest, dividends, and income earned;*
  - (D) *interest withdrawn;*
  - (E) *capital gains or capital losses; and*
  - (F) *capital gains taxes paid from capital gains.*
- (3) *The trustee shall use deposit and withdrawal forms approved by the secretary of state.*

(4) *The trustee shall invest the trust funds subject to the requirements of subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto. Control of the trust funds by the trustor is prohibited.*

(5) *By accepting the trusteeship of the permanent maintenance fund, the trustee submits personally to the jurisdiction of the courts of this state. All contractual agreements shall be subject to, governed by, and construed according to the laws of the state of Kansas.*

(6) *The trustee acknowledges the primary purpose of the permanent maintenance fund is to maintain the corpus of the trust.*

(7) *The trustee shall retain all liability and fiduciary responsibility for managing and administering the permanent maintenance fund.*

(8) *The trustee shall sign an affirmation under penalty of perjury, declaring the trustee has read, understands and agrees to comply with the requirements of K.S.A. 17-1308 et seq., and amendments thereto.*

Sec. 19. K.S.A. 17-1312a is hereby amended to read as follows: 17-1312a. (a) Each cemetery corporation formed under the laws of the state of Kansas and each foreign corporation granted a certificate of authority to own or operate a cemetery within the state of Kansas shall register with the secretary of state before commencing business in Kansas. Each cemetery corporation shall prepare and forward to the secretary of state at the time it is required to make ~~an annual~~ a quarterly report under the provisions of this act. ~~Kansas general corporation code, or if no such report is required then on January 1 in each year, a statement verified by the treasurer of said corporation describing the corpus and any accumulated income on the preceding December 31, or on the last day of its fiscal year if it does not use the calendar year in its accounts, in each permanent maintenance fund established by said corporation, the cost and the market value on said date of each security then held in each such fund, and the income of and disbursements from each such fund during the calendar or fiscal year then ended. This statement shall otherwise be in such form as the secretary of state shall prescribe.~~

(b) *Within 30 days following each end of the quarter, the cemetery corporation shall provide the trustee and the secretary of state a report of all sales of burial spaces. The report shall be in a form and manner approved by the secretary of state and shall contain the name of each purchaser, contract number, a brief description of the preneed burial space,*

*including the purchase price, the name and address of the trustee where the permanent maintenance fund is located, and the amount deposited into the permanent maintenance fund. If the cemetery corporation did not make a sale, within 30 days following each quarter end, the cemetery corporation shall provide to both the trustee and the secretary of state a report indicating no sales to record. The report shall be in a form and manner approved by the secretary of state.*

*(c) Within 30 days following the end of each quarter, the trustee shall provide the secretary of state a report of all deposits to, and distributions from, the permanent maintenance fund. The report shall be in a form and manner approved by the secretary of state and shall contain the total amount of the deposits, distributions, and the name and contact information of the trust officer in charge of the account.*

*(d) At least annually, the trustee of the permanent maintenance fund shall determine the income for the permanent maintenance fund, less reasonable costs, taxes and fees, and pay the income to the cemetery corporation. The trustee shall report to the secretary of state the calculation of the income paid to the cemetery within 30 days, in a form and manner approved by the secretary of state.*

*(e) Whenever the secretary of state shall determine that any cemetery corporation required by this act to be registered has failed or refused to do so, the secretary of state may notify the county attorney or district attorney of the county in which such cemetery corporation is located, and such county attorney or district attorney shall commence prosecution against such cemetery corporation. Any cemetery corporation which fails to register with the secretary of state shall be liable for a civil penalty of not to exceed \$1,000.*

~~(b)~~ *(f) Whenever and as often as deemed necessary, the secretary of state, or an employee designated by the secretary of state, may audit or otherwise examine any cemetery corporation books and accounts. Whenever such an audit or examination is so made, the cemetery corporation shall pay such expenses as shall be assessed by the secretary of state pursuant to K.S.A. 75-442, and amendments thereto.*

*(g) Fees not to exceed \$30 may be charged and collected by the secretary of state on each interment sold on or after January 1, 2011. Any such fees shall be forwarded on a quarterly basis to the secretary of state, in a form and manner approved by the secretary. The secretary of state shall promulgate rules and regulations fixing the fees to be charged and collected. On and after the effective date of this act any such fees collected shall be deposited in the cemetery maintenance and merchandise fee fund in the state treasury.*

Sec. 20. K.S.A. 17-1312d is hereby amended to read as follows: 17-1312d. Any cemetery corporation which shall refuse or neglect to establish or maintain a permanent maintenance fund in accordance with the require-

ments of this act for each cemetery owned by it for a period of ~~ninety (90)~~ 60 days after demand to do so is made upon it by the secretary of state shall be deemed to have forfeited its ~~franchise~~ cemetery corporation. The attorney general, upon the request of the secretary of state, shall then begin action for the appointment of a receiver for such cemetery corporation and to dissolve the same.

Sec. 21. K.S.A. 17-1312e is hereby amended to read as follows: 17-1312e. (a) Except as provided by this section, all information which the secretary of state shall gather or record in making an investigation and examination of any cemetery corporation, *or the reporting by the cemetery corporation or the trustee*, shall be deemed to be confidential information, and shall not be disclosed by the secretary of state, any assistant, examiner or employee thereof, except to: (1) *Officers and the members of the board of directors* of the cemetery corporation being audited; ~~and~~ (2) the attorney general, when in the opinion of the secretary of state the same should be disclosed; *and (3) the appropriate official for the municipality in which the cemetery resides when in the opinion of the secretary of state the same should be disclosed.*

(b) Upon request, the secretary of state may disclose to any person whether a cemetery corporation maintains a ~~cemetery merchandise trust fund under K.S.A. 16-322, and amendments thereto, or a permanent maintenance fund under K.S.A. 17-1311, and amendments thereto~~, and whether such funds are maintained in compliance with the provisions of such laws.

(c) *The provisions of subsection (a) shall expire on July 1, 2016, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2016.*

Sec. 22. K.S.A. 17-1312g is hereby amended to read as follows: 17-1312g. (a) Cemetery corporations subject to an audit by the secretary of state pursuant to K.S.A. 17-1312a, and amendments thereto, shall file, in the office of the secretary of state, a copy of the agreement or document which establishes the trust between the cemetery corporation and the trustee.

(b) *The trust agreement shall acknowledge all contractual agreements shall be subject to and governed by K.S.A. 17-1308 et seq., and amendments thereto.*

(c) *The secretary of state shall promulgate rules and regulations for the purpose of oversight and audit of the permanent maintenance fund.*

Sec. 23. K.S.A. 17-1366 is hereby amended to read as follows: 17-1366. As used in this act: (a) “Abandoned cemetery” means:

(1) Any cemetery owned by a corporation, as defined in K.S.A. 17-1312f, *and amendments thereto*, in which, for a period of at least one year, there has been a failure to cut grass or weeds or care for graves, grave markers, walls, fences, driveways and buildings; ~~or~~ *and*

(2) for a period of 180 days which proper records have not been main-

tained and ~~annual~~ *annual or quarterly* reports *have not been* made to the secretary of state, pursuant to the provisions of K.S.A. 17-1312a et seq., and amendments thereto; ~~and~~.

(b) “Municipality” means the cemetery district in which all or any portion of an abandoned cemetery is located. If no portion of such cemetery is located within a cemetery district, the term shall mean the city in which all or any portion of an abandoned cemetery is located unless such cemetery is not within the corporate limits of a city, in which case such term shall mean the county in which such cemetery is located.

Sec. 24. K.S.A. 16-320, 16-321, 16-322, 16-323, 16-324, 16-325, 16-328, 16-329, 16-331, 16-332, 16-333, 16-334, 17-1311, 17-1311a, 17-1312, 17-1312a, 17-1312d, 17-1312e, 17-1312g and 17-1366 are hereby repealed.

Sec. 25. This act shall take effect and be in force from and after January 1, 2012, and its publication in the statute book.

Approved May 12, 2011.

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CHAPTER 79

HOUSE BILL No. 2195\*

AN ACT concerning municipalities; establishing the organized collection service act.

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

Section 1. Sections 1 through 3, and amendments thereto, shall be known and may be cited as the organized collection service act.

Sec. 2. As used in this act:

(a) “Municipality” means any county, city, township and other political subdivision or taxing subdivision including any board, bureau, commission, committee or other agency having authority to create, regulate or otherwise impact the delivery of collection services.

(b) “Organized collection service” means a system for collecting solid waste, recyclables or both, including franchise, organized collection, or a process in which a municipality goes from multiple haulers to one single contracted hauler in which a specified collector, or a member of an organization of collectors, is authorized to collect from a defined geographic service area or areas some or all of the solid waste or recyclables that is released by generators.

(c) “Recyclables” has the meaning as the term is defined by K.S.A. 65-3402, and amendments thereto.

(d) “Solid waste” has the meaning as the term is defined by K.S.A. 65-3402, and amendments thereto.

Sec. 3. (a) A municipality may establish an organized collection service as a municipal service by ordinance, in the case of a city, or by resolution,

in the case of other municipalities. The ordinance or resolution shall incorporate any franchise, license, or negotiated contract or contract let by bid using one or more collectors or an organization of collectors.

(b) At least 180 days before adopting such an ordinance or resolution, the governing body of the municipality shall announce its intent to consider adoption of an organized collection service, stating specific goals to be achieved, detailed justification for any franchise fees and all other reasons for considering such a service by passage of a resolution of intent. The resolution of intent shall be published once in the official newspaper of the municipality. The resolution of intent shall give notice of a public hearing to be held at least 30 days prior to consideration of the adoption of the resolution of intent on the issue and shall invite the participation of interested persons in the planning and establishing of the organized collection service, including all licensees or other persons operating solid waste or recyclables collection services in the municipality as of the date of announcement of its intent to organize collection in the municipality.

(c) During a 90-day period following the adoption of the resolution of intent, the municipality shall develop a plan for organized collection service. During this period, the municipality shall invite and employ the assistance of all licensees or other persons operating solid waste or recyclables collection services in the municipality. All licensees or other persons operating solid waste or recyclables collection services in the municipality shall be allowed to participate in all planning meetings.

(d) The municipality shall provide 30 days notice prior to the hearing on the proposed plan to all licensees or other persons operating solid waste collection or recyclables services in the municipality.

(e) The plan shall:

(1) Describe in detail the procedures used for development of the plan for organized collection service and compliance with all required notice provisions;

(2) evaluate the proposed organized collection plan in regard to the following:

(A) Achieving the stated goals;

(B) minimizing displacement and economic impact to current solid waste collectors;

(C) ensuring participation in the decision-making process of all interested parties, including all licensees or other persons operating solid waste or recyclables collection services in the municipality as of the date of the resolution of intent to organize collection in the municipality; and

(D) maximizing efficiency in solid waste collection; and

(3) provide detailed justification for any tax, franchise or similar fee.

(f) (1) A municipality may not commence organized collection service pursuant to this act for a period of at least 18 months from the adoption of an ordinance or resolution establishing such service. During the 18-month

period the municipality shall not displace any person licensed to operate solid waste collection services in the municipality.

(2) If for any reason a municipality does not implement an organized collection service by passage of an ordinance or resolution within one year of the passage of a resolution of intent, the process shall be started over as provided in this section.

Sec. 4. (a) This act shall be applied to all municipalities regardless of the stage of development of an organized collection system.

(b) The provisions of this act shall not apply to the collection of waste tires as defined by K.S.A. 65-3424(m), and amendments thereto, from any facility for the purpose of recycling or disposal.

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

Approved May 12, 2011.

Published in the *Kansas Register* May 19, 2011.

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## CHAPTER 80

### HOUSE BILL No. 2044

AN ACT concerning motor vehicles; relating to requirements after a collision; amending K.S.A. 8-1604 and K.S.A. 2010 Supp. 8-1602, 8-1605 and section 292 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 2010 Supp. 8-1603 and 8-1606.

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

Section 1. K.S.A. 2010 Supp. 8-1602 is hereby amended to read as follows: 8-1602. (a) The driver of any vehicle involved in an accident resulting in injury to, great bodily harm to or death of any person *or damage to any attended vehicle or property* shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible, but shall then ~~forthwith~~ *immediately* return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of K.S.A. 8-1604, and amendments thereto. ~~Every such stop shall be made without obstructing traffic more than is necessary.~~

(b) A person who violates ~~this section which~~ *subsection (a) when an accident results in:*

(1) *Total property damages of less than \$1,000 shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in K.S.A. 8-2116, and amendments thereto.*

~~(1)~~ (2) *Injury to any person or total property damages in excess of \$1,000 or more shall be guilty of a class A person misdemeanor.*

~~(2)~~ (3) Great bodily harm to any person shall be guilty of a severity level ~~4~~ 8, person felony.

~~(3)~~ (4) The death of any person shall be guilty of a severity level ~~9~~ 6, person felony, *except as provided in subsection (a)(5)*.

(5) *The death of any person, if the person knew or reasonably should have known that such accident resulted in injury or death, shall be a level 5, person felony.*

(c) The director may revoke the license or permit to drive or any non-resident operating privilege of any person so convicted.

(d) *The driver shall comply with the provisions of K.S.A. 2010 Supp. 8-15,107, and amendments thereto.*

Sec. 2. K.S.A. 8-1604 is hereby amended to read as follows: 8-1604.  
 (a)(1) The driver of any vehicle involved in an accident resulting in injury to or death of any person, or damage to any *attended* vehicle or ~~other~~ property ~~which is driven or attended by any person~~, shall give such ~~person's~~ *driver's* name, address and the registration number of the vehicle such ~~person~~ *driver* is driving, and upon request shall exhibit such ~~person's driver's~~ license or permit to drive, the name of the company with which there is in effect a policy of motor vehicle liability insurance covering the vehicle involved in the accident and the policy number of such policy to any person injured in such accident or to the driver or occupant of or person attending any vehicle or other property damaged in such accident, and shall give such information and upon request exhibit such license or permit and the name of the insurer and policy number; to any police officer at the scene of the accident or who is investigating the accident. ~~and~~

(2) *Such driver, insofar as possible, shall immediately make efforts to determine whether any person involved in such accident was injured or killed, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary, or if such carrying is requested by the injured person.*

~~(b) In the event that none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (a) of this section, and no police officer is present, the driver of any vehicle involved in such accident, after fulfilling all other requirements of K.S.A. 8-1602, and amendments thereto, and of subsection (a) of this section, insofar as possible on such person's part to be performed, shall forthwith report such accident to the nearest office of a duly authorized police authority and submit thereto the information specified in subsection (a) of this section.~~

(b) *If no police officer is present, the driver of any vehicle involved in such accident, or any occupant of such vehicle 18 years of age or older, shall immediately report such accident, by the quickest available means of*

*communication, to the nearest office of a duly authorized police authority if:*

- (1) There is apparently property damage of \$1000 or more;*
- (2) any person involved in the accident is injured or killed; or*
- (3) the persons specified in subsection (a) are not present or in condition to receive such information.*

(c) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with failing to provide the name of such person's insurance company and policy number as required in subsection (a), shall be convicted if such person produces in court, within 10 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number, make and year of the vehicle and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance. Upon the production in court of evidence of financial security, the court shall record the information displayed thereon on the insurance verification form prescribed by the secretary of revenue, immediately forward such form to the department of revenue, and stay any further proceedings on the matter pending a request from the prosecuting attorney that the matter be set for trial. Upon receipt of such form the department shall mail the form to the named insurance company for verification that insurance was in force on the date indicated on the form. It shall be the duty of insurance companies to notify the department within 30 calendar days of the receipt of such forms of any insurance that was not in force on the date specified. Upon return of any form to the department indicating that insurance was not in force on such date, the department shall immediately forward a copy of such form to the office of the prosecuting attorney or the city clerk of the municipality in which such prosecution is pending when the prosecuting attorney is not ascertainable. Receipt of any completed form indicating that insurance was not in effect on the date specified shall be prima facie evidence of failure to provide proof of financial security and violation of this section. A request that the matter be set for trial shall be made immediately following the receipt by the prosecuting attorney of a copy of the form from the department of revenue indicating that insurance was not in force. Any charge hereunder shall be dismissed if no request for a trial setting has been made within 60 days of the date evidence of financial security was produced in court.

Sec. 3. K.S.A. 2010 Supp. 8-1605 is hereby amended to read as follows: 8-1605. (a) The driver of any vehicle which collides with or is in-

volved in an accident with any vehicle or other property which is unattended, resulting in any damage to such other vehicle or property, shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle or other property of such ~~person's driver's~~ name, address and the registration number of the vehicle such ~~person driver~~ was driving, or shall attach securely in a conspicuous place in or on such vehicle or other property a written notice giving such ~~person's driver's~~ name, address and the registration number of the vehicle such ~~person driver~~ was driving, and without unnecessary delay shall notify the nearest office of a duly authorized police authority. ~~Every such stop shall be made without obstructing traffic more than is necessary.~~ Violation of this section ~~subsection~~ is a misdemeanor *and, upon conviction shall be punished as provided in K.S.A. 8-2116, and amendments thereto.*

(b) The driver under subsection (a), if possible, shall comply with the provisions of K.S.A. 2010 Supp. 8-15,107, and amendments thereto.

Sec. 4. Section 292 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 292. In addition to the provisions of section 291 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in subsection (a) of section 47 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal use of weapons as defined in subsection (a)(8) or (a)(13) of section 186 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, or possession of a firearm on the grounds or in the state capitol building as defined in section 194 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of subsection (a)(3) of section 40 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a)(1) of section 93 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a)(2) or (a)(3) of section 93 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto.

The facts required to classify prior burglary adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(f) Except as provided in subsections (d)(3)(B), (d)(3)(C), (d)(3)(D) and (d)(4) of section 291 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in section 33, 34 or 35 of *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

(i) *If the current crime of conviction is for a violation of subsections (b)(2) through (b)(4) of K.S.A. 8-1602, and amendments thereto, each of the following prior convictions committed on or after July 1, 2011 shall count as a person felony for criminal history purposes: K.S.A. 8-235, 8-262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104, and amendments thereto, and subsection (a)(3) of section 40 and section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or a violation of a city ordinance or law of another state which would also constitute a violation of such sections.*

Sec. 5. K.S.A. 8-1604 and K.S.A. 2010 Supp. 8-1602, 8-1603, 8-1605, 8-1606 and section 292 of chapter 136 of the 2010 Session Laws of Kansas 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 12, 2011.

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## CHAPTER 81

### SUBSTITUTE for HOUSE BILL No. 2135

AN ACT concerning certain employees; relating to misclassification of employees to avoid tax withholding, contributions and reporting requirements; amending K.S.A. 2010 Supp. 44-703, 44-766 and 79-3234 and repealing the existing sections.

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

New Section 1. The secretary or the secretary's designee shall make all determinations regarding the proper classification of any worker pursuant to K.S.A. 44-703(i)(3), and amendments thereto.

(b) If the department of revenue has reason to believe that a business has not properly classified a worker pursuant to K.S.A. 44-703(i)(3), and amendments thereto, the department of revenue shall request a determination of such worker's classification pursuant to K.S.A. 44-703(i)(3), and amendments thereto, from the secretary. The department of revenue shall submit to the secretary all relevant information, including withholding tax and payroll information, in the possession of the department of revenue necessary to make such determination.

(1) If the secretary deems it necessary to obtain additional information from the department of revenue in order to make such determination or to calculate any assessment of unemployment insurance contributions due, the secretary shall notify the department of revenue. The department of revenue shall obtain and remit the requested information to the secretary.

(2) The department of revenue shall accept the secretary's determination made pursuant to subsection (a) and shall rely on such determination in the department of revenue's examination and assessment of the business with regard to such worker.

(3) Relying upon the information provided by the department of revenue pursuant to this section, and amendments thereto, and upon making the determination required by subsection (a), the secretary shall notify the business of any unemployment insurance contributions due pursuant to this act. The secretary shall not engage a separate investigation into the same matter once a determination has been made pursuant to subsection (a) based upon information so obtained through the department of revenue.

(4) Information shared with the secretary by the department of revenue pursuant to this section, shall be held by the secretary to the same confidentiality standards as may be required by statutes governing the department of revenue.

(c) Upon investigation and determination by the secretary that a business has misclassified a worker, the secretary shall notify the department of revenue that a determination has been made, referring the matter for collection of applicable income withholding taxes.

(1) Upon request of the department of revenue, the secretary shall make available for its review any information relied upon by the secretary in making the determination.

(2) Information shared with the department of revenue by the secretary pursuant to this section shall be held by the department of revenue to the same confidentiality standards as may be required by statutes governing the department of labor.

(d) Each of the secretary of labor and the secretary of revenue may adopt rules and regulations necessary to effect the purposes of this section.

(e) This section shall be a part of and supplemental to the employment security law.

New Sec. 2. The secretary shall make the determination of employment required by K.S.A. 44-703(i)(3)(D), and amendments thereto, by examining the totality of the circumstances in which the individual renders service and shall exercise strict impartiality in the conduct of any such determination.

(a) The secretary shall first seek to determine whether the business in question has a reasonable basis upon which it relied when it determined the classification of a worker as an employee or independent contractor. If a reasonable basis is found, the classification shall be deemed valid subject to the provisions of K.S.A. 44-703(i)(3)(D), and amendments thereto. A business has a reasonable basis for its classification of workers if:

(1) Any of the following circumstances are present:

(A) The business reasonably relied upon a judicial decision regarding employment classification matters rendered by a federal or state court of competent jurisdiction in the state of Kansas;

(B) the business previously received a ruling from the internal revenue service, the department of revenue, or the department of labor validating the business' classification of workers;

(C) the business has been previously audited by the internal revenue service, the department of revenue, or the department of labor at a time when the business classified workers similarly situated in the same manner to those workers currently in question, and such audit did not result in reclassification of those workers so similarly situated; or

(D) the business reasonably relied on the application of worker classifications customary among a significant segment of its industry; and

(2) The business showed consistency in its practices by:

(A) The business classified the worker in question and any similarly situated worker in the same manner; and

(B) the business has consistently and properly reported to the appropriate taxing authorities wages or payments to the workers in question and those similarly situated.

(b) If a reasonable basis as articulated herein cannot be ascertained, then when making a determination the secretary shall then consider the following factors:

(1) Must the individual comply with specific instructions from the business regarding when, where, and how to perform services so provided?

(2) Are the activities of the individual integrated into the ongoing operations of the business?

(3) If needed to accomplish the desired end result, does the individual have the responsibility to hire, supervise and pay assistants?

(4) Must the individual work exclusively for the business in question?

(5) Is payment by the business to the individual for services contingent on completion of established benchmarks or tasks?

(6) Does the individual provide significant tools, materials or other equipment used in the accomplishment of the desired end result?

(7) Is the individual responsible for any expenses incurred in the performance of services?

(8) Can the individual suffer a loss in the course of performing services?

(c) The secretary shall seek to educate the business by assisting the business in identifying facts which may establish either classification.

(d) If imposition of a penalty or interest could otherwise be imposed by this act due to a misclassification of a worker, before imposition of such assessment, the secretary shall consider the appropriateness of the penalty or interest to the business charged with the violation of misclassifying a worker given the circumstances in which the misclassification occurred, including whether or not a reasonable basis for the classification exists. If a reasonable basis for the classification exists, then the secretary shall not impose penalties or interest or seek recovery of back taxes for the time period prior to the secretary's determination that a reasonable basis exists.

(e) This section shall be a part of and supplemental to the employment security law.

Sec. 3. K.S.A. 2010 Supp. 44-703 is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise:

(a) (1) “Annual payroll” means the total amount of wages paid or payable by an employer during the calendar year.

(2) “Average annual payroll” means the average of the annual payrolls of any employer for the last three calendar years immediately preceding the computation date as hereinafter defined if the employer has been continuously subject to contributions during those three calendar years and has paid some wages for employment during each of such years. In determining contribution rates for the calendar year, if an employer has not been continuously subject to contribution for the three calendar years immediately preceding the computation date but has paid wages subject to contributions during only the two calendar years immediately preceding the computation date, such employer’s “average annual payroll” shall be the average of the payrolls for those two calendar years.

(3) “Total wages” means the total amount of wages paid or payable by an employer during the calendar year, including that part of remuneration in excess of the limitation prescribed as provided in subsection (o)(1) of this section.

(b) “Base period” means the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year, except that the base period in respect to combined wage claims means the base period as defined in the law of the paying state.

(1) (A) If an individual lacks sufficient base period wages in order to establish a benefit year in the matter set forth above and satisfies the requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of K.S.A. 44-703, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subsection, “alternative base period” means the last four completed quarters immediately preceding the date the qualifying injury occurred. In the event the wages in the alternative base period have been used on a prior claim, then they shall be excluded from the new alternative base period.

(B) If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above the claimant shall have an alternative base period substituted for the current base period. For the purposes of this subsection, “alternative base period” means eligibility shall be determined using a base period that consists of the four most recently completed calendar quarters preceding the start of the benefit year.

(2) For the purposes of this chapter, the term “base period” includes the alternative base period.

(c) (1) “Benefits” means the money payments payable to an individual, as provided in this act, with respect to such individual’s unemployment.

(2) “Regular benefits” means benefits payable to an individual under this act or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(d) “Benefit year” with respect to any individual, means the period beginning with the first day of the first week for which such individual files a valid claim for benefits, and such benefit year shall continue for one full year. In the case of a combined wage claim, the benefit year shall be the benefit year of the paying state. Following the termination of a benefit year, a subsequent benefit year shall commence on the first day of the first week with respect to which an individual next files a claim for benefits. When such filing occurs with respect to a week which overlaps the preceding benefit year, the subsequent benefit year shall commence on the first day immediately following the expiration date of the preceding benefit year. Any claim for benefits made in accordance with subsection (a) of K.S.A. 44-709, and amendments thereto, shall be deemed to be a “valid claim” for the purposes of this subsection if the individual has been paid wages for insured work as required under subsection (e) of K.S.A. 44-705, and amendments thereto. Whenever a week of unemployment overlaps two benefit years, such week shall, for the purpose of granting waiting-period credit or benefit payment with respect thereto, be deemed to be a week of unemployment within that benefit year in which the greater part of such week occurs.

(e) “Commissioner” or “secretary” means the secretary of labor.

(f) (1) “Contributions” means the money payments to the state employment security fund which are required to be made by employers on account of employment under K.S.A. 44-710, and amendments thereto, and voluntary payments made by employers pursuant to such statute.

(2) “Payments in lieu of contributions” means the money payments to the state employment security fund from employers which are required to make or which elect to make such payments under subsection (e) of K.S.A. 44-710, and amendments thereto.

(g) “Employing unit” means any individual or type of organization, including any partnership, association, limited liability company, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual em-

ployed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) “Employer” means:

(1) (A) Any employing unit for which agricultural labor as defined in subsection (w) of this section is performed and which during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

(B) For the purpose of this subsection (h)(1), any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(i) Such crew leader holds a valid certificate of registration under the federal migrant and seasonal agricultural workers protection act or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment or any other mechanized equipment, which is provided by such crew leader; and

(ii) such individual is not in the employment of such other person within the meaning of subsection (i) of this section.

(C) For the purpose of this subsection (h)(1), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on the crew leader’s own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(D) For the purposes of this subsection (h)(1) “crew leader” means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on such individual’s own behalf or on behalf of such other person, the individuals so furnished by such individual for the service in agricultural labor performed by them; and

(iii) has not entered into a written agreement with such other person

under which such individual is designated as an employee of such other person.

(2) (A) Any employing unit which for calendar year 2007 and each calendar year thereafter: (i) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of \$1,500 or more, (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual, whether or not the same individual was in employment in each such day, or (iii) elects to have an unemployment tax account established at the time of initial registration in accordance with subsection (c) of K.S.A. 44-711, and amendments thereto.

(B) Employment of individuals to perform domestic service or agricultural labor and wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

(3) Any employing unit for which service is employment as defined in subsection (i)(3)(E) of this section.

(4) (A) Any employing unit, whether or not it is an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to (i) substantially all of the employing enterprises, organization, trade or business, or (ii) substantially all the assets, of another employing unit which at the time of such acquisition was an employer subject to this act;

(B) any employing unit which is controlled substantially, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests, whether or not such interest or interests are an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to a portion of an employer's annual payroll, which is less than 100% of such employer's annual payroll, and which intends to continue the acquired portion as a going business.

(5) Any employing unit which paid cash remuneration of \$1,000 or more in any calendar quarter in the current or preceding calendar year to individuals employed in domestic service as defined in subsection (aa) of this section.

(6) Any employing unit which having become an employer under this subsection (h) has not, under subsection (b) of K.S.A. 44-711, and amendments thereto, ceased to be an employer subject to this act.

(7) Any employing unit which has elected to become fully subject to this act in accordance with subsection (c) of K.S.A. 44-711, and amendments thereto.

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state un-

employment compensation fund; or which, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an “employer” under this act.

(9) Any employing unit described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income tax under section 501(a) of the code that had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(i) “Employment” means:

(1) Subject to the other provisions of this subsection, service, including service in interstate commerce, performed by:

(A) Any active officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, *subject to provisions of K.S.A. 44-703(i)(3)(D), and amendments thereto*; or

(C) any individual other than an individual who is an employee under subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services for remuneration for any person:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for such individual’s principal; or

(ii) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of subsection (i)(1)(C), the term “employment” shall include services described in paragraphs (i) and (ii) above only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term “employment” shall include an individual’s entire service

within the United States, even though performed entirely outside this state if,

(A) The service is not localized in any state, and

(B) the individual is one of a class of employees who are required to travel outside this state in performance of their duties, and

(C) the individual's base of operations is in this state, or if there is no base of operations, then the place from which service is directed or controlled is in this state.

(3) The term "employment" shall also include:

(A) Services performed within this state but not covered by the provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(B) Services performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act only if the individual performing such services is a resident of this state and the secretary approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(C) Services covered by an arrangement pursuant to subsection (l) of K.S.A. 44-714, and amendments thereto, between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the secretary has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(D) Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this act ~~unless and until it is shown to the satisfaction of the secretary that: (i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of hire and in fact; and (ii) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed.~~ *if the business for which activities of the individual are performed retains not only the right to control the end results of the activities performed, but the manner and means by which the end result is accomplished.*

(E) Service performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any

instrumentality thereof, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality which is jointly owned by this state or a political subdivision thereof or Indian tribes and one or more other states or political subdivisions of this or other states, provided that such service is excluded from “employment” as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from “employment” under subsection (i)(4)(A) of this section. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

(F) Service performed by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term “employment” as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act, and is not excluded from employment under paragraphs (I) through (M) of subsection (i)(4).

(G) The term “employment” shall include the service of an individual who is a citizen of the United States, performed outside the United States except in Canada, in the employ of an American employer (other than service which is deemed “employment” under the provisions of subsection (i)(2) or subsection (i)(3) or the parallel provisions of another state’s law), if:

(i) The employer’s principal place of business in the United States is located in this state; or

(ii) the employer has no place of business in the United States, but:

~~(A)~~ (a) The employer is an individual who is a resident of this state; ~~or~~

~~(B)~~ (b) the employer is a corporation which is organized under the laws of this state; or

~~(C)~~ (c) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of paragraphs (i) and (ii) above of this subsection (i)(3)(G) are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(H) An “American employer,” for purposes of subsection (i)(3)(G), means a person who is:

(i) An individual who is a resident of the United States; or

(ii) a partnership if  $\frac{2}{3}$  or more of the partners are residents of the United States; or

(iii) a trust, if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(I) Notwithstanding subsection (i)(2) of this section, all service per-

formed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office, from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(J) Notwithstanding any other provisions of this subsection (i), service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this act.

(K) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(4) The term "employment" shall not include: (A) Service performed in the employ of an employer specified in subsection (h)(3) of this section if such service is performed by an individual in the exercise of duties:

- (i) As an elected official;
  - (ii) as a member of a legislative body, or a member of the judiciary, of a state, political subdivision or of an Indian tribe;
  - (iii) as a member of the state national guard or air national guard;
  - (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
  - (v) in a position which, under or pursuant to the laws of this state or tribal law, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;
- (B) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(C) service performed by an individual in the employ of such individual's son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of such individual's father or mother;

(D) service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any

year by the federal security agency under section 3304(c) of the federal internal revenue code of 1986, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in subsection (f) of K.S.A. 44-717, and amendments thereto, with respect to contributions erroneously collected;

(E) service covered by an arrangement between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(F) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(G) service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(H) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal internal revenue code of 1986 (other than an organization described in section 401(a) or under section 521 of such code) if the remuneration for such service is less than \$50. In construing the application of the term "employment," if services performed during  $\frac{1}{2}$  or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than  $\frac{1}{2}$  of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(I) services performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(J) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of such individual's ministry or by a member of a religious order in the exercise of duties required by such order;

(K) service performed in a facility conducted for the purpose of carrying out a program of:

(i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or

(ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(L) service performed as part of an employment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training;

(M) service performed by an inmate of a custodial or correctional institution;

(N) service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(O) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection (i)(4)(O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(P) service performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is performed by a patient of the hospital;

(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4)(Q) the term “qualified real estate agent” means any individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers’ and salespersons’ license act and for whom:

(i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes;

(R) services performed for an employer by an extra in connection with

any phase of motion picture or television production or television commercials for less than 14 days during any calendar year. As used in this subsection, the term “extra” means an individual who pantomimes in the background, adds atmosphere to the set and performs such actions without speaking and “employer” shall not include any employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(S) services performed by an oil and gas contract pumper. As used in this subsection (i)(4)(S), “oil and gas contract pumper” means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and “services” shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(T) service not in the course of the employer’s trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer’s trade or business; or

(ii) such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

Such excluded service shall not include any services performed for an employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(U) service which is performed by any person who is a member of a limited liability company and which is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term “direct seller” means any person if:

(i) Such person:

(a) Is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(b) is engaged in the trade or business of selling or soliciting the sale

of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes;

(iv) for purposes of this act, a sale or a sale resulting exclusively from a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection;

(W) service performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

(X) service performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 1101(a)(15)(H)(ii)(a) of the immigration and nationality act; and

(Y) service performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of the owner-operator shall not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation. As used in this subsection (Y), the following definitions apply: (i) “Motor vehicle” means any automobile, truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property; (ii) “licensed motor carrier” means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity or a certificate of public service from the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) “owner-operator” means a person, firm, corporation or other business entity that is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier.

(j) “Employment office” means any office operated by this state and maintained by the secretary of labor for the purpose of assisting persons to become employed.

(k) “Fund” means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

(l) “State” includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the District of Columbia and the Virgin Islands.

(m) “Unemployment.” An individual shall be deemed “unemployed” with respect to any week during which such individual performs no services and with respect to which no wages are payable to such individual, or with respect to any week of less than full-time work if the wages payable to such individual with respect to such week are less than such individual’s weekly benefit amount.

(n) “Employment security administration fund” means the fund established by this act, from which administrative expenses under this act shall be paid.

(o) “Wages” means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term “wages” shall not include:

(1) That part of the remuneration which has been paid in a calendar year to an individual by an employer or such employer’s predecessor in excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the calendar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to 1982,

inclusive, \$7,000 for the calendar year 1983, and \$8,000 with respect to employment during any calendar year following 1983, except that if the definition of the term “wages” as contained in the federal unemployment tax act is amended to include remuneration in excess of \$8,000 paid to an individual by an employer under the federal act during any calendar year, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer’s predecessor with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o)(1), the term “employment” shall include service constituting employment under any employment security law of another state or of the federal government;

(2) the amount of any payment (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of such employee’s dependents under a plan or system established by an employer which makes provisions for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of: (A) Sickness or accident disability, except in the case of any payment made to an employee or such employee’s dependents, this subparagraph shall exclude from the term “wages” only payments which are received under a workers compensation law. Any third party which makes a payment included as wages by reason of this subparagraph (2)(A) shall be treated as the employer with respect to such wages; or (B) medical and hospitalization expenses in connection with sickness or accident disability; or (C) death;

(3) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) any payment made to, or on behalf of, an employee or such employee’s beneficiary:

(A) From or to a trust described in section 401(a) of the federal internal revenue code of 1986 which is exempt from tax under section 501(a) of the federal internal revenue code of 1986 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the federal internal revenue code of 1986;

(C) under a simplified employee pension as defined in section 408(k)(1) of the federal internal revenue code of 1986, other than any contribution described in section 408(k)(6) of the federal internal revenue code of 1986;

(D) under or to an annuity contract described in section 403(b) of the federal internal revenue code of 1986, other than a payment for the purchase of such contract which was made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise;

(E) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the federal internal revenue code of 1986;

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the secretary of labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the federal employee retirement income security act of 1974; or

(G) under a cafeteria plan within the meaning of section 125 of the federal internal revenue code of 1986;

(5) the payment by an employing unit (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the federal internal revenue code of 1986 with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(7) remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the federal internal revenue code of 1986 relating to moving expenses;

(8) any payment or series of payments by an employer to an employee or any of such employee's dependents which is paid:

(A) Upon or after the termination of an employee's employment relationship because of (i) death or (ii) retirement for disability; and

(B) under a plan established by the employer which makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents, other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(9) remuneration for agricultural labor paid in any medium other than cash;

(10) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 129 of the federal internal revenue code of 1986 which relates to dependent care assistance programs;

(11) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that

the employee will be able to exclude such items from income under section 119 of the federal internal revenue code of 1986;

(12) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986;

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee; or

(15) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d) of the federal internal revenue code of 1986 relating to health savings accounts.

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term “wages”: (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the federal internal revenue code of 1986, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term “nonqualified deferred compensation plan” means any plan or other arrangement for deferral of compensation other than a plan described in subsection (o)(4).

(p) “Week” means such period or periods of seven consecutive calendar days, as the secretary may by rules and regulations prescribe.

(q) “Calendar quarter” means the period of three consecutive calendar months ending March 31, June 30, September 30 or December 31, or the equivalent thereof as the secretary may by rules and regulations prescribe.

(r) “Insured work” means employment for employers.

(s) “Approved training” means any vocational training course or course in basic education skills, including a job training program authorized under the federal workforce investment act of 1998, approved by the secretary or a person or persons designated by the secretary.

(t) “American vessel” or “American aircraft” means any vessel or

aircraft documented or numbered or otherwise registered under the laws of the United States; and any vessel or aircraft which is neither documented or numbered or otherwise registered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(u) “Institution of higher education,” for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor’s or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection (u), all colleges and universities in this state are institutions of higher education for purposes of this section, except that no college, university, junior college or other postsecondary school or institution which is operated by the federal government or any agency thereof shall be an institution of higher education for purposes of the employment security law.

(v) “Educational institution” means any institution of higher education, as defined in subsection (u) of this section, or any institution, except private for profit institutions, in which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher and which is approved, licensed or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school or to an Indian tribe in the operation of an educational institution. The courses of study or training which an educational institution offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

(w) (1) “Agricultural labor” means any remunerated service:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

(B) In the employ of the owner or tenant or other operator of a farm,

in connection with the operating, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section (15)(g) of the agricultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. § 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than  $\frac{1}{2}$  of the commodity with respect to which such service is performed;

(ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (i) above of this subsection (w)(1)(D), but only if such operators produced more than  $\frac{1}{2}$  of the commodity with respect to which such service is performed;

(iii) the provisions of paragraphs (i) and (ii) above of this subsection (w)(1)(D) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(E) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(2) "Agricultural labor" does not include service performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the federal immigration and nationality act.

(3) As used in this subsection (w), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) For the purpose of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during  $\frac{1}{2}$  or more of such pay period constitute agricultural labor; but if the services performed during more than  $\frac{1}{2}$  of any such pay period by an individual for the person employing such individual do not

constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection (w), the term “pay period” means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing such individual.

(x) “Reimbursing employer” means any employer who makes payments in lieu of contributions to the employment security fund as provided in subsection (e) of K.S.A. 44-710, and amendments thereto.

(y) “Contributing employer” means any employer other than a reimbursing employer or rated governmental employer.

(z) “Wage combining plan” means a uniform national arrangement approved by the United States secretary of labor in consultation with the state unemployment compensation agencies and in which this state shall participate, whereby wages earned in one or more states are transferred to another state, called the “paying state,” and combined with wages in the paying state, if any, for the payment of benefits under the laws of the paying state and as provided by an arrangement so approved by the United States secretary of labor.

(aa) “Domestic service” means any service for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer’s trade, occupation, profession, enterprise or vocation.

(bb) “Rated governmental employer” means any governmental entity which elects to make payments as provided by K.S.A. 44-710d, and amendments thereto.

(cc) “Benefit cost payments” means payments made to the employment security fund by a governmental entity electing to become a rated governmental employer.

(dd) “Successor employer” means any employer, as described in subsection (h) of this section, which acquires or in any manner succeeds to: (1) Substantially all of the employing enterprises, organization, trade or business of another employer; or (2) substantially all the assets of another employer.

(ee) “Predecessor employer” means an employer, as described in subsection (h) of this section, who has previously operated a business or portion of a business with employment to which another employer has succeeded.

(ff) “Lessor employing unit” means any independently established business entity which engages in the business of providing leased employees to a client lessee.

(gg) “Client lessee” means any individual, organization, partnership, corporation or other legal entity leasing employees from a lessor employing unit.

(hh) “Qualifying injury” means a personal injury by accident arising

out of and in the course of employment within the coverage of the Kansas workers compensation act, K.S.A. 44-501 et seq., and amendments thereto.

Sec. 4. K.S.A. 2010 Supp. 44-766 is hereby amended to read as follows: 44-766. (a) No person shall knowingly and intentionally misclassify an employee as an independent contractor for the sole or primary purpose of avoiding either state income tax withholding and reporting requirements or state unemployment insurance contributions reporting requirements.

~~(b) Any person violating subsection (a) shall be subject to a penalty pursuant to K.S.A. 79-3228, and amendments thereto.~~ (b) (1) Any person violating subsection (a) shall upon first violation be subject to a civil penalty in an amount computed in the manner prescribed in K.S.A. 79-3228, and amendments thereto.

(2) Any person violating subsection (a) upon a second violation shall be subject to a civil penalty computed as prescribed in paragraph (1) and in addition, upon conviction, shall be guilty of a class C nonperson misdemeanor.

(3) Any person violating subsection (a) upon a third or subsequent violation shall be subject to a civil penalty computed as prescribed in paragraph (1) and in addition, upon conviction, shall be guilty of a class A nonperson misdemeanor.

(c) Criminal violations of subsection (a) may be prosecuted by the attorney general or the district or county attorney for the county in which the violation occurred.

(d) Any civil penalty assessed hereunder shall be remitted to the secretary and deposited in the state treasury.

(e) Any penalty provided in this section shall be in addition to any other penalty and remedy that may otherwise be imposed under the employment security act and such remedies shall be cumulative.

(f) This section shall be part of and supplemental to the employment security law.

Sec. 5. K.S.A. 2010 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. 2010 Supp. 74-50,212, and amendments thereto; (C) information received from businesses completing the form required by K.S.A. 2010 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. 2010 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, ~~at~~ K.S.A. 74-4901 et seq., and amendments thereto; and

~~(13) provide taxpayer information of persons suspected of violating K.S.A. 2010 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. 2010 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., as amended, and the results or status of such audit or investigation:~~

*(13) (i) provide taxpayer information of persons suspected of violating K.S.A. 2010 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. 2010 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. 2010 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.

New Sec. 6. On or before January 31 of each year, the secretary shall transmit annually to the standing committee on commerce of the senate and the standing committee on commerce and economic development of the house of representatives or any successor committee, a report, based on

information received or developed by the department of labor concerning misclassification of employees and any investigations related thereto. Such report shall contain the following information for the preceding calendar year:

- (a) The number of investigations initiated;
- (b) the number of investigations which were closed:
  - (1) With no assessment being made;
  - (2) with assessment being made which includes the following information:
    - (A) An estimate of the amount of unreported payroll;
    - (B) an estimate of the unpaid taxes or taxes which have not been withheld on such unreported payroll amount;
    - (C) the amount of unpaid contributions or other amounts required to be paid under the employment security act related to such unreported payroll amount;
    - (D) the total amount of interest assessed;
    - (E) the total amount of penalties assessed; and
    - (F) the number of employers found to be employing undocumented workers;
- (c) the total amounts collected for each of the categories listed in subsection (b).

Sec. 7. K.S.A. 2010 Supp. 44-703, 44-766 and 79-3234 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 12, 2011.

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## CHAPTER 82

House Substitute for SENATE BILL No. 36

AN ACT concerning abortion; relating to licensure of abortion clinics.

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

Section 1. As used in sections 1 through 12, and amendments thereto:

- (a) “Abortion” means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.

(b) “Ambulatory surgical center” means an ambulatory surgical center as defined in K.S.A. 65-425, and amendments thereto.

(c) “Clinic” means any facility, other than a hospital or ambulatory surgical center, in which any second or third trimester, or five or more first trimester abortions are performed in a month.

(d) “Department” means the department of health and environment.

(e) “Elective abortion” means an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; provided, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which would result in her death.

(f) “Facility” means any clinic, hospital or ambulatory surgical center, in which any second or third trimester elective abortion, or five or more first trimester elective abortions are performed in a month, excluding any abortion performed due to a medical emergency as defined in this act, and amendments thereto.

(g) “Gestational age” has the same meaning ascribed thereto in K.S.A. 65-6701, and amendments thereto, and shall be determined pursuant to K.S.A. 65-6703, and amendments thereto.

(h) “Hospital” means a hospital as defined in subsection (a) or (b) of K.S.A. 65-425, and amendments thereto.

(i) “Medical emergency” means a condition that, in a reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining gestational age in order to avert her death, or for which a delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(j) “Physician” has the same meaning ascribed thereto in K.S.A. 65-6701, and amendments thereto.

(k) “Secretary” means the secretary of the department of health and environment.

Sec. 2. (a) A facility shall be licensed in accordance with sections 1 through 12, and amendments thereto.

(b) Any facility seeking licensure for the performance of abortions shall submit an application for such license to the department on forms and in the manner required by the secretary. Such application shall contain such information as the secretary may reasonably require, including affirmative evidence of the ability of the applicant to comply with such reasonable standards and rules and regulations adopted pursuant to section 9, and amendments thereto.

(c) Upon receipt of such application and verification by the department that the applicant is in compliance with all applicable laws and rules and regulations, the secretary shall issue a license to the applicant.

(d) A license issued under this section shall be posted in a conspicuous place in a public area within the facility. The issuance of a license does not guarantee adequacy of individual care, treatment, personal safety, fire safety or the well-being of any occupant of such facility. A license is not assignable or transferable.

(e) A license shall be effective for one year following the date of issuance. A license issued under this section shall apply only to the premises described in the application and in the license issued thereon, and only one location shall be described in each license.

(f) At the time application for a license is made the applicant shall pay a license fee in the amount of \$500. Fees paid pursuant to this section shall not be refunded by the secretary.

(g) The secretary may make exceptions to the standards set forth in law or in rules and regulations when it is determined that the health and welfare of the community require the services of the hospital or ambulatory surgical center and that the exceptions, as granted, will have no significant adverse impact on the health, safety or welfare of the patients of such hospital or ambulatory surgical center.

Sec. 3. Applicants for an annual license renewal shall file an application with the department and pay the license fee in accordance with section 2, and amendments thereto. Applicants for an annual license renewal shall also be subject to a licensing inspection in accordance with section 5, and amendments thereto.

Sec. 4. (a) No proposed facility shall be named, nor may any existing facility have its name changed to, the same or similar name as any other facility licensed pursuant to sections 1 through 12, and amendments thereto. If the facility is affiliated with one or more other facilities with the same or similar name, then the facility shall have the geographic area in which it is located as part of its name.

(b) Within 30 days after the occurrence of any of the following, a facility shall apply for an amended license by submitting such application to the department:

- (1) A change of ownership either by purchase or lease; or
- (2) a change in the facility's name or address.

Sec. 5. (a) The secretary shall make or cause to be made such inspections and investigations of each facility at least twice each calendar year and at such other times as the secretary determines necessary to protect the public health and safety and to implement and enforce the provisions of sections 1 through 12, and amendments thereto, and rules and regulations adopted pursuant to section 9, and amendments thereto. At least one inspection shall be made each calendar year without providing prior notice

to the facility. For that purpose, authorized agents of the secretary shall have access to a facility during regular business hours.

(b) Information received by the secretary through filed reports, inspections or as otherwise authorized under sections 1 through 12, and amendments thereto, shall not be disclosed publicly in such manner as to identify individuals. Under no circumstances shall patient medical or other identifying information be made available to the public, and such information shall always be treated by the department as confidential.

Sec. 6. (a) When the secretary determines that a facility is in violation of any applicable law or rule and regulation relating to the operation or maintenance of such facility, the secretary, upon proper notice, may deny, suspend or revoke the license of such facility, or assess a monetary penalty after notice and an opportunity for hearing has been given to the licensee in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the secretary and the facility may enter into a stipulation which shall be binding upon the secretary and the facility entering into such stipulation, and the secretary may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by this section against the facility entering into such stipulation.

(c) The secretary may temporarily suspend or temporarily limit the license of any facility in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the secretary determines that there is cause to believe that grounds exist under this section for immediate action authorized by this section against the facility and that the facility's continuation in operation would constitute an imminent danger to the public health and safety.

(d) Violations of sections 1 through 12, and amendments thereto, or of any rules and regulations adopted thereunder shall be deemed one of the following:

(1) Class I violations are those that the secretary determines to present an imminent danger to the health, safety or welfare of the patients of the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the secretary, is required for correction. Each day such violation shall exist after expiration of such time shall be considered a subsequent violation.

(2) Class II violations are those, other than class I violations, that the secretary determines to have a direct or immediate relationship to the health,

safety or welfare of the facility's patients. The citation of a class II violation shall specify the time within which the violation is required to be corrected. Each day such violation shall exist after expiration of such time shall be considered a subsequent violation.

(3) Class III violations are those that are not classified as class I or II, or those that are against the best practices as interpreted by the secretary. The citation of a class III violation shall specify the time within which the violation is required to be corrected. Each day such violation shall exist after expiration of such time shall be considered a subsequent violation.

(e) The secretary shall consider the following factors when determining the severity of a violation:

(1) Specific conditions and their impact or potential impact on the health, safety or welfare of the facility's patients;

(2) efforts by the facility to correct the violation;

(3) overall conditions of the facility;

(4) the facility's history of compliance; and

(5) any other pertinent conditions that may be applicable.

(f) Any monetary penalty assessed by the secretary shall be assessed in accordance with the following fine schedule:

(1) For class I violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

(A) One violation, a fine of not less than \$200 and not more than \$1,000;

(B) two violations, a fine of not less than \$500 and not more than \$2,000;

(C) three violations, a fine of not less than \$1,000 and not more than \$5,000; and

(D) four or more violations, a fine of \$5,000;

(2) for class II violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

(A) One violation, a fine of not less than \$100 and not more than \$200;

(B) two violations, a fine of not less than \$200 and not more than \$1,000;

(C) three violations, a fine of not less than \$500 and not more than \$2,000;

(D) four violations, a fine of not less than \$1,000 and not more than \$5,000; and

(E) five or more violations, a fine of \$5,000;

(3) for class III violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

(A) One violation, there shall be no fine;

(B) two violations, a fine of not less than \$100 and not more than \$500;

(C) three violations, a fine of not less than \$200 and not more than \$1,000;

(D) four violations, a fine of not less than \$500 and not more than \$2,000;

(E) five violations, a fine of not less than \$1,000 and not more than \$5,000; and

(F) six or more violations, a fine of \$5,000.

Sec. 7. Except in the case of a medical emergency, as defined in this act, and amendments thereto, an abortion performed when the gestational age of the unborn child is 22 weeks or more shall be performed in a hospital or ambulatory surgical center licensed pursuant to this act. All other abortions shall be performed in a hospital, ambulatory surgical center or facility licensed pursuant to this act. All other abortions shall be performed in a facility licensed pursuant to this act, except that a hospital or ambulatory surgical center that does not meet the definition of a facility under this act and that is licensed pursuant to K.S.A. 65-425 et seq., and amendments thereto, may perform abortions.

Sec. 8. (a) It shall be unlawful to operate a facility within Kansas without possessing a valid license issued annually by the secretary pursuant to section 2, and amendments thereto, with no requirement of culpable mental state.

(b) It shall be unlawful for a person to perform or induce an abortion in a facility unless such person is a physician, with clinical privileges at a hospital located within 30 miles of the facility, with no requirement of culpable mental state.

(c) Violation of subsection (a) or (b) is a class A nonperson misdemeanor and shall constitute unprofessional conduct under K.S.A. 65-2837, and amendments thereto.

Sec. 9. (a) The secretary shall adopt rules and regulations for the licensure of facilities for the performance of abortions.

(b) The secretary shall adopt rules and regulations concerning sanitation, housekeeping, maintenance, staff qualifications, emergency equipment and procedures to provide emergency care, medical records and reporting, laboratory, procedure and recovery rooms, physical plant, quality assurance, infection control, information on and access to patient follow-up care and any other areas of medical practice necessary to carry out the purposes of sections 1 through 12, and amendments thereto, for facilities for the performance of abortions. At a minimum these rules and regulations shall prescribe standards for:

(1) Adequate private space that is specifically designated for interviewing, counseling and medical evaluations;

(2) dressing rooms for staff and patients;

(3) appropriate lavatory areas;

(4) areas for preprocedure hand washing;

(5) private procedure rooms;

(6) adequate lighting and ventilation for abortion procedures;

(7) surgical or gynecologic examination tables and other fixed equipment;

(8) postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients' needs;

(9) emergency exits to accommodate a stretcher or gurney;

(10) areas for cleaning and sterilizing instruments; and

(11) adequate areas for the secure storage of medical records and necessary equipment and supplies.

(c) The secretary shall adopt rules and regulations to prescribe facility supplies and equipment standards, including supplies and equipment, that are required to be immediately available for use or in an emergency. At a minimum these rules and regulations shall:

(1) Prescribe required equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the facility anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period;

(2) require that the number or amount of equipment and supplies at the facility is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient;

(3) prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power;

(4) prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the facility or operated by facility staff;

(5) require ultrasound equipment in facilities; and

(6) require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

(d) The secretary shall adopt rules and regulations relating to facility personnel. At a minimum these rules and regulations shall require that:

(1) The facility designate a medical director of the facility who is licensed to practice medicine and surgery in Kansas;

(2) physicians performing surgery in a facility are licensed to practice medicine and surgery in Kansas, demonstrate competence in the procedure involved and are acceptable to the medical director of the facility;

(3) a physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available;

(4) another individual is present in the room during a pelvic examination or during the abortion procedure and if the physician is male then the other individual shall be female;

(5) a registered nurse, nurse practitioner, licensed practical nurse or physician assistant is present and remains at the facility when abortions are

performed to provide postoperative monitoring and care until each patient who had an abortion that day is discharged;

(6) surgical assistants receive training in the specific responsibilities of the services the surgical assistants provide; and

(7) volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules and regulations adopted by the director for different types of volunteers based on their responsibilities.

(e) The secretary shall adopt rules and regulations relating to the medical screening and evaluation of each facility patient. At a minimum these rules and regulations shall require:

(1) A medical history including the following:

(A) Reported allergies to medications, antiseptic solutions or latex;

(B) obstetric and gynecologic history; and

(C) past surgeries;

(2) a physical examination including a bimanual examination estimating uterine size and palpation of the adnexa;

(3) the appropriate laboratory tests including:

(A) For an abortion in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure;

(B) a test for anemia as indicated;

(C) Rh typing, unless reliable written documentation of blood type is available; and

(D) other tests as indicated from the physical examination;

(4) an ultrasound evaluation for all patients who elect to have an abortion of an unborn child. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that the person completed a course in the operation of ultrasound equipment as prescribed in rules and regulations. The physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the unborn child; and

(5) that the physician is responsible for estimating the gestational age of the unborn child based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rules and regulations and shall verify the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.

(f) The secretary shall adopt rules and regulations relating to the abortion procedure. At a minimum these rules and regulations shall require:

(1) That medical personnel is available to all patients throughout the abortion procedure;

(2) standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rules and regulations;

(3) appropriate use of local anesthesia, analgesia and sedation if ordered by the physician;

(4) the use of appropriate precautions, such as the establishment of intravenous access at least for patients undergoing second or third trimester abortions; and

(5) the use of appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

(g) The secretary shall adopt rules and regulations that prescribe minimum recovery room standards. At a minimum these rules and regulations shall require that:

(1) Immediate postprocedure care consists of observation in a supervised recovery room for as long as the patient's condition warrants;

(2) the facility arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected;

(3) a licensed health professional who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remains on the premises of the facility until all patients are discharged;

(4) a physician or a nurse who is advanced cardiovascular life support certified shall remain on the premises of the facility until all patients are discharged and to facilitate the transfer of emergency cases if hospitalization of the patient or viable unborn child is necessary. A physician or nurse shall be readily accessible and available until the last patient is discharged;

(5) a physician or trained staff member discusses Rho(d) immune globulin with each patient for whom it is indicated and assures it is offered to the patient in the immediate postoperative period or that it will be available to her within 72 hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the department shall be signed by the patient and a witness and included in the medical record;

(6) written instructions with regard to postabortion coitus, signs of possible problems and general aftercare are given to each patient. Each patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies;

(7) there is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and gestational age of the unborn child;

(8) the physician assures that a licensed health professional from the facility makes a good faith effort to contact the patient by telephone, with the patient's consent, within 24 hours after surgery to assess the patient's recovery; and

(9) equipment and services are located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable unborn child to the hospital.

(h) The secretary shall adopt rules and regulations that prescribe standards for follow-up visits. At a minimum these rules and regulations shall require that:

(1) A postabortion medical visit is offered and scheduled within four weeks after the abortion, if accepted by the patient, including a medical examination and a review of the results of all laboratory tests;

(2) a urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs or induces abortions shall be consulted; and

(3) the physician performing or inducing the abortion, or a person acting on behalf of the physician performing or inducing the abortion, shall make all reasonable efforts to ensure that the patient returns for a subsequent examination so that the physician can assess the patient's medical condition. A brief description of the efforts made to comply with this requirements, including the date, time and identification by name of the person making such efforts, shall be included in the patient's medical record.

(i) The secretary shall adopt rules and regulations to prescribe minimum facility incident reporting. At a minimum these rules and regulations shall require that:

(1) The facility records each incident resulting in a patient's or viable unborn child's serious injury occurring at a facility and shall report them in writing to the department within 10 days after the incident. For the purposes of this paragraph, "serious injury" means an injury that occurs at a facility and that creates a serious risk of substantial impairment of a major body organ;

(2) if a patient's death occurs, other than an unborn child's death properly reported pursuant to law, the facility shall report such death to the department of health and environment not later than the next department business day; and

(3) incident reports are filed with the department of health and environment and appropriate professional regulatory boards.

(j) (1) The secretary shall adopt rules and regulations requiring each facility to establish and maintain an internal risk management program which, at a minimum, shall consist of:

(A) A system for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(B) measures to minimize the occurrence of reportable incidents and the resulting injuries within the facility; and

(C) a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents

to the chief of the medical staff, chief administrative officer or risk manager of the facility.

(2) As used in this subsection, the term “reportable incident” means an act by a health care provider which:

(A) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or

(B) may be grounds for disciplinary action by the appropriate licensing agency.

(k) The rules and regulations adopted by the secretary pursuant to this section do not limit the ability of a physician or other health care professional to advise a patient on any health issue. The secretary periodically shall review and update current practice and technology standards under sections 1 through 12, and amendments thereto, and based on current practice or technology adopt by rules and regulations alternative practice or technology standards found by the secretary to be as effective as those enumerated in sections 1 through 12, and amendments thereto.

(l) The provisions of sections 1 through 12, and amendments thereto, and the rules and regulations adopted pursuant thereto shall be in addition to any other laws and rules and regulations which are applicable to facilities defined as clinics under section 1, and amendments thereto.

(m) In addition to any other penalty provided by law, whenever in the judgment of the secretary of health and environment any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this section, or any rules and regulations adopted under the provisions of this section, the secretary shall make application to any court of competent jurisdiction for an order enjoining such acts or practices, and upon a showing by the secretary that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order or such other order as may be appropriate shall be granted by such court without bond.

Sec. 10. (a) No abortion shall be performed or induced by any person other than a physician licensed to practice medicine in the state of Kansas. When RU-486 (mifepristone) or any drug is used for the purpose of inducing an abortion, the drug must be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed or otherwise provided the drug to the patient.

(b) The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall make all reasonable efforts to ensure that the patient returns 12 to 18 days after the administration or use of such drug for a subsequent examination so that the physician can confirm that the pregnancy has been terminated and assess the patient’s medical condition. A brief description of the efforts made to comply with this subsection, including the date, time and identification by name of the person making such efforts, shall be included in the patient’s medical record.

(c) A violation of this section shall constitute unprofessional conduct under K.S.A. 65-2837, and amendments thereto.

Sec. 11. Nothing in sections 1 through 12, and amendments thereto, shall be construed as creating or recognizing a right to abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

Sec. 12. The provisions of sections 1 through 12, and amendments thereto, are declared to be severable, and if any provision, or the application thereof, to any person shall be held invalid, such invalidity shall not affect the validity of the remaining provisions of sections 1 through 12, and amendments thereto.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 16, 2011.

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## CHAPTER 83

### SENATE SUBSTITUTE for HOUSE BILL No. 2049 (Amends Chapter 10)

AN ACT concerning controlled substances; amending K.S.A. 65-4107, 65-4109 and 65-4111 and K.S.A. 2010 Supp. 21-36a05, 21-36a06, 65-4105 and 65-4113 and repealing the existing sections; also repealing K.S.A. 65-4107, as amended by section 2 of 2011 House Bill No. 2023, 65-4109, as amended by section 3 of 2011 House Bill No. 2023, 65-4111, as amended by section 4 of 2011 House Bill No. 2023 and K.S.A. 2010 Supp. 65-4105, as amended by section 1 of 2011 House Bill No. 2023 and 65-4113, as amended by section 5 of 2011 House Bill No. 2023.

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

Section 1. K.S.A. 2010 Supp. 21-36a05 is hereby amended to read as follows: 21-36a05. (a) It shall be unlawful for any person to cultivate, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-

4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(5) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; ~~or~~

(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; *or*

(7) *any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.*

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 3 felony, except that:

(A) Violation of subsection (a) is a drug severity level 2 felony if the trier of fact makes a finding that the offender is 18 or more years of age and the substance was distributed to or possessed with intent to distribute to a minor or the violation occurs on or within 1,000 feet of any school property;

(B) violation of subsection (a)(1) is a drug severity level 2 felony if that person has one prior conviction under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction; and

(C) violation of subsection (a)(1) is a drug severity level 1 felony if that person has two prior convictions under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction.

(2) Violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if the substance was distributed to or possessed with the intent to distribute to a child under 18 years of age.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Sec. 2. K.S.A. 2010 Supp. 21-36a06 is hereby amended to read as follows: 21-36a06. (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a controlled substance analog thereof.

(b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto;

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; ~~or~~

(6) any substance designated in K.S.A. 65-4113, and amendments thereto; *or*

(7) *any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.*

(c) (1) Violation of subsection (a) is a drug severity level 4 felony;

(2) violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b)(1) through (b)(5) *or (b)(7)* is a drug severity level 4 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162 prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana ~~or tetrahydrocannabinol~~ as designated in subsection (d) of K.S.A. 65-4105, and amendments thereto, *or any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.*

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Sec. 3. K.S.A. 2010 Supp. 65-4105 is hereby amended to read as follows: 65-4105. (a) The controlled substances listed in this section are included in schedule I and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidiny]l-N-phenylacetamide ..... 9815
- (2) Acetylmethadol ..... 9601
- (3) Allylprodine ..... 9602
- (4) Alphacetylmethadol ..... 9603  
(except levo-alpha-cetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM)
- (5) Alphameprodine ..... 9604

(6) Alphamethadol .....	9605
(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine) .....	9814
(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) .....	9832
(9) Benzethidine .....	9606
(10) Betacetylmethadol .....	9607
(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide) .....	9830
(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide) .....	9831
(13) Betameprodine .....	9608
(14) Betamethadol .....	9609
(15) Betaprodine .....	9611
(16) Clonitazene .....	9612
(17) Dextromoramide .....	9613
(18) Diampromide .....	9615
(19) Diethylthiambutene .....	9616
(20) Difenoxin .....	9168
(21) Dimenoxadol .....	9617
(22) Dimepheptanol .....	9618
(23) Dimethylthiambutene .....	9619
(24) Dioxaphetyl butyrate .....	9621
(25) Dipipanone .....	9622
(26) Ethylmethylthiambutene .....	9623
(27) Etonitazene .....	9624
(28) Etoxidine .....	9625
(29) Furethidine .....	9626
(30) Hydroxypethidine .....	9627
(31) Ketobemidone .....	9628
(32) Levomoramide .....	9629
(33) Levophenacilmorphan .....	9631
(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide) .....	9813
(35) 3-Methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) .....	9833
(36) Morpheridine .....	9632
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine) .....	9661
(38) Noracymethadol .....	9633
(39) Norlevorphanol .....	9634
(40) Normethadone .....	9635
(41) Norpipanone .....	9636
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide) .....	9812
(43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine) .....	9663
(44) Phenadoxone .....	9637
(45) Phenampromide .....	9638
(46) Phenomorphan .....	9647
(47) Phenoperidine .....	9641
(48) Piritramide .....	9642
(49) Proheptazine .....	9643
(50) Properidine .....	9644
(51) Propiram .....	9649
(52) Racemoramide .....	9645
(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide) .....	9835

(54) Tilidine .....	9750
(55) Trimeperidine .....	9646

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine .....	9319
(2) Acetyldihydrocodeine .....	9051
(3) Benzylmorphine .....	9052
(4) Codeine methylbromide .....	9070
(5) Codeine-N-Oxide .....	9053
(6) Cyprenorphine .....	9054
(7) Desomorphine .....	9055
(8) Dihydromorphine .....	9145
(9) Drotebanol .....	9335
(10) Etorphine (except hydrochloride salt) .....	9056
(11) Heroin .....	9200
(12) Hydromorphinol .....	9301
(13) Methyldesorphine .....	9302
(14) Methyldihydromorphine .....	9304
(15) Morphine methylbromide .....	9305
(16) Morphine methylsulfonate .....	9306
(17) Morphine-N-Oxide .....	9307
(18) Myrophine .....	9308
(19) Nicocodeine .....	9309
(20) Nicomorphine .....	9312
(21) Normorphine .....	9313
(22) Pholcodine .....	9314
(23) Thebacon .....	9315

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) 4-bromo-2,5-dimethoxy-amphetamine .....	7391
Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.	
(2) 2,5-dimethoxyamphetamine .....	7396
Some trade or other names: 2,5-dimethoxy-alpha-methyl-phenethylamine; 2,5-DMA.	
(3) 4-methoxyamphetamine .....	7411
Some trade or other names: 4-methoxy-alpha-methylphene-thylamine; paramethoxyamphetamine; PMA.	
(4) 5-methoxy-3,4-methylenedioxy-amphetamine .....	7401
(5) 4-methyl-2,5-dimethoxy-amphetamine .....	7395
Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP".	
(6) 3,4-methylenedioxy amphetamine .....	7400
(7) 3,4-methylenedioxy-methamphetamine (MDMA) .....	7405

(8) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA) ..... 7404

(9) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA) ..... 7402

(10) 3,4,5-trimethoxy amphetamine ..... 7390

(11) Bufotenine ..... 7433  
Some trade or other names: 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethyl-aminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine.

(12) Diethyltryptamine ..... 7434  
Some trade or other names: N,N-Diethyltryptamine; DET.

(13) Dimethyltryptamine ..... 7435  
Some trade or other names: DMT.

(14) Ibogaine ..... 7260  
Some trade or other names: 7-Ethyl-6,6 Beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepero [5,4-b]indole; Tabernanthe iboga.

(15) Lysergic acid diethylamide ..... 7315

(16) Marihuana ..... 7360

(17) Mescaline ..... 7381

(18) Parahexyl ..... 7374  
Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.

(19) Peyote ..... 7415  
Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.

(20) N-ethyl-3-piperidyl benzilate ..... 7482

(21) N-methyl-3-piperidyl benzilate ..... 7484

(22) Psilocybin ..... 7437

(23) Psilocyn ..... 7438

~~(24) Tetrahydrocannabinols ..... 7370~~  
Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

~~(25)~~ (24) Ethylamine analog of phencyclidine ..... 7455  
Some trade or other names: N-ethyl-1-phenyl-cyclo-hexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE.

~~(26)~~ (25) Pyrrolidine analog of phencyclidine ..... 7458  
Some trade or other names: 1-(1-phenylcyclo-hexyl)-pyrrolidine; PCPy; PHP.

~~(27)~~ (26) Thiophene analog of phencyclidine ..... 7470  
Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP.

~~(28)~~ (27) 1-[1-(2-thienyl)-cyclohexyl] pyrrolidine ..... 7473  
Some other names: TCPy.

<del>(29)</del> (28) 2,5-dimethoxy-4-ethylamphetamine	7399
Some trade or other names: DOET.	
<del>(30)</del> (29) Salvia divinorum or salvinorum A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.	
<del>(31)</del> (30) Datura stramonium, commonly known as gypsum weed or jimson weed; all parts of the plant presently classified botanically as datura stramonium, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.	
<del>(32)</del> <del>(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzocchromen-1-ol</del>	<del>7370</del>
Some trade or other names: HU-210.	
<del>(33)</del> <del>1-Pentyl-3-(1-naphthoyl)indole</del>	
Some trade or other names: JWH-018.	
<del>(34)</del> <del>1-Butyl-3-(1-naphthoyl)indole</del>	
Some trade or other names: JWH-073.	
<del>(35)</del> (31) N-benzylpiperazine	7493
Some trade or other names: BZP.	
<del>(36)</del> (32) 1-(3-[trifluoromethylphenyl])piperazine	
Some trade or other names: TFMPP.	
(33) 4-Bromo-2,5-dimethoxyphenethylamine	7392
(34) 2,5-dimethoxy-4-(n-propylthiopenenthylamine (2C-7), its optical isomers, salts and salts of optical isomers	7348
(35) Alpha-methyltryptamine (other name: AMT)	7432
(36) 5-methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts and salts of isomers	7439

(e) 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, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone	2572
(2) Methaqualone	2565
(3) Gamma hydroxybutyric acid	

(f) 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 and salts of isomers:

(1) Fenethylline	1503
(2) N-ethylamphetamine	1475
(3) (+ cis-4-methylaminorex ((+)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine)	1590
(4) N,N-dimethylamphetamine (also known as N,N-alpha-trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine)	1480
(5) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-amino propiophenone, 2-amino propiophenone and norphedrone)	1235

(6) *Substituted cathinones*

Any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

- (A) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
- (B) by substitution at the 3-position with an acyclic alkyl substituent;
- (C) by substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or
- (D) by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(g) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers ..... 9818
- (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers ..... 9834
- ~~(3) Methcathinone (some other names: 2-methylamino-1-phenylpropan-1-one; Ephedrone; Monomethylpropion; UR1431, its salts, optical isomers and salts of optical isomers) ..... 1237~~
- ~~(4) Aminorex (some other names: Aminoxaphen 2-amino-5-phenyl-2-oxazoline or 4,5-dihydro-5-phenyl-2-oxazolamine, its salts, optical isomers and salts of optical isomers) ..... 1585~~
- ~~(5) (4) Alpha-ethyltryptamine, its optical isomers, salts and salts of isomers ..... 7249~~  
Some other names: eryptamine, alpha-methyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole.

(h) Any of the following cannabinoids, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Tetrahydrocannabinols ..... 7370  
*Meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and their optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)*
- (2) Naphthoylindoles  
*Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkyl-methyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.*
- (3) Naphthylmethylindoles  
*Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.*

(4) *Naphthoylpyrroles*

Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

(5) *Naphthylmethylindenes*

Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.

(6) *Phenylacetylindoles*

Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

(7) *Cyclohexylphenols*

Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent.

(8) *Benzoylindoles*

Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

(9) *2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone.*

Some trade or other names: WIN 55,212-2.

(10) *9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.*

Some trade or other names: HU-210, HU-211.

Sec. 4. K.S.A. 65-4107 is hereby amended to read as follows: 65-4107.

(a) The controlled substances listed in this section are included in schedule II and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nal-mefene, naloxone and naltrexone and their respective salts, but including the following:

(A) Raw opium .....	9600
(B) Opium extracts .....	9610
(C) Opium fluid .....	9620

(D) Powdered opium .....	9639
(E) Granulated opium .....	9640
(F) Tincture of opium .....	9630
(G) Codeine .....	9050
(H) Ethylmorphine .....	9190
(I) Etorphine hydrochloride .....	9059
(J) Hydrocodone .....	9193
(K) Hydromorphone .....	9150
(L) Metopon .....	9260
(M) Morphine .....	9300
(N) Oxycodone .....	9143
(O) Oxymorphone .....	9652
(P) Thebaine .....	9333
(Q) <i>Dihydroetorphine</i> .....	9334
(R) <i>Oripavine</i> .....	9330

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

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine (9041) or ecgonine (9180).

(5) Cocaine, its salts, isomers and salts of isomers (9041).

(6) Ecgonine, its salts, isomers and salts of isomers (9180).

(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy) (9670).

(c) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation dextrorphan and levopropoxyphene excepted:

(1) Alfentanil .....	9737
(2) Alphaprodine .....	9010
(3) Anileridine .....	9020
(4) Bezitramide .....	9800
(5) Bulk dextropropoxyphene (nondosage forms) .....	9273
(6) Carfentanil .....	9743
(7) Dihydrocodeine .....	9120
(8) Diphenoxylate .....	9170
(9) Fentanyl .....	9801
(10) Isomethadone .....	9226
(11) Levomethorphan .....	9210
(12) Levorphanol .....	9220
(13) Metazocine .....	9240
(14) Methadone .....	9250
(15) Methadone-intermediate,4-cyano-2-dimethyl amino-4,4-diphenyl butane .....	9254
(16) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid .....	9802
(17) Pethidine (meperidine) .....	9230
(18) Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine .....	9232

(19) Pethidine-intermediate-B, ethyl-4-phenyl-piperidine-4-carboxylate .....	9233
(20) Pethidine-intermediate-C, 1-methyl-4-phenyl-piperidine-4-carboxylic acid .....	9234
(21) Phenazocine .....	9715
(22) Piminodine .....	9730
(23) Racemethorphan .....	9732
(24) Racemorphan .....	9733
(25) Sufentanil .....	9740
(26) Levo-alpha-cetyl methadol .....	9648
Some other names: levo-alpha-acetyl methadol, levomethadyl acetate or LAAM.	
(27) <i>Remifentanil</i> .....	9739
(28) <i>Tapentadol</i> .....	9780

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers and salts of its optical isomers .....	1100
(2) Phenmetrazine and its salts .....	1631
(3) Methamphetamine, including its salts, isomers and salts of isomers .....	1105
(4) Methylphenidate .....	1724
(5) <i>Lisdexamfetamine, its salts, isomers, and salts of its isomers</i> .....	1205

(e) 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 depressant effect on the central nervous system, 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:

(1) Amobarbital .....	2125
(2) Glutethimide .....	2550
(3) Secobarbital .....	2315
(4) Pentobarbital .....	2270
(5) Phencyclidine .....	7471

(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:	
(A) Phenylacetone .....	8501
Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.	
(2) Immediate precursors to phencyclidine (PCP):	
(A) 1-phenylcyclohexylamine .....	7460
(B) 1-piperidinocyclohexanecarbonitrile (PCC) .....	8603

(g) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substance, its salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

Nabilone ..... 7379  
 [Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one]

Sec. 5. K.S.A. 65-4109 is hereby amended to read as follows: 65-4109.  
 (a) The controlled substances listed in this section are included in schedule III and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Any compound, mixture or preparation containing:
  - (A) Amobarbital ..... 2126
  - (B) Secobarbital ..... 2316
  - (C) Pentobarbital ..... 2271
 or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
- (2) Any suppository dosage form containing:
  - (A) Amobarbital ..... 2126
  - (B) Secobarbital ..... 2316
  - (C) Pentobarbital ..... 2271
 or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.
- (3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules ..... 2100
- (4) Chlorhexadol ..... 2510
- (5) Lysergic acid ..... 7300
- (6) Lysergic acid amide ..... 7310
- (7) Methyprylon ..... 2575
- (8) Sulfondiethylmethane ..... 2600
- (9) Sulfonethylmethane ..... 2605
- (10) Sulfonmethane ..... 2610
- (11) Tiletamine and zolazepam or any salt thereof ..... 7295  
 Some trade or other names for a tiletamine-zolazepam combination product:  
 Telazol  
 Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone  
 Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon
- (12) Ketamine, its salts, isomers, and salts of isomers ..... 7285  
 Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone
- (13) Gamma hydroxybutyric acid, any salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid contained in a drug product for which an application has been approved under section 505 of the federal food, drug and cosmetic act
- (14) *Embutramide* ..... 2020
- (c) Nalorphine ..... 9400
- (d) Any material, compound, mixture or preparation containing any of

the following narcotic drugs or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium ..... 9803
- (2) not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9804
- (3) not more than 300 milligrams of dihydrocodeinone (hydrocodone) or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with a fourfold or greater quantity of an isoquinoline alkaloid of opium ..... 9805
- (4) not more than 300 milligrams of dihydrocodeinone (hydrocodone) or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9806
- (5) not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9807
- (6) not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9808
- (7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9809
- (8) not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9810
- (9) *any material, compound, mixture or preparation containing any of the following narcotic drugs or their salts, as set forth below:*
  - (A) *Buprenorphine* ..... 9064

(e) 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) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substance listed in schedule II, which compounds, mixtures or preparations were listed on August 25, 1971, as excepted compounds under section 308.32 of title 21 of the code of federal regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same, except that it contains a lesser quantity of controlled substances ..... 1405
- (2) Benzphetamine ..... 1228
- (3) Chlorphentermine ..... 1645
- (4) Clortermine ..... 1647
- (5) Phendimetrazine ..... 1615

(f) Anabolic steroids ..... 4000

“Anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) boldenone
- (2) chlorotestosterone (4-chlortestosterone)
- (3) clostebol
- (4) dehydrochlormethyltestosterone
- (5) dihydrotestosterone (4-dihydrotestosterone)
- (6) drostanolone
- (7) ethylestrenol
- (8) fluoxymesterone
- (9) formebulone (formebolone)
- (10) mesterolone
- (11) methandienone
- (12) methandranone
- (13) methandriol
- (14) methandrostenolone
- (15) methenolone
- (16) methyltestosterone
- (17) mibolerone
- (18) nandrolone
- (19) norethandrolone
- (20) oxandrolone
- (21) oxymesterone
- (22) oxymetholone
- (23) stanolone
- (24) stanozolol
- (25) testolactone
- (26) testosterone
- (27) trenbolone

(28) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

(A) Except as provided in (B), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States' secretary of health and human services for such administration.

(B) If any person prescribes, dispenses or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this subsection (f).

(g) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substance, its salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product ..... 7369  
 Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6-6-9-trimethyl-3-pentyl-6H-dibenzo(b,d)pyran-1-0l, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(h) The board may except by rule any compound, mixture or preparation containing any stimulant or 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 stimulant or 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 stimulant or depressant effect on the central nervous system.

Sec. 6. K.S.A. 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) Barbital .....	2145
(3) Bromazepam .....	2748
(4) Camazepam .....	2749
(5) Chloral betaine .....	2460
(6) Chloral hydrate .....	2465
(7) Chlordiazepoxide .....	2744
(8) Clobazam .....	2751
(9) Clonazepam .....	2737
(10) Clorazepate .....	2768
(11) Clotiazepam .....	2752
(12) Cloxazolam .....	2753
(13) Delorazepam .....	2754
(14) Diazepam .....	2765
(15) <i>Dichloralphenazone</i> .....	2467
<del>(15)</del> (16) Estazolam .....	2756
<del>(16)</del> (17) Ethchlorvynol .....	2540
<del>(17)</del> (18) Ethinamate .....	2545
<del>(18)</del> (19) Ethyl loflazepate .....	2758
<del>(19)</del> (20) Fludiazepam .....	2759
<del>(20)</del> (21) Flunitrazepam .....	2763
<del>(21)</del> (22) Flurazepam .....	2767
(23) <i>Fospropofol</i> .....	2138
<del>(22)</del> (24) Halazepam .....	2762
<del>(23)</del> (25) Haloxazolam .....	2771
<del>(24)</del> (26) Ketazolam .....	2772
<del>(25)</del> (27) Loprazolam .....	2773
<del>(26)</del> (28) Lorazepam .....	2885
<del>(27)</del> (29) Lormetazepam .....	2774
<del>(28)</del> (30) Mebutamate .....	2800
<del>(29)</del> (31) Medazepam .....	2836
<del>(30)</del> (32) Meprobamate .....	2820
<del>(31)</del> (33) Methohexital .....	2264
<del>(32)</del> (34) Methylphenobarbital (mephobarbital) .....	2250
<del>(33)</del> (35) Midazolam .....	2884
<del>(34)</del> (36) Nimetazepam .....	2837
<del>(35)</del> (37) Nitrazepam .....	2834
<del>(36)</del> (38) Nordiazepam .....	2838

<del>(37)</del> (39) Oxazepam .....	2835
<del>(38)</del> (40) Oxazolam .....	2839
<del>(39)</del> (41) Paraldehyde .....	2585
<del>(40)</del> (42) Petrichloral .....	2591
<del>(41)</del> (43) Phenobarbital .....	2285
<del>(42)</del> (44) Pinazepam .....	2883
<del>(43)</del> (45) Prazepam .....	2764
<del>(44)</del> (46) Quazepam .....	2881
<del>(45)</del> (47) Temazepam .....	2925
<del>(46)</del> (48) Tetrazepam .....	2886
<del>(47)</del> (49) Triazolam .....	2887
<del>(48)</del> (50) Zolpidem .....	2783
<del>(49)</del> (51) Zaleplon .....	2781
(52) 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 United States code 812~~ 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 United States code 812~~ 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-propionoxybutane) ..... 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. 7. K.S.A. 2010 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) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing the following narcotic drug or its salts:~~

~~Buprenorphine ..... 9064~~

~~(c)~~ (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.

(d) (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

(e) (d) Any compound, mixture or preparation containing any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers.

(f) (e) Any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.

(g) (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) *Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]* ..... 2746
- (2) *Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]* ..... 2782

Sec. 8. K.S.A. 65-4107, 65-4109, 65-4111 and K.S.A. 2010 Supp. 21-36a05, 21-36a06, 65-4105 and 65-4113 are hereby repealed.

Sec. 9. On and after July 1, 2011, K.S.A. 65-4107, as amended by section 2 of 2011 House Bill No. 2023, 65-4109, as amended by section 3 of 2011 House Bill No. 2023, and 65-4111, as amended by section 4 of 2011 House Bill No. 2023 and K.S.A. 2010 Supp. 65-4105, as amended by section 1 of 2011 House Bill No. 2023 and 65-4113, as amended by section 5 of 2011 House Bill No. 2023 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 18, 2011.

Published in the *Kansas Register* May 26, 2011.



## CHAPTER 84

SUBSTITUTE FOR SENATE BILL No. 50  
(Amends Chapter 30)

AN ACT concerning emergency communications service; relating to fees, charges, collection and distribution; amending K.S.A. 2010 Supp. 12-5327, 12-5338, 12-5361, 45-221, as amended by section 192 of 2011 House Bill No. 2339 and 75-5133, as amended by section 276 of 2011 House Bill No. 2339 and repealing the existing sections; also repealing K.S.A. 12-5303, 12-5305, 12-5306, 12-5307, 12-5308 and 12-5309 and K.S.A. 2010 Supp. 12-5301, 12-5302, 12-5304, 12-5310, 12-5321, 12-5322, 12-5323, 12-5324, 12-5325, 12-5326, 12-5327, 12-5328, 12-5329, 12-5330, 12-5331, 12-5332, 12-5333, 12-5334, 12-5335, 12-5336, 12-5337, 12-5351, 12-5352, 12-5353, 12-5354, 12-5355, 12-5356, 12-5357, 12-5358, 12-5359 and 12-5360.

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

New Section 1. Sections 1 through 19 and 25, and amendments thereto, shall be known and may be cited as the Kansas 911 act.

New Sec. 2. 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) “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) “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) “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) “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) “Provider” means any person providing exchange telecommunications service, wireless telecommunications service, VoIP service or other service capable of contacting a PSAP.

(l) “PSAP” means a public safety answering point operated by a city or county.

(m) “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) “Seller” means a person who sells prepaid wireless service to another person.

(o) “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) “Subscriber account” means the 10-digit access number assigned to a service user regardless of whether more than one such number is aggregated for the purpose of billing a service user.

(q) “Subscriber radio equipment” means mobile and portable radio equipment installed in vehicles or carried by persons for voice communication with a radio system.

(r) “VoIP service” means voice over internet protocol.

(s) “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.

New Sec. 3. (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 non-voting 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 providers; 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) 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 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 three-year terms.

(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 section 6, 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 provisions 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.

New Sec. 4. (a) There is hereby established in the state treasury the 911 federal grant fund.

(b) The chair of the 911 coordinating council shall serve as the administrator of the 911 federal grant fund and shall distribute grants in accordance with the recommendations of the 911 coordinating council. Subject to the conditions and in accordance with the requirements of this act and 47 C.F.R. part 400, the chair is authorized to perform such acts necessary for the effectuation of this act.

(c) Moneys received by the state from the federal government for the purposes of the fund shall be credited to the fund.

(d) Subject to the conditions and in accordance with the requirements

of this act and 47 C.F.R. part 400, moneys credited to the fund shall be used only:

(1) To pay all expenses incurred in the administration of the fund; and  
(2) to provide grants to eligible municipalities only for necessary and reasonable costs incurred or to be incurred by PSAPs for: (A) Implementation of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; (B) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; and (C) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this act.

(e) 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 chair or by a person or persons designated by the chair.

(f) This section shall take effect on and after January 1, 2012.

New Sec. 5. (a) There is hereby established in the state treasury the 911 state maintenance fund.

(b) The chair of the 911 coordinating council shall serve as the administrator of the 911 state maintenance fund and shall distribute grants in accordance with the recommendations of the 911 coordinating council. Subject to the conditions and in accordance with the requirements of this act and 47 C.F.R. part 400, the chair is authorized to perform such acts necessary for the effectuation of this act.

(c) Moneys from the following sources shall be credited to the fund:

(1) Amounts appropriated or otherwise made available by the legislature for the purposes of the fund;

(2) interest attributable to investment of moneys in the fund; and

(3) amounts received from any public or private entity for the purposes of the fund.

(d) Moneys credited to the fund shall be used only:

(1) To pay all expenses incurred in the administration of the fund; and

(2) to provide grants to eligible municipalities only for necessary and reasonable costs incurred or to be incurred by PSAPs for: (A) Implementation of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; (B) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced 911 service and next generation 911 service, as defined

in section 2, and amendments thereto; and (C) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this act.

(e) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the 911 state maintenance fund interest earnings based on:

(1) The average daily balance of moneys in the 911 state maintenance fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(f) 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 chair or by a person or persons designated by the chair.

(g) This section shall take effect on and after January 1, 2012.

New Sec. 6. Upon the advice and consent of the legislative coordinating council, the 911 coordinating council shall select the local collection point administrator. In selecting the LCPA, the council shall contract with the LCPA for services for no longer than two years. The 911 coordinating council and the legislative coordinating council shall annually review the designation of the LCPA and the contract with the LCPA for services. The LCPA shall be subject to the requirements of the Kansas open meetings act, the Kansas open records act and shall treat all moneys received as public funds pursuant to article 14 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto. Notwithstanding any other provision of law to the contrary, the LCPA shall not be considered a state agency.

New Sec. 7. (a) Upon the advice and consent of the 911 coordinating council, the LCPA shall establish the 911 state fund and the 911 state grant fund which shall not be part of the state treasury. On or after the effective date of this section, the secretary of administration shall certify all unobligated funds remaining in the wireless enhanced 911 grant fund as having originated as either federal grant moneys or 911 fee moneys. All such moneys originating from 911 fees, and any interest accrued on such fees, shall be paid to the LCPA for deposit in the 911 state grant fund. All unobligated federal moneys, and any interest accrued on such moneys, shall be transferred to the 911 federal grant fund.

(b) The council shall be responsible for ensuring that the 911 state grant fund and any interest earned on money credited to the fund is only expended for the following purposes: (1) Projects involving the development and

implementation of next generation 911 services; (2) costs associated with PSAP consolidation or cost-sharing projects; (3) expenses related to the 911 coordinating council; (4) costs of audits conducted pursuant to section 16, and amendments thereto; and (5) other costs pursuant to section 14, and amendments thereto.

(c) The council shall develop criteria for eligible purchases and for grant applicants and make the final determination as to the distribution of grant funds. Such criteria shall promote the procurement of equipment that meets open architecture and national technical standards. Distribution of grant funds shall not include expenditures to procure, maintain or upgrade subscriber radio equipment.

(d) The LCPA shall be authorized to maintain an action to collect any funds owed by any providers in the district court in the county of the registered office of such provider or, if such provider does not have a registered office in the state, such an action may be maintained in the county where such provider's principal office is located. If such provider has no principal office in the state, such an action may be maintained in the district court of any county in which such provider provides service.

(e) This section shall take effect on and after January 1, 2012.

New Sec. 8. (a) There is hereby imposed a 911 fee in the amount of \$.53 per month per subscriber account of any exchange telecommunications service, wireless telecommunications service, VoIP service, or other service capable of contacting a PSAP. Such fee shall not be imposed on prepaid wireless service. It shall be the duty of each exchange telecommunications service provider, wireless telecommunications service provider, VoIP service provider or other service provider to remit such fees to the LCPA as provided in section 9, and amendments thereto.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 9. (a) Every billed service user shall be liable for the 911 fee until such fees have been paid to the exchange telecommunications service provider, wireless telecommunications service provider, VoIP service provider or other service provider.

(b) The duty to collect the fees imposed pursuant to this act shall commence January 1, 2012. Such fees shall be added to and may be stated separately in billings for the subscriber account. If stated separately in billings, the fees shall be labeled "911 fees."

(c) The provider shall have no obligation to take any legal action to enforce the collection of the fees imposed by this act. The provider shall provide annually to the LCPA a list of the amount of uncollected 911 fees along with the names and addresses of those service users which carry a balance that can be determined by the provider to be nonpayment of such fees.

(d) The fees imposed by this act shall be collected insofar as practicable at the same time as, and along with, the charges for local exchange, wireless,

VoIP, or other service in accordance with regular billing practice of the provider.

(e) The 911 fees and the amounts required to be collected therefor are due monthly. The amount of such fees collected in one month by the provider shall be remitted to the LCPA not more than 15 days after the close of the calendar month. On or before the 15th day of each calendar month following, a return for the preceding month shall be filed with the LCPA. Such return shall be in such form and shall contain such information as required by the LCPA. The provider required to file the return shall deliver the return together with a remittance of the amount of fees payable to the LCPA. The provider shall maintain records of the amount of any such fees collected in accordance with this act for a period of three years from the time the fees are collected.

(f) The provisions of this section shall not be construed to apply to prepaid wireless service.

(g) This section shall take effect on and after January 1, 2012.

New Sec. 10. (a) There is hereby imposed a prepaid wireless 911 fee of 1.06% per retail transaction or, on and after the effective date of an adjusted amount per retail transaction that is established under subsection (f), such adjusted amount.

(b) The prepaid wireless 911 fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless 911 fee shall be either separately stated on an invoice, receipt or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

(c) For purposes of subsection (b), a retail transaction that is effected in person by a consumer in a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for the purposes of subsection (c)(3) of K.S.A. 79-3673, and amendments thereto.

(d) The prepaid wireless 911 fee is the liability of the consumer and not of the seller nor of any provider, except that the seller shall be liable to remit all prepaid wireless 911 fees that the seller collects from consumers pursuant to this section, and amendments thereto, including all such fees that the seller is deemed to collect where the amount of the charge has not been separately stated in an invoice, receipt or other similar document provided to the consumer by the seller.

(e) The amount of the prepaid wireless 911 fee that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

(f) The prepaid wireless 911 fee shall be proportionately increased or reduced, as applicable, upon any change to the fee imposed by subsection (a) of section 8, and amendments thereto. The adjusted amount shall be determined by dividing the amount of the fee imposed by subsection (a) of section 8, and amendments thereto, by \$50. Such increase or reduction shall be effective on the effective date of the change to the fee imposed by subsection (a) of section 8, and amendments thereto, or, if later, the first day of the calendar quarter to occur at least 60 days after the enactment to the change to the fee imposed by subsection (a) of section 8, and amendments thereto. The department shall provide not less than 60 days' notice of such increase or decrease on the department's website.

(g) When prepaid wireless service is sold with one or more other products or services for a single, non-itemized price, then the percentage specified in subsection (a) shall apply to the entire non-itemized price unless the seller elects to apply such percentage to: (1) If the amount of the prepaid wireless service is disclosed to the consumer as a dollar amount, such dollar amount; or (2) if the seller can identify the portion of the price that is attributable to the prepaid wireless service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes, such portion.

(h) This section shall take effect on and after January 1, 2012.

New Sec. 11. (a) Prepaid wireless 911 fees collected by sellers shall be remitted to the department by electronic filing that is consistent with the provisions of article 36 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The department shall establish registration and payment procedures for the collection of the prepaid wireless 911 fee.

(b) To minimize additional costs to the department, the department may conduct audits of sellers in conjunction with sales and use tax audits. The department is authorized to provide the LCPA with information obtained in such audits if such information indicates that a seller may not be complying with the provisions of this section and section 10, and amendments thereto. The LCPA may request the department to initiate collection or audit procedures on individual sellers if collection efforts by the LCPA are unsuccessful.

(c) The department shall establish procedures by which a seller may document that a sale is not a retail sale, which procedures shall substantially coincide with procedures for documenting sale for resale transactions for article 36 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

(d) The department shall transfer all remitted prepaid wireless 911 fees to the LCPA within 30 days of receipt for distribution as provided in section 13, and amendments thereto.

(e) The department may retain up to \$70,000 of remitted funds in fiscal

year 2012 only for use in paying for programming and other one-time costs for establishing a system for collecting the prepaid wireless 911 fee.

(f) This section shall take effect on and after January 1, 2012.

New Sec. 12. (a) The prepaid wireless 911 fee imposed in this act shall be the only 911 funding obligation imposed with respect to prepaid wireless service in this state. No tax, fee, surcharge or other charge shall be imposed by this state, any political subdivision of this state or any intergovernmental agency for 911 funding purposes upon any prepaid wireless service provider, seller or consumer with respect to the sale, purchase, use or provision of prepaid wireless service.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 13. (a) Not later than 30 days after the receipt of moneys from providers pursuant to sections 9 and 10, and amendments thereto, and the department pursuant to section 11, 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).

(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.

New Sec. 14. (a) The proceeds of the 911 fees imposed pursuant to this act, and any interest earned on revenue derived from such fee, shall be used only for necessary and reasonable costs incurred or to be incurred by PSAPs for: (1) Implementation of 911 services; (2) purchase of 911 equipment and upgrades; (3) maintenance and license fees for 911 equipment; (4) training of personnel; (5) monthly recurring charges billed by service suppliers; (6) installation, service establishment and nonrecurring start-up charges billed by the service supplier; (7) charges for capital improvements and equipment or other physical enhancements to the 911 system; or (8) the original acquisition and installation of road signs designed to aid in the delivery of emergency service. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities. Such costs shall also not include expenditures to purchase subscriber radio equipment.

(b) If the 911 coordinating council, based upon information obtained from the PSAP reports or an audit of the PSAPs, determines that any PSAP has used any 911 fees for any purpose other than those authorized in this act, such PSAP shall repay all such funds used for any unauthorized purposes plus 10% to the LCPA for deposit in the 911 state grant fund. No such repayment of 911 fees shall be imposed pursuant to this section except

upon the written order of the council. Such order shall state the unauthorized purposes for which the funds were used, the amount of funds to be repayed and the right of such PSAP to appeal to a hearing before the council. Any such PSAP 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.

(c) Any action of the council pursuant to subsection (b) is subject to review in accordance with the Kansas judicial review act.

(d) As long as the PSAP is working in good faith to use the 911 fees for expenditures authorized by this act, no repayment of 911 fees shall be required prior to January 1, 2013.

(e) This section shall take effect on and after January 1, 2012.

New Sec. 15. (a) Except as provided by the Kansas tort claims act, and except for failure to use ordinary care, or for intentional acts, the LCPA and each provider, and their employees and agents, and each seller, and their employees and agents, shall not be liable for the payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining or providing 911 service.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 16. (a) The receipts and disbursements of the LCPA shall be audited yearly by a licensed municipal accountant or certified public accountant.

(b) The LCPA may require an audit of any provider's books and records concerning the collection and remittance of fees pursuant to this act. The cost of any such audit shall be paid from the 911 state grant fund.

(c) On or before December 31, 2013, and at least once every three years thereafter, the division of post audit shall conduct an audit of the 911 system to determine: (1) Whether the moneys received by PSAPs pursuant to this act are being used appropriately; (2) whether the amount of moneys collected pursuant to this act is adequate; and (3) the status of 911 service implementation. The auditor to conduct such audit shall be specified in accordance with K.S.A. 46-1122, and amendments thereto. The post auditor shall compute the reasonably anticipated cost of providing audits pursuant to this subsection, subject to review and approval by the contract audit committee established by K.S.A. 46-1120, and amendments thereto. Upon such approval, the 911 state grant fund shall reimburse the division of post audit for the amount approved by the contract audit committee. The audit report shall be submitted to the 911 coordinating council, the LCPA, the house energy and utilities committee and the senate utilities committee.

(d) The legislature shall review this act at the regular 2014 legislative session and at the regular legislative session every five years thereafter.

(e) This section shall take effect on and after January 1, 2012.

New Sec. 17. (a) Nothing in this act shall be construed to limit the ability of a provider from recovering directly from the provider's customers its costs associated with designing, developing, deploying and maintaining 911 service and its cost of collection and administration of the fees imposed by this act, whether such costs are itemized on the customer's bill as a surcharge or by any other lawful method.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 18. A provider of wireless telecommunications service shall: (1) Receive prior approval of the PSAP of that jurisdiction before directing emergency calls to such PSAP; and (2) establish the unique emergency telephone number "911" across the state, excluding the Kansas turnpike assistance telephone number.

New Sec. 19. The governing body of each city and county shall provide or contract for the 24-hour receipt of wireless emergency calls for all wireless service areas within the jurisdiction of the city or county.

Sec. 20. K.S.A. 2010 Supp. 12-5327 is hereby amended to read as follows: 12-5327. (a) After providing for public comment and review each year, the secretary, in conjunction with the advisory board, shall prepare a plan identifying the intended uses of the moneys available in the fund. The intended use plan shall include, but not be limited to:

- (a) (1) The wireless enhanced 911 project priority list;
- (b) (2) a description of the short-term and long-term goals and objectives of the fund for the deployment of wireless enhanced 911;
- (c) (3) provisions addressing the needs of persons with communication disabilities;
- (d) (4) information on the projects to be financed, including a description thereof, the terms of grants to be provided and the municipalities receiving the grants; and
- (e) (5) the criteria and method established for the provision of grants to be made from the fund.

(b) *Notwithstanding the provisions of subsection (a), moneys in the fund shall be used to pay any expenses authorized by this act incurred by the 911 coordinating council in effectuating the provisions of this act.*

Sec. 21. K.S.A. 2010 Supp. 12-5338 is hereby amended to read as follows: 12-5338. ~~(a) On July January 1, 2011 2012;~~

(1) the wireless enhanced 911 grant fee shall be discontinued, the advisory board shall be abolished, any unobligated balance of the wireless enhanced 911 grant fund shall be ~~paid to the local collection point administrator for distribution to PSAP's based on the population of the municipality or municipalities served by the respective PSAP distributed pursuant to subsection (a) of section 7, and amendments thereto,~~ and the fund shall be abolished.

(2) ~~Within any county which has a population of 125,000 or more, the amount of the tax imposed pursuant to K.S.A. 12-5302, and amendments~~

~~thereto, shall not exceed \$.25 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee within such jurisdiction shall be an equal amount per month per wireless subscriber account.~~

~~(3) Within any county which has a population of less than 125,000 the amount of the tax imposed pursuant to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.50 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee shall be an equal amount per month per wireless subscriber account.~~

~~(4) The provisions of K.S.A. 2010 Supp. 12-5323 through 12-5329, and amendments thereto, shall expire.~~

~~(b) On and after July 1, 2011, the proceeds of the wireless enhanced 911 local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2010 Supp. 12-5330, and amendments thereto.~~

Sec. 22. K.S.A. 2010 Supp. 12-5361 is hereby amended to read as follows: 12-5361. ~~(a) On July January 1, 2011 2012,~~

~~(1) the VoIP enhanced 911 grant fee shall be discontinued.~~

~~(2) The amount of the tax per access line or its equivalent imposed within a jurisdiction pursuant to K.S.A. 12-5302, and amendments thereto, and the amount of the VoIP enhanced 911 local fee per VoIP subscriber whose primary residence is within such jurisdiction shall be an equal amount per month.~~

~~(3) The provisions of K.S.A. 2010 Supp. 12-5354 and 12-5355, and amendments thereto, shall expire.~~

~~(b) On and after July 1, 2011, the proceeds of the VoIP local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2010 Supp. 12-5330, and amendments thereto.~~

Sec. 23. On and after July 1, 2011, K.S.A. 2010 Supp. 45-221, as amended by section 192 of 2011 House Bill No. 2339, 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. 2010 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. 2010 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 sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, 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 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 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.*

(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. 24. On and after July 1, 2011, K.S.A. 2010 Supp. 75-5133, as amended by section 276 of 2011 House Bill No. 2339, 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 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, infor-

mation 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 section 11 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation; ~~and~~

(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 section 2, and amendments thereto, of prepaid wireless 911 fees from returns to the local collection point administrator, as defined in section 2, 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.

New Sec. 25. The provisions of this act are declared to be severable and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this act.

Sec. 26. K.S.A. 12-5309 and K.S.A. 2010 Supp. 12-5327, 12-5338 and 12-5361 are hereby repealed.

Sec. 27. From and after July 1, 2011, K.S.A. 2010 Supp. 45-221, as amended by section 192 of 2011 House Bill No. 2339 and 75-5133, as amended by section 276 of 2011 House Bill No. 2339 are hereby repealed.

Sec. 28. From and after January 1, 2012, K.S.A. 12-5303, 12-5305, 12-5306, 12-5307, 12-5308 and K.S.A. 2010 Supp. 12-5301, 12-5302, 12-5304, 12-5310, 12-5321, 12-5322, 12-5323, 12-5324, 12-5325, 12-5326, 12-5327, 12-5328, 12-5329, 12-5330, 12-5331, 12-5332, 12-5333, 12-5334, 12-5335, 12-5336, 12-5337, 12-5351, 12-5352, 12-5353, 12-5354, 12-5355, 12-5356, 12-5357, 12-5358, 12-5359 and 12-5360 are hereby repealed.

Sec. 29. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 18, 2011.

Published in the *Kansas Register* May 26, 2011.

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## CHAPTER 85

### SENATE BILL No. 77

AN ACT concerning the employment security act; creating an assessment for the payment of interest on advances received from the federal government; removing the waiting week extension; pertaining to benefits; allowing withholding of taxes from unemployment compensation; amending K.S.A. 2010 Supp. 44-703, 44-704a, 44-705, 44-706, 44-710, 44-710a, 44-712, 44-717 and 44-718 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 44-703 is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise:

(a) (1) “Annual payroll” means the total amount of wages paid or payable by an employer during the calendar year.

(2) “Average annual payroll” means the average of the annual payrolls of any employer for the last three calendar years immediately preceding the computation date as hereinafter defined if the employer has been continuously subject to contributions during those three calendar years and has paid some wages for employment during each of such years. In determining contribution rates for the calendar year, if an employer has not been continuously subject to contribution for the three calendar years immediately preceding the computation date but has paid wages subject to contributions during only the two calendar years immediately preceding the computation

date, such employer's "average annual payroll" shall be the average of the payrolls for those two calendar years.

(3) "Total wages" means the total amount of wages paid or payable by an employer during the calendar year, including that part of remuneration in excess of the limitation prescribed as provided in subsection (o)(1) of this section.

(b) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the base period in respect to combined wage claims means the base period as defined in the law of the paying state.

(1) (A) If an individual lacks sufficient base period wages in order to establish a benefit year in the matter set forth above and satisfies the requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of K.S.A. 44-703, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subsection, "alternative base period" means the last four completed quarters immediately preceding the date the qualifying injury occurred. In the event the wages in the alternative base period have been used on a prior claim, then they shall be excluded from the new alternative base period.

(B) If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above the claimant shall have an alternative base period substituted for the current base period. For the purposes of this subsection, "alternative base period" means eligibility shall be determined using a base period that consists of the four most recently completed calendar quarters preceding the start of the benefit year.

(2) For the purposes of this chapter, the term "base period" includes the alternative base period.

(c) (1) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to such individual's unemployment.

(2) "Regular benefits" means benefits payable to an individual under this act or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(d) "Benefit year" with respect to any individual, means the period beginning with the first day of the first week for which such individual files a valid claim for benefits, and such benefit year shall continue for one full year. In the case of a combined wage claim, the benefit year shall be the benefit year of the paying state. Following the termination of a benefit year, a subsequent benefit year shall commence on the first day of the first week with respect to which an individual next files a claim for benefits. When such filing occurs with respect to a week which overlaps the preceding benefit year, the subsequent benefit year shall commence on the first day immediately following the expiration date of the preceding benefit year. Any claim for benefits made in accordance with subsection (a) of K.S.A.

44-709, and amendments thereto, shall be deemed to be a “valid claim” for the purposes of this subsection if the individual has been paid wages for insured work as required under subsection (e) of K.S.A. 44-705, and amendments thereto. Whenever a week of unemployment overlaps two benefit years, such week shall, for the purpose of granting waiting-period credit or benefit payment with respect thereto, be deemed to be a week of unemployment within that benefit year in which the greater part of such week occurs.

(e) “Commissioner” or “secretary” means the secretary of labor.

(f) (1) “Contributions” means the money payments to the state employment security fund which are required to be made by employers on account of employment under K.S.A. 44-710, and amendments thereto, and voluntary payments made by employers pursuant to such statute.

(2) “Payments in lieu of contributions” means the money payments to the state employment security fund from employers which are required to make or which elect to make such payments under subsection (e) of K.S.A. 44-710, and amendments thereto.

(g) “Employing unit” means any individual or type of organization, including any partnership, association, limited liability company, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) “Employer” means:

(1) (A) Any employing unit for which agricultural labor as defined in subsection (w) of this section is performed and which during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

(B) For the purpose of this subsection (h)(1), any individual who is a member of a crew furnished by a crew leader to perform service in agri-

cultural labor for any other person shall be treated as an employee of such crew leader if:

(i) Such crew leader holds a valid certificate of registration under the federal migrant and seasonal agricultural workers protection act or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment or any other mechanized equipment, which is provided by such crew leader; and

(ii) such individual is not in the employment of such other person within the meaning of subsection (i) of this section.

(C) For the purpose of this subsection (h)(1), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on the crew leader's own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(D) For the purposes of this subsection (h)(1) "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on such individual's own behalf or on behalf of such other person, the individuals so furnished by such individual for the service in agricultural labor performed by them; and

(iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(2) (A) Any employing unit which for calendar year 2007 and each calendar year thereafter: (i) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of \$1,500 or more, (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual, whether or not the same individual was in employment in each such day, or (iii) elects to have an unemployment tax account established at the time of initial registration in accordance with subsection (c) of K.S.A. 44-711, and amendments thereto.

(B) Employment of individuals to perform domestic service or agricultural labor and wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

(3) Any employing unit for which service is employment as defined in subsection (i)(3)(E) of this section.

(4) (A) Any employing unit, whether or not it is an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to (i) substantially all of the employing enterprises, organization, trade or business, or (ii) substantially all the assets, of another employing unit which at the time of such acquisition was an employer subject to this act;

(B) any employing unit which is controlled substantially, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests, whether or not such interest or interests are an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to a portion of an employer's annual payroll, which is less than 100% of such employer's annual payroll, and which intends to continue the acquired portion as a going business.

(5) Any employing unit which paid cash remuneration of \$1,000 or more in any calendar quarter in the current or preceding calendar year to individuals employed in domestic service as defined in subsection (aa) of this section.

(6) Any employing unit which having become an employer under this subsection (h) has not, under subsection (b) of K.S.A. 44-711, and amendments thereto, ceased to be an employer subject to this act.

(7) Any employing unit which has elected to become fully subject to this act in accordance with subsection (c) of K.S.A. 44-711, and amendments thereto.

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or which, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an "employer" under this act.

(9) Any employing unit described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income tax under section 501(a) of the code that had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(i) "Employment" means:

(1) Subject to the other provisions of this subsection, service, including service in interstate commerce, performed by

(A) Any active officer of a corporation; or

(B) any individual who, under the usual common law rules applicable

in determining the employer-employee relationship, has the status of an employee; or

(C) any individual other than an individual who is an employee under subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services for remuneration for any person:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for such individual's principal; or

(ii) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of subsection (i)(1)(C), the term "employment" shall include services described in paragraphs (i) and (ii) above only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term "employment" shall include an individual's entire service within the United States, even though performed entirely outside this state if,

(A) The service is not localized in any state, and

(B) the individual is one of a class of employees who are required to travel outside this state in performance of their duties, and

(C) the individual's base of operations is in this state, or if there is no base of operations, then the place from which service is directed or controlled is in this state.

(3) The term "employment" shall also include:

(A) Services performed within this state but not covered by the provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(B) Services performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act only if the individual perform-

ing such services is a resident of this state and the secretary approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(C) Services covered by an arrangement pursuant to subsection (I) of K.S.A. 44-714, and amendments thereto, between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the secretary has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(D) Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the secretary that: (i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of hire and in fact; and (ii) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed.

(E) Service performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any instrumentality thereof, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality which is jointly owned by this state or a political subdivision thereof or Indian tribes and one or more other states or political subdivisions of this or other states, provided that such service is excluded from "employment" as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subsection (i)(4)(A) of this section. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

(F) Service performed by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act, and is not excluded from employment under paragraphs (I) through (M) of subsection (i)(4).

(G) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States except in Canada, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subsection

(i)(2) or subsection (i)(3) or the parallel provisions of another state's law), if:

(i) The employer's principal place of business in the United States is located in this state; or

(ii) the employer has no place of business in the United States, but

(A) The employer is an individual who is a resident of this state; or

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of paragraphs (i) and (ii) above of this subsection (i)(3)(G) are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(H) An "American employer," for purposes of subsection (i)(3)(G), means a person who is:

(i) An individual who is a resident of the United States; or

(ii) a partnership if  $\frac{2}{3}$  or more of the partners are residents of the United States; or

(iii) a trust, if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(I) Notwithstanding subsection (i)(2) of this section, all service performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office, from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(J) Notwithstanding any other provisions of this subsection (i), service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this act.

(K) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(4) The term "employment" shall not include: (A) Service performed in the employ of an employer specified in subsection (h)(3) of this section if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) as a member of a legislative body, or a member of the judiciary, of a state, political subdivision or of an Indian tribe;

(iii) as a member of the state national guard or air national guard;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) in a position which, under or pursuant to the laws of this state or tribal law, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(B) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(C) service performed by an individual in the employ of such individual's son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of such individual's father or mother;

(D) service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code of 1986, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in subsection (f) of K.S.A. 44-717, and amendments thereto, with respect to contributions erroneously collected;

(E) service covered by an arrangement between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(F) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(G) service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(H) service performed in any calendar quarter in the employ of any

organization exempt from income tax under section 501(a) of the federal internal revenue code of 1986 (other than an organization described in section 401(a) or under section 521 of such code) if the remuneration for such service is less than \$50. In construing the application of the term “employment,” if services performed during  $\frac{1}{2}$  or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than  $\frac{1}{2}$  of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term “pay period” means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(I) services performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(J) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of such individual’s ministry or by a member of a religious order in the exercise of duties required by such order;

(K) service performed in a facility conducted for the purpose of carrying out a program of:

(i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(L) service performed as part of an employment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training;

(M) service performed by an inmate of a custodial or correctional institution;

(N) service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(O) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a

student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection (i)(4)(O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(P) service performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is performed by a patient of the hospital;

(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4)(Q) the term “qualified real estate agent” means any individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers’ and salespersons’ license act and for whom:

(i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes;

(R) services performed for an employer by an extra in connection with any phase of motion picture or television production or television commercials for less than 14 days during any calendar year. As used in this subsection, the term “extra” means an individual who pantomimes in the background, adds atmosphere to the set and performs such actions without speaking and “employer” shall not include any employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(S) services performed by an oil and gas contract pumper. As used in this subsection (i)(4)(S), “oil and gas contract pumper” means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and “services” shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(T) service not in the course of the employer’s trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$200 or more and such service is performed by an individual who is regularly employed by such employer to perform

such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(ii) such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

Such excluded service shall not include any services performed for an employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(U) service which is performed by any person who is a member of a limited liability company and which is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term "direct seller" means any person if:

(i) Such person:

(a) is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(b) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes;

(iv) for purposes of this act, a sale or a sale resulting exclusively from a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection;

(W) service performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

(X) service performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 1101 (a)(15)(H)(ii)(a) of the immigration and nationality act; and

(Y) service performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver

and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of the owner-operator shall not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation. As used in this subsection (Y), the following definitions apply: (i) “Motor vehicle” means any automobile, truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property; (ii) “licensed motor carrier” means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity or a certificate of public service from the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) “owner-operator” means a person, firm, corporation or other business entity that is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier.

(j) “Employment office” means any office operated by this state and maintained by the secretary of labor for the purpose of assisting persons to become employed.

(k) “Fund” means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

(l) “State” includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the District of Columbia and the Virgin Islands.

(m) “Unemployment.” An individual shall be deemed “unemployed” with respect to any week during which such individual performs no services and with respect to which no wages are payable to such individual, or with respect to any week of less than full-time work if the wages payable to such individual with respect to such week are less than such individual’s weekly benefit amount.

(n) “Employment security administration fund” means the fund established by this act, from which administrative expenses under this act shall be paid.

(o) “Wages” means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and

determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term "wages" shall not include:

(1) That part of the remuneration which has been paid in a calendar year to an individual by an employer or such employer's predecessor in excess of \$3,000 for all calendar years prior to 1972, *in excess of* \$4,200 for the calendar years 1972 to 1977, inclusive, *in excess of* \$6,000 for calendar years 1978 to 1982, inclusive, *in excess of* \$7,000 for the calendar year 1983, and *in excess of* \$8,000 with respect to employment during any calendar year following 1983, except that if the definition of the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of \$8,000 paid to an individual by an employer under the federal act during any calendar year, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer's predecessor with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o)(1), the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(2) the amount of any payment (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of such employee's dependents under a plan or system established by an employer which makes provisions for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of (A) sickness or accident disability, except in the case of any payment made to an employee or such employee's dependents, this subparagraph shall exclude from the term "wages" only

payments which are received under a workers compensation law. Any third party which makes a payment included as wages by reason of this subparagraph (2)(A) shall be treated as the employer with respect to such wages, or (B) medical and hospitalization expenses in connection with sickness or accident disability, or (C) death;

(3) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) any payment made to, or on behalf of, an employee or such employee's beneficiary:

(A) From or to a trust described in section 401(a) of the federal internal revenue code of 1986 which is exempt from tax under section 501(a) of the federal internal revenue code of 1986 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the federal internal revenue code of 1986;

(C) under a simplified employee pension as defined in section 408(k)(1) of the federal internal revenue code of 1986, other than any contribution described in section 408(k)(6) of the federal internal revenue code of 1986;

(D) under or to an annuity contract described in section 403(b) of the federal internal revenue code of 1986, other than a payment for the purchase of such contract which was made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise;

(E) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the federal internal revenue code of 1986;

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the secretary of labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the federal employee retirement income security act of 1974; or

(G) under a cafeteria plan within the meaning of section 125 of the federal internal revenue code of 1986;

(5) the payment by an employing unit (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the federal internal revenue code of 1986 with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(7) remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the federal internal revenue code of 1986 relating to moving expenses;

(8) any payment or series of payments by an employer to an employee or any of such employee's dependents which is paid:

(A) Upon or after the termination of an employee's employment relationship because of (i) death or (ii) retirement for disability; and

(B) under a plan established by the employer which makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents, other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(9) remuneration for agricultural labor paid in any medium other than cash;

(10) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 129 of the federal internal revenue code of 1986 which relates to dependent care assistance programs;

(11) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the federal internal revenue code of 1986;

(12) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986;

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee; or

(15) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d) of the federal internal revenue code of 1986 relating to health savings accounts.

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the federal internal revenue code of 1986, to the extent that such contri-

bution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term “nonqualified deferred compensation plan” means any plan or other arrangement for deferral of compensation other than a plan described in subsection (o)(4).

(p) “Week” means such period or periods of seven consecutive calendar days, as the secretary may by rules and regulations prescribe.

(q) “Calendar quarter” means the period of three consecutive calendar months ending March 31, June 30, September 30 or December 31, or the equivalent thereof as the secretary may by rules and regulations prescribe.

(r) “Insured work” means employment for employers.

(s) “Approved training” means any vocational training course or course in basic education skills, including a job training program authorized under the federal workforce investment act of 1998, approved by the secretary or a person or persons designated by the secretary.

(t) “American vessel” or “American aircraft” means any vessel or aircraft documented or numbered or otherwise registered under the laws of the United States; and any vessel or aircraft which is neither documented or numbered or otherwise registered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(u) “Institution of higher education,” for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor’s or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection (u), all colleges and universities in this state are institutions of higher education

for purposes of this section, except that no college, university, junior college or other postsecondary school or institution which is operated by the federal government or any agency thereof shall be an institution of higher education for purposes of the employment security law.

(v) “Educational institution” means any institution of higher education, as defined in subsection (u) of this section, or any institution, except private for profit institutions, in which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher and which is approved, licensed or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school or to an Indian tribe in the operation of an educational institution. The courses of study or training which an educational institution offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

(w) (1) “Agricultural labor” means any remunerated service:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operating, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section (15)(g) of the agricultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. § 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than ½ of the commodity with respect to which such service is performed;

(ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (i) above of this subsection (w)(1)(D), but

only if such operators produced more than  $\frac{1}{2}$  of the commodity with respect to which such service is performed;

(iii) the provisions of paragraphs (i) and (ii) above of this subsection (w)(1)(D) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(E) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(2) "Agricultural labor" does not include service performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the federal immigration and nationality act.

(3) As used in this subsection (w), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) For the purpose of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during  $\frac{1}{2}$  or more of such pay period constitute agricultural labor; but if the services performed during more than  $\frac{1}{2}$  of any such pay period by an individual for the person employing such individual do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection (w), the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing such individual.

(x) "Reimbursing employer" means any employer who makes payments in lieu of contributions to the employment security fund as provided in subsection (e) of K.S.A. 44-710, and amendments thereto.

(y) "Contributing employer" means any employer other than a reimbursing employer or rated governmental employer.

(z) "Wage combining plan" means a uniform national arrangement approved by the United States secretary of labor in consultation with the state unemployment compensation agencies and in which this state shall participate, whereby wages earned in one or more states are transferred to another state, called the "paying state," and combined with wages in the paying state, if any, for the payment of benefits under the laws of the paying state and as provided by an arrangement so approved by the United States secretary of labor.

(aa) "Domestic service" means any service for a person in the operation and maintenance of a private household, local college club or local

chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

(bb) "Rated governmental employer" means any governmental entity which elects to make payments as provided by K.S.A. 44-710d, and amendments thereto.

(cc) "Benefit cost payments" means payments made to the employment security fund by a governmental entity electing to become a rated governmental employer.

(dd) "Successor employer" means any employer, as described in subsection (h) of this section, which acquires or in any manner succeeds to (1) substantially all of the employing enterprises, organization, trade or business of another employer or (2) substantially all the assets of another employer.

(ee) "Predecessor employer" means an employer, as described in subsection (h) of this section, who has previously operated a business or portion of a business with employment to which another employer has succeeded.

(ff) "Lessor employing unit" means any independently established business entity which engages in the business of providing leased employees to a client lessee.

(gg) "Client lessee" means any individual, organization, partnership, corporation or other legal entity leasing employees from a lessor employing unit.

(hh) "Qualifying injury" means a personal injury by accident arising out of and in the course of employment within the coverage of the Kansas workers compensation act, K.S.A. 44-501 et seq., and amendments thereto.

Sec. 2. K.S.A. 2010 Supp. 44-704a is hereby amended to read as follows: 44-704a. (a) *Definitions*. As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which there is an "on" indicator; and

(B) ends with either of the following weeks, whichever occurs later: (i) The third week after the first week for which there is an "off" indicator; or (ii) the 13th consecutive week of such period, except that no extended benefit period may begin by reason of an "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For the purposes of this section:

(A) There is an "on" indicator for this state for a week if the secretary of labor determines, in accordance with the regulations of the United States secretary of labor, that, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (i) Equaled or exceeded 5% and equaled

or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years; ~~or (ii) and the state of Kansas pays a portion of such benefits in accordance with the provisions of K.S.A. 44-710(c)(2)(C) and 44-710(e), and amendments thereto; or (ii) equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding three calendar years and until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by section 2005(a) of public law 111-5 without regard to section 2005(c) of public law 111-5; or (iii) equaled or exceeded 6%; or (iii) (iv) with respect to benefits for weeks of unemployment beginning after March 6, 1993, (a) the average rate of total unemployment (seasonally adjusted), as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5%, and (b) the average rate of total unemployment for this state (seasonally adjusted), as determined by the United States secretary of labor, for the three-month period referred to in clause (iii)(a) (iv)(a)(1), equals or exceeds 110% of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years; or (2) equals or exceeds 110% of such average for any or all of the corresponding three-month periods ending in each of the three preceding calendar years and until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by section 2005(a) of public law 111-5 without regard to section 2005(c) of public law 111-5.~~

(B) (i) There is an “off” indicator for this state for a week if the secretary of labor determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (a) (1) Was less than 5% or less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years; or (2) was less than 5% or less than 120% of the average of such rates for the corresponding 13-week period ending in any or all of the three preceding calendar years and until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by section 2005(a) of public law 111-5 without regard to section 2005(c) of public law 111-5; and (b) was less than 5%.

(ii) There is an “off” indicator for this state for a week only if, for the period consisting of such week and the immediately preceding 12 weeks, none of the conditions specified in subsection (a)(2)(A) of this section result in an “on” indicator.

(3) “Rate of insured unemployment,” for purposes of paragraphs (2)(A) and (2)(B) of this subsection, means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the secretary of labor on the basis of reports to the United States secretary of labor; by

(B) the average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

(4) “Extended entitlement period” of an individual means the period consisting of the weeks of the individual’s benefit year which begin in an extended benefit period and, if the individual’s benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(5) “Extended benefits” means benefits (including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C.A. chapter 85) payable to an individual under the provisions of the act for weeks of unemployment in the individual’s extended entitlement period.

(6) “Exhaustee” means an individual who, with respect to any week of unemployment in the individual’s extended entitlement period:

(A) Has received, prior to such week, all of the regular benefits that were available to the individual under this act or any other state law (including dependents’ allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C.A. chapter 85) in the individual’s current benefit year that includes such week, provided that, for the purposes of this paragraph (6)(A), an individual shall be deemed to have received all of the regular benefits that were available to the individual although the individual may subsequently be determined to be entitled to added regular benefits as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the individual’s benefit year; or

(B) the individual’s benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit year that would include such week; and

(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the federal railroad unemployment insurance act and such other federal laws as are specified in regulations issued by the United States secretary of labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

(7) “State law” means the unemployment compensation law of any

state, approved by the United States secretary of labor under section 3304 of the federal internal revenue code of 1986.

(b) *Payment of extended benefits.* Extended benefits shall be payable to eligible individuals with respect to weeks of unemployment in their extended entitlement periods. The extended benefits provided by this section and K.S.A. 44-704b, and amendments thereto, shall be payable from the fund. All extended benefits shall be paid through the employment offices, in accordance with such rules and regulations as the secretary of labor may adopt.

(c) *Beginning and termination of extended benefit period.* (1) Whenever an extended benefit period is to become effective in this state as a result of an “on” indicator, or an extended benefit period is to be terminated in this state as a result of an “off” indicator, the secretary of labor shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(3) of this section shall be made by the secretary of labor, in accordance with regulations prescribed by the United States secretary of labor.

(d) *Weekly extended benefit amount.* The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual’s extended entitlement period shall be an amount equal to the regular weekly benefit amount payable to the individual during the individual’s applicable benefit year, except that for any week during a period in which federal payments to states under section 204 of the federal-state extended unemployment compensation act of 1970 are reduced pursuant to an order issued under section 252 of the federal balanced budget and emergency deficit control act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual’s eligibility period shall be reduced by a percentage amount which is equivalent to the reduction in the federal payment. If such reduced weekly extended benefit amount is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

(e) *Total extended benefit amount.* (1) Except as otherwise provided in subsection (e)(2) or (e)(3) of this section, the total extended benefit amount payable to any eligible individual with respect to the individual’s applicable benefit year shall be the least of the following amounts:

(A) Fifty percent of the total amount of regular benefits which were payable to the individual under this act in the individual’s applicable benefit year; or

(B) thirteen times the individual’s weekly benefit amount which was payable to the individual under this act for a week of total unemployment in the applicable benefit year.

(2) Effective with respect to weeks beginning in a high unemployment period, the provisions of subsection (e)(1) of this section shall be applied by substituting “80%” for “50%” in subparagraph (A) of that subsection (e)(1), and by substituting “20” for “13” in subparagraph (B) of that

subsection (e)(1). For purposes of this subsection (e)(2), the term “high unemployment period” means any period during which an extended benefit period would be in effect if the provisions of subsection (a)(2)(A)(iii) of this section were applied after substituting “8%” for “6.5%” in clause (a) of that subsection (a)(2)(A)(iii).

(3) During any fiscal year in which federal payments to states under section 204 of the federal-state extended unemployment compensation act of 1970 are reduced pursuant to an order issued under section 252 of the federal balanced budget and emergency deficit control act of 1985, the total extended benefit amount payable to an individual with respect to the individual’s applicable benefit year shall be reduced by an amount equal to the total of all of the reductions under subsection (d) of this section in the weekly extended benefit amounts paid to the individual.

(f) *Eligibility requirements for extended benefits.* An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual’s extended entitlement period only if the secretary of labor, or a person or persons designated by the secretary, finds that with respect to such week:

(1) The individual is an “exhaustee” as defined in subsection (a)(6) of this section;

(2) the individual is qualified and eligible for extended benefits pursuant to K.S.A. 44-704b, and amendments thereto;

(3) the individual is entitled to benefits pursuant to the provisions of this act which apply to claims for, or the payment of regular benefits which are not inconsistent with the provisions of K.S.A. 44-704b, and amendments thereto; and

(4) the individual, during the base period, (A) was paid wages for insured work equal to or greater than 1½ times the amount of total wages paid for the quarter in which such wages were highest during the individual’s base period; or (B) has been paid an amount equal to or exceeding 40 times the individual’s most recent weekly benefit amount in the individual’s base period.

(g) *Limitation on amount of combined regular, extended and trade readjustment act benefits received.* Notwithstanding any other provisions of this section or K.S.A. 44-704b, and amendments thereto, if the benefit year of any individual ends within an extended entitlement period, the remaining balance of extended benefits that the individual would, but for this section, be entitled to receive in that extended entitlement period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual’s weekly benefit amount for extended benefits.

Sec. 3. From and after July 1, 2010, K.S.A. 2010 Supp. 44-705 is

hereby amended to read as follows: 44-705. Except as provided by K.S.A. 44-757, and amendments thereto, an unemployed individual shall be eligible to receive benefits with respect to any week only if the secretary, or a person or persons designated by the secretary, finds that:

(a) The claimant has registered for work at and thereafter continued to report at an employment office in accordance with rules and regulations adopted by the secretary, except that, subject to the provisions of subsection (a) of K.S.A. 44-704, and amendments thereto, the secretary may adopt rules and regulations which waive or alter either or both of the requirements of this subsection (a).

(b) The claimant has made a claim for benefits with respect to such week in accordance with rules and regulations adopted by the secretary.

(c) The claimant is able to perform the duties of such claimant's customary occupation or the duties of other occupations for which the claimant is reasonably fitted by training or experience, and is available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment except that, notwithstanding any other provisions of this section, an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits: (1) Because of the claimant's enrollment in and satisfactory pursuit of approved training, including training approved under section 236(a)(1) of the trade act of 1974; or (2) solely because such individual is seeking only part-time employment if the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period.

For the purposes of this subsection, an inmate of a custodial or correctional institution shall be deemed to be unavailable for work and not eligible to receive unemployment compensation while incarcerated.

(d) (1) Except as provided further, the claimant has been unemployed for a waiting period of one week or the claimant is unemployed and has satisfied the requirement for a waiting period of one week under the shared work unemployment compensation program as provided in subsection (k)(4) of K.S.A. 44-757, and amendments thereto, which period of one week, in either case, occurs within the benefit year which includes the week for which the claimant is claiming benefits. No week shall be counted as a week of unemployment for the purposes of this subsection (d):

(A) If benefits have been paid for such week;

(B) if the individual fails to meet with the other eligibility requirements of this section; or

(C) if an individual is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other law, this subsection (d)(1)(C) shall not apply.

(2) The waiting week requirement of paragraph (1) shall not apply to

new claims, filed on or after July 1, 2007, by claimants who become unemployed as a result of an employer terminating business operations within this state, declaring bankruptcy or initiating a work force reduction pursuant to public law 100-379, the federal worker adjustment and retraining notification act (29 U.S.C. §§ 2101 through 2109), as amended. The secretary shall adopt rules and regulations to administer the provisions of this paragraph.

~~(3) a claimant shall become eligible to receive compensation for the waiting period of one week, pursuant to paragraph (1), upon completion of three weeks of unemployment consecutive to such waiting period.~~

(e) For benefit years established on and after the effective date of this act, the claimant has been paid total wages for insured work in the claimant's base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's base period, except that the wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which such individual filed a valid initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has returned to work and subsequently earned wages for insured work in an amount equal to at least eight times the claimant's current weekly benefit amount.

(f) The claimant participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the secretary, unless the secretary determines that: (1) The individual has completed such services; or (2) there is justifiable cause for the claimant's failure to participate in such services.

(g) The claimant is returning to work after a qualifying injury and has been paid total wages for insured work in the claimant's alternative base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's alternative base period if:

(1) The claimant has filed for benefits within four weeks of being released to return to work by a licensed and practicing health care provider.

(2) The claimant files for benefits within 24 months of the date the qualifying injury occurred.

(3) The claimant attempted to return to work with the employer where the qualifying injury occurred, but the individual's regular work or comparable and suitable work was not available.

Sec. 4. From and after July 1, 2011, K.S.A. 2010 Supp. 44-706 is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this

subsection ~~(a)~~. Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection ~~(a)~~ if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; As used in this paragraph ~~(4)~~ "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the ~~individual~~ *spouse of an individual who is a member of the armed forces of the United States who left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job; For the purposes of this provision the term "armed forces" means active duty in the army, navy, marine corps, air force, coast guard or any branch of the military reserves of the United States;*

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph ~~(5)~~, "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of (A) the safety measures used or the lack thereof, and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or sub-

stantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the federal trade act of 1974), and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of (A) the rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted, (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted, and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating;

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; or

(12) (A) the individual left work due to circumstances resulting from domestic violence, including:

(i) The individual's reasonable fear of future domestic violence at or en route to or from the individual's place of employment; or

(ii) the individual's need to relocate to another geographic area in order to avoid future domestic violence; or

(iii) the individual's need to address the physical, psychological and legal impacts of domestic violence; or

(iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or

(v) the individual's reasonable belief that termination of employment

is necessary to avoid other situations which may cause domestic violence and to provide for the future safety of the individual or the individual's family.

(B) An individual may prove the existence of domestic violence by providing one of the following:

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction; or

(ii) a police record documenting the abuse; or

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in ~~articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated~~ *sections 36 through 77, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, where the victim was a family or household member; or

(iv) medical documentation of the abuse; or

(v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

(vi) a sworn statement from the individual attesting to the abuse.

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual.

(b) If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection ~~(b)~~, "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. The term "gross misconduct" as used in this subsection ~~(b)~~ shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection ~~(b)~~. Failure of the employee to notify the employer of an absence shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(2) For the purposes of this subsection ~~(b)~~, the use of or impairment caused by alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which is a violation of a duty or obligation reasonably owed to the employer as a condition of employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A. 41-2701, and amendments thereto. Controlled substance shall be defined as provided in K.S.A. 2010 Supp. 21-36a01, and amendments thereto. As used in this ~~subsection (b)(2)~~ *paragraph*, “required by law” means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity. Chemical test shall include, but is not limited to, tests of urine, blood or saliva. A positive chemical test shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein. A positive breath test shall mean a test result showing an alcohol concentration of .04 or greater. Alcohol concentration means the number of grams of alcohol per 210 liters of breath. An individual’s refusal to submit to a chemical test or breath alcohol test shall be conclusive evidence of misconduct if the test meets the standards of the drug free workplace act, 41 U.S.C. § 701 et seq.; the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment; the test was otherwise required by law and the test constituted a required condition of employment for the individual’s job; the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met:

(A) Either (i) the test was required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq., (ii) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment, (iv) the test was required by law and the test constituted a required condition of employment for the individual’s job, or (v) there was probable cause to believe that the

individual used, had possession of, or was impaired by alcoholic liquor, the cereal malt beverage or the controlled substance while working;

(B) the test sample was collected either (i) as prescribed by the drug free workplace act, 41 U.S.C. § 701 et seq., (ii) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment, (iv) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job, or (v) at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(2)(F) or authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force or effect of law, including law enforcement personnel;

(D) the chemical test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test;

(F) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(G) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) (A) For the purposes of this subsection ~~(b)~~, misconduct shall include, but not be limited to repeated absence, including incarceration, resulting in absence from work of three days or longer, excluding Saturdays, Sundays and legal holidays, and lateness, from scheduled work if the facts show:

(i) The individual was absent without good cause;

(ii) the absence was in violation of the employer's written absenteeism policy;

(iii) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence may or will result in discharge; and

(iv) the employee had knowledge of the employer's written absenteeism policy.

(B) For the purposes of this subsection ~~(b)~~, if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause. If the employee alleges that the employee's repeated absences were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a)(1).

(4) An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under

any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, and/or legal needs relating to such domestic violence.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (~~d~~) be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (~~d~~), failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor.

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection (j) and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection (j).

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any person or organization) who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection ~~(n)~~; or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for

the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection ~~(n)~~. No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) which an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection ~~(n)~~, the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection ~~(p)~~ for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection ~~(r)~~ provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance; or

(2) the individual is attending approved training as defined in subsection (s) of K.S.A. 44-703, and amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under subsection (c) of K.S.A. 44-705, and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

(t) If the individual has been discharged for failing a preemployment drug screen required by the employer and if such discharge occurs not later than seven days after the employer is notified of the results of such drug screen. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

Sec. 5. K.S.A. 2010 Supp. 44-710 is hereby amended to read as follows: 44-710. (a) *Payment*. Contributions shall accrue and become payable by each contributing employer for each calendar year in which the contributing employer is subject to the employment security law with respect to wages paid for employment. Such contributions shall become due and be

paid by each contributing employer to the secretary for the employment security fund in accordance with such rules and regulations as the secretary may adopt and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of \$.01 shall be disregarded unless it amounts to \$.005 or more, in which case it shall be increased to \$.01. Should contributions for any calendar quarter be less than \$5, no payment shall be required.

(b) *Rates and base of contributions.* (1) Except as provided in paragraph (2) of this subsection, each contributing employer shall pay contributions on wages paid by the contributing employer during each calendar year with respect to employment as provided in K.S.A. 44-710a and amendments thereto. Except that, notwithstanding the federal law requiring the secretary of labor to annually recalculate the contribution rate, for calendar years 2010 ~~and~~, 2011, 2012, 2013 and 2014, the secretary shall charge each contributing employer in rate groups 1 through 32 the contribution rate in the 2010 original tax rate computation table, with contributing employers in rate groups 33 through 51 being capped at a 5.4% contribution rate.

(2) (A) If the congress of the United States either amends or repeals the Wagner-Peyser act, the federal unemployment tax act, the federal social security act, or subtitle C of chapter 23 of the federal internal revenue code of 1986, or any act or acts supplemental to or in lieu thereof, or any part or parts of any such law, or if any such law, or any part or parts thereof, are held invalid with the effect that appropriations of funds by congress and grants thereof to the state of Kansas for the payment of costs of administration of the employment security law are no longer available for such purposes, or (B) if employers in Kansas subject to the payment of tax under the federal unemployment tax act are granted full credit against such tax for contributions or taxes paid to the secretary of labor, then, and in either such case, beginning with the year in which the unavailability of federal appropriations and grants for such purpose occurs or in which such change in liability for payment of such federal tax occurs and for each year thereafter, the rate of contributions of each contributing employer shall be equal to the total of .5% and the rate of contributions as determined for such contributing employer under K.S.A. 44-710a and amendments thereto. The amount of contributions which each contributing employer becomes liable to pay under this paragraph (2) over the amount of contributions which such contributing employer would be otherwise liable to pay shall be credited to the employment security administration fund to be disbursed and paid out under the same conditions and for the same purposes as other moneys are authorized to be paid from the employment security administration fund, except that, if the secretary determines that as of the first day of January of any year there is an excess in the employment security administration fund over the amount required to be disbursed during such

year, an amount equal to such excess as determined by the secretary shall be transferred to the employment security fund.

(c) *Charging of benefit payments.* (1) The secretary shall maintain a separate account for each contributing employer, and shall credit the contributing employer's account with all the contributions paid on the contributing employer's own behalf. Nothing in the employment security law shall be construed to grant any employer or individuals in such employer's service prior claims or rights to the amounts paid by such employer into the employment security fund either on such employer's own behalf or on behalf of such individuals. Benefits paid shall be charged against the accounts of each base period employer in the proportion that the base period wages paid to an eligible individual by each such employer bears to the total wages in the base period. Benefits shall be charged to contributing employers' accounts and rated governmental employers' accounts upon the basis of benefits paid during each twelve-month period ending on the computation date.

(2) (A) Benefits paid in benefit years established by valid new claims shall not be charged to the account of a contributing employer or rated governmental employer who is a base period employer if the examiner finds that claimant was separated from the claimant's most recent employment with such employer under any of the following conditions: (i) Discharged for misconduct or gross misconduct connected with the individual's work; or (ii) leaving work voluntarily without good cause attributable to the claimant's work or the employer.

(B) Where base period wage credits of a contributing employer or rated governmental employer represent part-time employment and the claimant continues in that part-time employment with that employer during the period for which benefits are paid, then that employer's account shall not be charged with any part of the benefits paid if the employer provides the secretary with information as required by rules and regulations. For the purposes of this subsection (c)(2)(B), "part-time employment" means any employment when an individual works concurrently for two or more employers and also works less than full-time for at least one of those employers because the individual's services are not required for the customary, scheduled full-time hours prevailing at the work place or the individual does not customarily work the regularly scheduled full-time hours due to personal choice or circumstances.

(C) No contributing employer or rated governmental employer's account shall be charged with any extended benefits paid in accordance with the employment security law, except for weeks of unemployment beginning after December 31, 1978, all contributing governmental employers and governmental rated employers shall be charged an amount equal to all extended benefits paid.

(D) No contributing employer, rated governmental employer or reim-

bursing employer's account shall be charged for any additional benefits paid during the period July 1, 2003 through June 30, 2004.

(E) No contributing employer or rated governmental employer's account will be charged for benefits paid a claimant while pursuing an approved training course as defined in subsection (s) of K.S.A. 44-703, and amendments thereto.

(F) No contributing employer or rated governmental employer's account shall be charged with respect to the benefits paid to any individual whose base period wages include wages for services not covered by the employment security law prior to January 1, 1978, to the extent that the employment security fund is reimbursed for such benefits pursuant to section 121 of public law 94-566 (90 Stat. 2673).

(G) With respect to weeks of unemployment beginning after December 31, 1977, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection (c)(2)(G), the term "previously uncovered services" means services which were not covered employment, at any time during the one-year period ending December 31, 1975, except to the extent that assistance under title II of the federal emergency jobs and unemployment assistance act of 1974 was paid on the basis of such services, and which:

(i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-703, and amendments thereto, or domestic service as defined in subsection (aa) of K.S.A. 44-703, and amendments thereto, or

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in subsection (i)(3)(E) of K.S.A. 44-703, and amendments thereto, or

(iii) are services performed by an employee of a nonprofit educational institution which is not an institution of higher education.

(H) No contributing employer or rated governmental employer's account shall be charged with respect to their pro rata share of benefit charges if such charges are of \$100 or less.

(3) The examiner shall notify any base period employer whose account will be charged with benefits paid following the filing of a valid new claim and a determination by the examiner based on all information relating to the claim contained in the records of the division of employment security. Such notice shall become final and benefits charged to the base period employer's account in accordance with the claim unless within 10 calendar days from the date the notice was sent, the base period employer requests in writing that the examiner reconsider the determination and furnishes any required information in accordance with the secretary's rules and regulations. In a similar manner, a notice of an additional claim followed by the first payment of benefits with respect to the benefit year, filed by an individual during a benefit year after a period in such year during which such individual was employed, shall be given to any base period employer of the individual who has requested such a notice within 10 calendar days

from the date the notice of the valid new claim was sent to such base period employer. For purposes of this subsection (c)(3), if the required information is not submitted or postmarked within a response time limit of 10 days after the base period employer notice was sent, the base period employer shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the base period employer's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. The examiner shall notify the employer of the reconsidered determination which shall be subject to appeal, or further reconsideration, in accordance with the provisions of K.S.A. 44-709, and amendments thereto.

(4) *Time, computation and extension.* In computing the period of time for a base period employer response or appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(d) *Pooled fund.* All contributions and payments in lieu of contributions and benefit cost payments to the employment security fund shall be pooled and available to pay benefits to any individual entitled thereto under the employment security law, regardless of the source of such contributions or payments in lieu of contributions or benefit cost payments.

(e) *Election to become reimbursing employer; payment in lieu of contributions.* (1) Any governmental entity, Indian tribes or tribal units, (subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribes), for which services are performed as described in subsection (i)(3)(E) of K.S.A. 44-703, and amendments thereto, or any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income tax under section 501(a) of such code, that becomes subject to the employment security law may elect to become a reimbursing employer under this subsection (e)(1) and agree to pay the secretary for the employment security fund an amount equal to the amount of regular benefits and  $\frac{1}{2}$  of the extended benefits paid that are attributable to service in the employ of such reimbursing employer, except that each reimbursing governmental employer, Indian tribes or tribal units shall pay an amount equal to the amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, for governmental employers and December 21, 2000, for Indian tribes or tribal units to individuals for weeks of unemployment which begin during the effective period of such election.

(A) Any employer identified in this subsection (e)(1) may elect to be-

come a reimbursing employer for a period encompassing not less than four complete calendar years if such employer files with the secretary a written notice of such election within the 30-day period immediately following January 1 of any calendar year or within the 30-day period immediately following the date on which a determination of subjectivity to the employment security law is issued, whichever occurs later.

(B) Any employer which makes an election to become a reimbursing employer in accordance with subparagraph (A) of this subsection (e)(1) will continue to be liable for payments in lieu of contributions until such employer files with the secretary a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

(C) Any employer identified in this subsection (e)(1) which has remained a contributing employer and has been paying contributions under the employment security law for a period subsequent to January 1, 1972, may change to a reimbursing employer by filing with the secretary not later than 30 days prior to the beginning of any calendar year a written notice of election to become a reimbursing employer. Such election shall not be terminable by the employer for four complete calendar years.

(D) The secretary may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after January 1 of the year such election is received.

(E) The secretary, in accordance with such rules and regulations as the secretary may adopt, shall notify each employer identified in subsection (e)(1) of any determination which the secretary may make of its status as an employer and of the effective date of any election which it makes to become a reimbursing employer and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of K.S.A. 44-710b, and amendments thereto.

(2) *Reimbursement reports and payments.* Payments in lieu of contributions shall be made in accordance with the provisions of paragraph (A) of this subsection (e)(2) by all reimbursing employers except the state of Kansas. Each reimbursing employer shall report total wages paid during each calendar quarter by filing quarterly wage reports with the secretary which shall be filed by the last day of the month following the close of each calendar quarter. Wage reports are deemed filed as of the date they are placed in the United States mail.

(A) At the end of each calendar quarter, or at the end of any other period as determined by the secretary, the secretary shall bill each reimbursing employer, except the state of Kansas, (i) an amount to be paid which is equal to the full amount of regular benefits plus  $\frac{1}{2}$  of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing employer; and

(ii) for weeks of unemployment beginning after December 31, 1978, each reimbursing governmental employer and December 21, 2000, for Indian tribes or tribal units shall be certified an amount to be paid which is equal to the full amount of regular benefits and extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing governmental employer.

(B) Payment of any bill rendered under paragraph (A) of this subsection (e)(2) shall be made not later than 30 days after such bill was mailed to the last known address of the reimbursing employer, or otherwise was delivered to such reimbursing employer, unless there has been an application for review and redetermination in accordance with paragraph (D) of this subsection (e)(2).

(C) Payments made by any reimbursing employer under the provisions of this subsection (e)(2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of such employer.

(D) The amount due specified in any bill from the secretary shall be conclusive on the reimbursing employer, unless, not later than 15 days after the bill was mailed to the last known address of such employer, or was otherwise delivered to such employer, the reimbursing employer files an application for redetermination in accordance with K.S.A. 44-710b, and amendments thereto.

(E) Past due payments of amounts certified by the secretary under this section shall be subject to the same interest, penalties and actions required by K.S.A. 44-717, and amendments thereto. (1) If any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 or governmental reimbursing employer is delinquent in making payments of amounts certified by the secretary under this section, the secretary may terminate such employer's election to make payments in lieu of contributions as of the beginning of the next calendar year and such termination shall be effective for such next calendar year and the calendar year thereafter so that the termination is effective for two complete calendar years. (2) Failure of the Indian tribe or tribal unit to make required payments, including assessment of interest and penalty within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions as described pursuant to paragraph (e)(1) for the following tax year unless payment in full is received before contribution rates for the next tax year are calculated. (3) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in paragraph (2), shall have such option reinstated, if after a period of one year, all contributions have been made on time and no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain outstanding.

(F) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalties, after all collection activities deemed necessary by the secretary have been exhausted, will

cause services performed by such tribe to not be treated as employment for purposes of subsection (i)(3)(E) of K.S.A. 44-703, and amendments thereto. If an Indian tribe fails to make payments required under this section, including assessments of interest and penalties, within 90 days of a final notice of delinquency, the secretary shall immediately notify the United States internal revenue service and the United States department of labor. The secretary may determine that any Indian tribe that loses coverage pursuant to this paragraph may have services performed on behalf of such tribe again deemed "employment" if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(G) In the discretion of the secretary, any employer who elects to become liable for payments in lieu of contributions and any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 or governmental reimbursing employer or Indian tribe or tribal unit who is delinquent in filing reports or in making payments of amounts certified by the secretary under this section shall be required within 60 days after the effective date of such election, in the case of an eligible employer so electing, or after the date of notification to the delinquent employer under this subsection (e)(2)(G), in the case of a delinquent employer, to execute and file with the secretary a surety bond, except that the employer may elect, in lieu of a surety bond, to deposit with the secretary money or securities as approved by the secretary or to purchase and deliver to an escrow agent a certificate of deposit to guarantee payment. The amount of the bond, deposit or escrow agreement required by this subsection (e)(2)(G) shall not exceed 5.4% of the organization's taxable wages paid for employment by the eligible employer during the four calendar quarters immediately preceding the effective date of the election or the date of notification, in the case of a delinquent employer. If the employer did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the secretary. Upon the failure of an employer to comply with this subsection (e)(2)(G) within the time limits imposed or to maintain the required bond or deposit, the secretary may terminate the election of such eligible employer or delinquent employer, as the case may be, to make payments in lieu of contributions, and such termination shall be effective for the current and next calendar year.

(H) The state of Kansas shall make reimbursement payments quarterly at a fiscal year rate which shall be based upon: (i) The available balance in the state's reimbursing account as of December 31 of each calendar year; (ii) the historical unemployment experience of all covered state agencies during prior years; (iii) the estimate of total covered wages to be paid during the ensuing calendar year; (iv) the applicable fiscal year rate of the claims processing and auditing fee under K.S.A. 75-3798, and amendments thereto; and (v) actuarial and other information furnished to the secretary by the secretary of administration. In accordance with K.S.A. 75-3798, and amendments thereto, the claims processing and auditing fees charged to

state agencies shall be deducted from the amounts collected for the reimbursement payments under this paragraph (H) prior to making the quarterly reimbursement payments for the state of Kansas. The fiscal year rate shall be expressed as a percentage of covered total wages and shall be the same for all covered state agencies. The fiscal year rate for each fiscal year will be certified in writing by the secretary to the secretary of administration on July 15 of each year and such certified rate shall become effective on the July 1 immediately following the date of certification. A detailed listing of benefit charges applicable to the state's reimbursing account shall be furnished quarterly by the secretary to the secretary of administration and the total amount of charges deducted from previous reimbursing payments made by the state. On January 1 of each year, if it is determined that benefit charges exceed the amount of prior reimbursing payments, an upward adjustment shall be made therefor in the fiscal year rate which will be certified on the ensuing July 15. If total payments exceed benefit charges, all or part of the excess may be refunded, at the discretion of the secretary, from the fund or retained in the fund as part of the payments which may be required for the next fiscal year.

(3) *Allocation of benefit costs.* The reimbursing account of each reimbursing employer shall be charged the full amount of regular benefits and  $\frac{1}{2}$  of the amount of extended benefits paid except that each reimbursing governmental employer's account shall be charged the full amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, to individuals whose entire base period wage credits are from such employer. When benefits received by an individual are based upon base period wage credits from more than one employer then the reimbursing employer's or reimbursing governmental employer's account shall be charged in the same ratio as base period wage credits from such employer bear to the individual's total base period wage credits. Notwithstanding any other provision of the employment security law, no reimbursing employer's or reimbursing governmental employer's account shall be charged for payments of extended benefits which are wholly reimbursed to the state by the federal government.

(A) *Proportionate allocation (when fewer than all reimbursing base period employers are liable).* If benefits paid to an individual are based on wages paid by one or more reimbursing employers and on wages paid by one or more contributing employers or rated governmental employers, the amount of benefits payable by each reimbursing employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bears to the total base period wages paid to the individual by all of such individual's base period employers.

(B) *Proportionate allocation (when all base period employers are reimbursing employers).* If benefits paid to an individual are based on wages paid by two or more reimbursing employers, the amount of benefits payable

by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of such individual's base period employers.

(4) *Group accounts.* Two or more reimbursing employers may file a joint application to the secretary for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employment of such reimbursing employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection (e)(4). Upon approval of the application, the secretary shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the secretary receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than four years and thereafter such account shall remain in effect until terminated at the discretion of the secretary or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The secretary shall adopt such rules and regulations as the secretary deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subsection (e)(4), for addition of new members to, and withdrawal of active members from such accounts, and for the determination of the amounts that are payable under this subsection (e)(4) by members of the group and the time and manner of such payments.

Sec. 6. K.S.A. 2010 Supp. 44-710a is hereby amended to read as follows: 44-710a. (a) *Classification of employers by the secretary.* The term "employer" as used in this section refers to contributing employers. The secretary shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts with a view of fixing such contribution rates as will reflect such experience. If, as of the date such classification of employers is made, the secretary finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the secretary finds incorrect or insufficient, the secretary shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the secretary at the time, and notify the employing unit thereof by mail addressed to its last known address. Unless such employing unit shall file the report or a cor-

rected or sufficient report as the case may be, within 15 days after the mailing of such notice, the secretary shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increase but not to reduction on the basis of subsequently ascertained information. The secretary shall determine the contribution rate of each employer in accordance with the requirements of this section.

(1) *New employers.* (A) No employer will be eligible for a rate computation until there have been 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account.

(B) (i) For the rate year 2007 and each rate year thereafter, each employer who is not eligible for a rate contribution shall pay contributions equal to 4% of wages paid during each calendar year with regard to employment except such employers engaged in the construction industry shall pay a rate equal to 6%.

(ii) For rate years prior to 2007, employers who are not eligible for a rate computation shall pay contributions at an assigned rate equal to the sum of 1% plus the greater of the average rate assigned in the preceding calendar year to all employers in such industry sector or the average rate assigned to all covered employers during the preceding calendar year, except that in no instance shall any such assigned rate be less than 2%. Employers engaged in more than one type of industrial activity shall be classified by principal activity. All rates assigned will remain in effect for a complete calendar year. If the sale or acquisition of a new establishment would require reclassification of the employer to a different industry sector, the employer would be promptly notified, and the contribution rate applicable to the new industry sector would become effective the following January 1.

(iii) For purposes of this subsection (a), employers shall be classified by industrial activity in accordance with standard procedures as set forth in rules and regulations adopted by the secretary.

(C) "Computation date" means June 30 of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January 1. In arriving at contribution rates for each calendar year, contributions paid on or before July 31 following the computation date for employment occurring on or prior to the computation date shall be considered for each contributing employer who has been subject to this act for a sufficient period of time to have such employer's rate computed under this subsection (a).

(2) *Eligible employers.* (A) A reserve ratio shall be computed for each eligible employer by the following method: Total benefits charged to the employer's account for all past years shall be deducted from all contributions paid by such employer for all such years. The balance, positive or

negative, shall be divided by the employer's average annual payroll, and the result shall constitute the employer reserve ratio.

(B) Negative account balance employers as defined in subsection (d) shall pay contributions at the rate of 5.4% for each calendar year.

(C) Eligible employers, other than negative account balance employers, who do not meet the average annual payroll requirements as stated in subsection (a)(2) of K.S.A. 44-703, and amendments thereto, will be issued the maximum rate indicated in subsection (a)(3)(C) of this section until such employer establishes a new period of 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account by resuming the payment of wages. Contribution rates effective for each calendar year thereafter shall be determined as prescribed below.

(D) As of each computation date, the total of the taxable wages paid during the 12-month period prior to the computation date by all employers eligible for rate computation, except negative account balance employers, shall be divided into 51 approximately equal parts designated in column A of schedule I as "rate groups," except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during the entire twelve-month period prior to the computation date. The lowest numbered of such rate groups shall consist of the employers with the most favorable reserve ratios, as defined in this section, whose combined taxable wages paid are less than 1.96% of all taxable wages paid by all eligible employers. Each succeeding higher numbered rate group shall consist of employers with reserve ratios that are less favorable than those of employers in the preceding lower numbered rate groups and whose taxable wages when combined with the taxable wages of employers in all lower numbered rate groups equal the appropriate percentage of total taxable wages designated in column B of schedule I. Each eligible employer, other than a negative account balance employer, shall be assigned an experience factor designated under column C of schedule I in accordance with the rate group to which the employer is assigned on the basis of the employer's reserve ratio and taxable payroll. If an employer's taxable payroll falls into more than one rate group the employer shall be assigned the experience factor of the lower numbered rate group. If one or more employers have reserve ratios identical to that of the last employer included in the next lower numbered rate group, all such employers shall be assigned the experience factor designated to such last employer, notwithstanding the position of their taxable payroll in column B of schedule I.

SCHEDULE I—Eligible Employers

Column A Rate group	Column B Cumulative taxable payroll	Column C Experience factor (Ratio to total wages)
1	Less than 1.96% .....	.025%
2	1.96% but less than 3.92 .....	.40
3	3.92 but less than 5.88 .....	.80
4	5.88 but less than 7.84 .....	.12
5	7.84 but less than 9.80 .....	.16
6	9.80 but less than 11.76 .....	.20
7	11.76 but less than 13.72 .....	.24
8	13.72 but less than 15.68 .....	.28
9	15.68 but less than 17.64 .....	.32
10	17.64 but less than 19.60 .....	.36
11	19.60 but less than 21.56 .....	.40
12	21.56 but less than 23.52 .....	.44
13	23.52 but less than 25.48 .....	.48
14	25.48 but less than 27.44 .....	.52
15	27.44 but less than 29.40 .....	.56
16	29.40 but less than 31.36 .....	.60
17	31.36 but less than 33.32 .....	.64
18	33.32 but less than 35.28 .....	.68
19	35.28 but less than 37.24 .....	.72
20	37.24 but less than 39.20 .....	.76
21	39.20 but less than 41.16 .....	.80
22	41.16 but less than 43.12 .....	.84
23	43.12 but less than 45.08 .....	.88
24	45.08 but less than 47.04 .....	.92
25	47.04 but less than 49.00 .....	.96
26	49.00 but less than 50.96 .....	1.00
27	50.96 but less than 52.92 .....	1.04
28	52.92 but less than 54.88 .....	1.08
29	54.88 but less than 56.84 .....	1.12
30	56.84 but less than 58.80 .....	1.16
31	58.80 but less than 60.76 .....	1.20
32	60.76 but less than 62.72 .....	1.24
33	62.72 but less than 64.68 .....	1.28
34	64.68 but less than 66.64 .....	1.32
35	66.64 but less than 68.60 .....	1.36
36	68.60 but less than 70.56 .....	1.40
37	70.56 but less than 72.52 .....	1.44
38	72.52 but less than 74.48 .....	1.48
39	74.48 but less than 76.44 .....	1.52
40	76.44 but less than 78.40 .....	1.56
41	78.40 but less than 80.36 .....	1.60
42	80.36 but less than 82.32 .....	1.64
43	82.32 but less than 84.28 .....	1.68
44	84.28 but less than 86.24 .....	1.72
45	86.24 but less than 88.20 .....	1.76
46	88.20 but less than 90.16 .....	1.80
47	90.16 but less than 92.12 .....	1.84
48	92.12 but less than 94.08 .....	1.88
49	94.08 but less than 96.04 .....	1.92

50	96.04 but less than 98.00 .....	1.96
51	98.00 and over .....	2.00

(E) Negative account balance employers shall, in addition to paying the rate provided for in subsection (a)(2)(B) of this section, pay a surcharge based on the size of the employer’s negative reserve ratio, the calculation which is provided for in subsection (a)(2) of this section. The amount of the surcharge shall be determined from ~~column B of schedule II of this section~~ *column B2 of schedule II of this section for calendar years 2012, 2013, 2014 and from column B1 of schedule II of this section for each calendar year after 2014.* Each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be assigned a surcharge of ~~2%~~ *equal to the maximum negative ratio surcharge from column B2 of schedule II of this section for calendar years 2012, 2013 and 2014. From calendar year 2015 forward each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be assigned a surcharge equal to the maximum negative ratio surcharge from column B1 of schedule II of this section.* ~~Contribution payments made pursuant to this subsection (a)(2)(E) shall be credited to the appropriate account of such negative account balance employer.~~ *Funds from the surcharge paid according to this subsection (a)(2)(E), and amendments thereto, shall be used to pay principal and interest due on funds received from the federal unemployment account under title XII of the social security act, (42 U.S.C. § 1321 to 1324), in the following manner:*

(i) *For each calendar year 2012, 2013 and 2014, an additional 0.10% of the taxable wages paid by all negative account balance employers with a negative reserve ratio between 0.0% and 19.9% shall be designated an interest assessment surcharge and paid into the employment security interest assessment fund for the purpose of paying interest due and owing on funds received from the federal unemployment account under title XII of the social security act. The total surcharges assessed, including the additional 0.10% surcharge mentioned above, on such employers are listed in schedule II column B2. For the calendar year 2015, and each calendar year thereafter, the surcharge rate for negative balance employers with a negative reserve ratio between 0.0% and 19.9% shall be as listed in schedule II column B1.*

(ii) *For the calendar year 2012, and each calendar year thereafter, an additional surcharge on negative balance employers with negative reserve ratio of 20.0% and higher shall be designated an interest assessment surcharge and deposited in the employment security interest assessment fund. The additional surcharge shall be used for the purposes of paying interest due and owing on fund received from the federal unemployment account under title XII of the social security act. The total surcharge including the*

*additional surcharge on such employers is listed in schedule II column B3 of this section.*

*(iii) For any succeeding year in which interest is due and owing on funds received from the federal unemployment account under title XII of the social security act, the secretary of labor may adjust the surcharge amounts necessary to pay such interest;*

*(iv) the portion of such surcharge used for the payment of such interest shall not be included in the calculation of such employers reserve ratio pursuant to subsection (a)(2). The portion of such surcharge used for the payment of principal shall be included in the calculation of such employers reserve ratio pursuant to subsection (a)(2); and*

*(v) if the amounts collected under this subsection are in excess of the amounts needed to pay interest due, the amounts in excess shall remain in the employment security interest assessment fund to be used to pay interest in future years. Whenever the secretary certifies all interest payments have been paid pursuant to this section, any excess funds remaining in the employment security interest assessment fund shall be transferred to the employment security trust fund for the purpose of paying any remaining principal amount due for advances described in this section. In the event that the amount transferred from the employment security interest assessment fund exceeds such remaining amount of principal due, the balance shall be used for the purposes of the employment security trust fund.*

SCHEDULE II—Surcharge on Negative Accounts

Column A Negative Reserve Ratio	Column B Surcharge as a percent of taxable wages
Less than 2.0%	0.20%
2.0% but less than 4.0	.40
4.0 but less than 6.0	.60
6.0 but less than 8.0	.80
8.0 but less than 10.0	1.00
10.0 but less than 12.0	1.20
12.0 but less than 14.0	1.40
14.0 but less than 16.0	1.60
16.0 but less than 18.0	1.80
18.0 and over	2.00

Column A Negative Reserve Ratio	Column B1 Surcharge as a percent of taxable wages	Column B2 Surcharge as a percent of taxable wages	Column B3 Surcharge as a percent of taxable wages
Less than 2.0%	0.20%	0.30%	
2.0% but less than 4.0	0.40	0.50	
4.0 but less than 6.0	0.60	0.70	
6.0 but less than 8.0	0.80	0.90	
8.0 but less than 10.0	1.00	1.10	
10.0 but less than 12.0	1.20	1.30	
12.0 but less than 14.0	1.40	1.50	
14.0 but less than 16.0	1.60	1.70	

16.0 but less than 18.0	1.80	1.90
18.0 but less than 20.0	2.00	2.10
20.0 but less than 22.0	2.00	2.20
22.0 but less than 24.0	2.00	2.40
24.0 but less than 26.0	2.00	2.60
26.0 but less than 28.0	2.00	2.80
28.0 but less than 30.0	2.00	3.00
30.0 but less than 32.0	2.00	3.20
32.0 but less than 34.0	2.00	3.40
34.0 but less than 36.0	2.00	3.60
36.0 but less than 38.0	2.00	3.80
38.0 and over	2.00	4.00

(3) *Planned yield.* (A) The average required yield shall be determined from schedule III of this section, and the planned yield on total wages in column B of schedule III shall be determined by the reserve fund ratio in column A of schedule III. The reserve fund ratio shall be determined by dividing total assets in the employment security fund provided for in subsection (a) of K.S.A. 44-712, and amendments thereto, excluding all moneys credited to the account of this state pursuant to section 903 of the federal social security act, as amended, which have been appropriated by the state legislature, whether or not withdrawn from the trust fund, and excluding contributions not yet paid on July 31 by total payrolls for contributing employers for the preceding fiscal year which ended June 30.

SCHEDULE III—Fund Control  
Ratios to Total Wages

Column A Reserve Fund Ratio	Column B Planned Yield
4.500 and over	0.00
4.475 but less than 4.500	0.01
4.450 but less than 4.475	0.02
4.425 but less than 4.450	0.03
4.400 but less than 4.425	0.04
4.375 but less than 4.400	0.05
4.350 but less than 4.375	0.06
4.325 but less than 4.350	0.07
4.300 but less than 4.325	0.08
4.275 but less than 4.300	0.09
4.250 but less than 4.275	0.10
4.225 but less than 4.250	0.11
4.200 but less than 4.225	0.12
4.175 but less than 4.200	0.13
4.150 but less than 4.175	0.14
4.125 but less than 4.150	0.15
4.100 but less than 4.125	0.16
4.075 but less than 4.100	0.17
4.050 but less than 4.075	0.18
4.025 but less than 4.050	0.19
4.000 but less than 4.025	0.20
3.950 but less than 4.000	0.21
3.900 but less than 3.950	0.22
3.850 but less than 3.900	0.23

3.800 but less than 3.850 .....	0.24
3.750 but less than 3.800 .....	0.25
3.700 but less than 3.750 .....	0.26
3.650 but less than 3.700 .....	0.27
3.600 but less than 3.650 .....	0.28
3.550 but less than 3.600 .....	0.29
3.500 but less than 3.550 .....	0.30
3.450 but less than 3.500 .....	0.31
3.400 but less than 3.450 .....	0.32
3.350 but less than 3.400 .....	0.33
3.300 but less than 3.350 .....	0.34
3.250 but less than 3.300 .....	0.35
3.200 but less than 3.250 .....	0.36
3.150 but less than 3.200 .....	0.37
3.100 but less than 3.150 .....	0.38
3.050 but less than 3.100 .....	0.39
3.000 but less than 3.050 .....	0.40
2.950 but less than 3.000 .....	0.41
2.900 but less than 2.950 .....	0.42
2.850 but less than 2.900 .....	0.43
2.800 but less than 2.850 .....	0.44
2.750 but less than 2.800 .....	0.45
2.700 but less than 2.750 .....	0.46
2.650 but less than 2.700 .....	0.47
2.600 but less than 2.650 .....	0.48
2.550 but less than 2.600 .....	0.49
2.500 but less than 2.550 .....	0.50
2.450 but less than 2.500 .....	0.51
2.400 but less than 2.450 .....	0.52
2.350 but less than 2.400 .....	0.53
2.300 but less than 2.350 .....	0.54
2.250 but less than 2.300 .....	0.55
2.200 but less than 2.250 .....	0.56
2.150 but less than 2.200 .....	0.57
2.100 but less than 2.150 .....	0.58
2.050 but less than 2.100 .....	0.59
2.000 but less than 2.050 .....	0.60
1.975 but less than 2.000 .....	0.61
1.950 but less than 1.975 .....	0.62
1.925 but less than 1.950 .....	0.63
1.900 but less than 1.925 .....	0.64
1.875 but less than 1.900 .....	0.65
1.850 but less than 1.875 .....	0.66
1.825 but less than 1.850 .....	0.67
1.800 but less than 1.825 .....	0.68
1.775 but less than 1.800 .....	0.69
1.750 but less than 1.775 .....	0.70
1.725 but less than 1.750 .....	0.71
1.700 but less than 1.725 .....	0.72
1.675 but less than 1.700 .....	0.73
1.650 but less than 1.675 .....	0.74
1.625 but less than 1.650 .....	0.75
1.600 but less than 1.625 .....	0.76
1.575 but less than 1.600 .....	0.77
1.550 but less than 1.575 .....	0.78

1.525 but less than 1.550 .....	0.79
1.500 but less than 1.525 .....	0.80
1.475 but less than 1.500 .....	0.81
1.450 but less than 1.475 .....	0.82
1.425 but less than 1.450 .....	0.83
1.400 but less than 1.425 .....	0.84
1.375 but less than 1.400 .....	0.85
1.350 but less than 1.375 .....	0.86
1.325 but less than 1.350 .....	0.87
1.300 but less than 1.325 .....	0.88
1.275 but less than 1.300 .....	0.89
1.250 but less than 1.275 .....	0.90
1.225 but less than 1.250 .....	0.91
1.200 but less than 1.225 .....	0.92
1.175 but less than 1.200 .....	0.93
1.150 but less than 1.175 .....	0.94
1.125 but less than 1.150 .....	0.95
1.100 but less than 1.125 .....	0.96
1.075 but less than 1.100 .....	0.97
1.050 but less than 1.075 .....	0.98
1.025 but less than 1.050 .....	0.99
1.000 but less than 1.025 .....	1.00
0.900 but less than 1.000 .....	1.01
0.800 but less than 0.900 .....	1.02
0.700 but less than 0.800 .....	1.03
0.600 but less than 0.700 .....	1.04
0.500 but less than 0.600 .....	1.05
0.400 but less than 0.500 .....	1.06
0.300 but less than 0.400 .....	1.07
0.200 but less than 0.300 .....	1.08
0.100 but less than 0.200 .....	1.09
Less than 0.100% .....	1.10

(B) *Adjustment to taxable wages.* The planned yield as a percent of total wages, as determined in this subsection (a)(3), shall be adjusted to taxable wages by multiplying by the ratio of total wages to taxable wages for all contributing employers for the preceding fiscal year ending June 30, except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during all of the preceding fiscal year ending June 30.

(C) *Effective rates.* (i) Except with regard to rates for negative account balance employers, employer contribution rates to be effective for the ensuing calendar year shall be computed by adjusting proportionately the experience factors from schedule I of this section to the required yield on taxable wages. For the purposes of this subsection (a)(3), all rates computed shall be rounded to the nearest .01% and for calendar year 1983 and ensuing calendar years, the maximum effective contribution rate shall not exceed 5.4%.

(ii) For rate year 2007 and subsequent rate years, employers who are

current in filing quarterly wage reports and in payment of all contributions due and owing, shall be issued a contribution rate based upon the following reduction: for rate groups 1 through 5, the rates would be reduced to 0.00%; for rate groups 6 through 28, the rates would be reduced by 50%; for rate groups 29 through 51, the rates would be reduced by 40%.

(iii) In order to be eligible for the reduced rates for rate year 2007, the employer must file all late reports and pay all contributions due and owing within a 30-day period following the date of mailing of the amended rate notice.

(iv) In order to be eligible for the reduced rates for rate year 2008 and subsequent rate years, employers must file all reports due and pay all contributions due and owing on or before January 31 of the applicable year, except that the reduced rates for otherwise eligible employers shall not be effective for any rate year if the average high cost multiple of the employment security trust fund balance falls below 1.2 as of the computation date of that year's rates. For the purposes of this provision, the average high cost multiple is the reserve fund ratio, as defined by subsection (a)(3)(A), divided by the average high benefit cost rate. The average high benefit cost rate shall be determined by averaging the three highest benefit cost rates over the last 20 years from the preceding fiscal year which ended June 30. The high benefit cost rate is defined by dividing total benefits paid in the fiscal year by total payrolls for covered employers in the fiscal year.

(b) *Successor classification.* (1) (A) For the purposes of this subsection (b), whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703, and amendments thereto, becomes an employer pursuant to subsection (h)(4) of K.S.A. 44-703, and amendments thereto, or is an employer at the time of acquisition and meets the definition of a "successor employer" as defined by subsection (dd) of K.S.A. 44-703, and amendments thereto, and thereafter transfers its trade or business, or any portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. These experience factors consist of all contributions paid, benefit experience and annual payrolls of the predecessor employer. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(B) If, following a transfer of experience under subparagraph (A), the secretary determines that a substantial purpose of the transfer or business was to obtain a reduced liability for contributions, then the experience rating

accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(2) A successor employer as defined by subsection (h)(4) or subsection (dd) of K.S.A. 44-703, and amendments thereto, may receive the experience rating factors of the predecessor employer if an application is made to the secretary or the secretary's designee in writing within 120 days of the date of the transfer.

(3) Whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703, and amendments thereto, acquires or in any manner succeeds to a percentage of an employer's annual payroll which is less than 100% and intends to continue the acquired percentage as a going business, the employing unit may acquire the same percentage of the predecessor's experience factors if: (A) The predecessor employer and successor employing unit make an application in writing on the form prescribed by the secretary, (B) the application is submitted within 120 days of the date of the transfer, (C) the successor employing unit is or becomes an employer subject to this act immediately after the transfer, (D) the percentage of the experience rating factors transferred shall not be thereafter used in computing the contribution rate for the predecessor employer, and (E) the secretary finds that such transfer will not tend to defeat or obstruct the object and purposes of this act.

(4) (A) The rate of both employers in a full or partial successorship under paragraph (1) of this subsection shall be recalculated and made effective on the first day of the next calendar quarter following the date of transfer of trade or business.

(B) If a successor employer is determined to be qualified under paragraph (2) or (3) of this subsection to receive the experience rating factors of the predecessor employer, the rate assigned to the successor employer for the remainder of the contributions year shall be determined by the following:

(i) If the acquiring employing unit was an employer subject to this act prior to the date of the transfer, the rate of contribution shall be the same as the contribution rate of the acquiring employer on the date of the transfer.

(ii) If the acquiring employing unit was not an employer subject to this act prior to the date of the transfer, the successor employer shall have a newly computed rate for the remainder of the contribution year which shall be based on the transferred experience rating factors as they existed on the most recent computation date immediately preceding the date of acquisition. These experience rating factors consist of all contributions paid, benefit experience and annual payrolls.

(5) Whenever an employing unit is not an employer at the time it acquires the trade or business of an employer, the unemployment experience factors of the acquired business shall not be transferred to such employing unit if the secretary finds that such employing unit acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

Instead, such employing unit shall be assigned the applicable industry rate for a “new employer” as described in subsection (a)(1) of this section. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the secretary shall use objective factors which may include the cost of acquiring the business, whether the employer continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(6) Whenever an employer’s account has been terminated as provided in subsections (d) and (e) of K.S.A. 44-711, and amendments thereto, and the employer continues with employment to liquidate the business operations, that employer shall continue to be an “employer” subject to the employment security law as provided in subsection (h)(8) of K.S.A. 44-703, and amendments thereto. The rate of contribution from the date of transfer to the end of the then current calendar year shall be the same as the contribution rate prior to the date of the transfer. At the completion of the then current calendar year, the rate of contribution shall be that of a “new employer” as described in subsection (a)(1) of this section.

(7) No rate computation will be permitted an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to such succession except in accordance with rules and regulations adopted by the secretary. Any such regulations shall be consistent with federal requirements for additional credit allowance in section 3303 of the federal internal revenue code of 1986, and consistent with the provisions of this act.

(c) *Voluntary contributions.* Notwithstanding any other provision of the employment security law, any employer may make voluntary payments for the purpose of reducing or maintaining a reduced rate in addition to the contributions required under this section. Such voluntary payments may be made only during the thirty-day period immediately following the date of mailing of experience rating notices for a calendar year. All such voluntary contribution payments shall be paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective. The amount of voluntary contributions shall be credited to the employer’s account as of the next preceding computation date and the employer’s rate shall be computed accordingly, except that no employer’s rate shall be reduced more than five rate groups as provided in schedule I of this section as the result of a voluntary payment. An employer not having a negative account balance may have such employer’s rate reduced not more than five rate groups as provided in schedule I of this section as a result of a voluntary payment. An employer having a negative account balance may have such employer’s rate reduced to that prescribed for rate group 51 of schedule I of this section by making a voluntary payment in the amount of such negative account balance or to that rate prescribed for rate groups 50 through 47 of schedule

I of this section by making an additional voluntary payment that would increase such employer's reserve ratio to the lower limit required for such rate groups 50 through 47. Under no circumstances shall voluntary payments be refunded in whole or in part.

(d) As used in this section, "negative account balance employer" means an eligible employer whose total benefits charged to such employer's account for all past years have exceeded all contributions paid by such employer for all such years.

(e) *There is hereby established in the state treasury, separate and apart from all public moneys or funds of this state, an employment security interest assessment fund, which shall be administered by the secretary as provided in this act. Moneys in the employment security fund established by K.S.A. 44-712, and amendments thereto, and employment security interest assessment fund established by 44-710, and amendments thereto, shall not be invested in the pooled money investment portfolio established under K.S.A. 75-4234, and amendments thereto. Notwithstanding the provisions of subsection (a) of K.S.A. 44-712, K.S.A. 44-716, K.S.A. 44-717 and K.S.A. 75-4234, and amendments thereto, or any like provision the secretary shall remit all moneys received from employers pursuant to the interest payment assessment established in section (a)(2)(E), 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 employment security interest assessment fund. All moneys in this fund which are received from employers pursuant to the interest payment assessment established in section (a)(2)(E), and amendments thereto, shall be expended solely for the purposes and in the amounts found by the secretary necessary to pay any principal and interest due and owing the United States department of labor resulting from any advancements made to the Kansas employment security fund pursuant to the provisions of title XII of the social security act (42 U.S.C. § 1321 to 1324) except as may be otherwise provided under section (a)(2)(E), and amendments thereto. Notwithstanding any provision of this section, all moneys received and credited to this fund pursuant to section (a)(2)(E), and amendments thereto, pursuant to section (a)(2)(E), and amendments thereto, shall remain part of the employment security interest assessment fund and shall be used only in accordance with the conditions specified in section (a)(2)(E), and amendments thereto.*

(e) (f) The secretary of labor shall annually prepare and submit a certification as to the solvency and adequacy of the amount credited to the state of Kansas' account in the federal employment security trust fund to the governor and the employment security advisory council. The certification shall be submitted on or before December 1 of each calendar year and shall be for the 12-month period ending on June 30 of that calendar year. In arriving at the certification contributions paid on or before July 31 following the 12-month period ending date of June 30 shall be considered.

Each certification shall be used to determine the need for any adjustment to schedule III in subsection (a)(3)(A) and to assist in preparing legislation to accomplish any such adjustment.

Sec. 7. K.S.A. 2010 Supp. 44-717 is hereby amended to read as follows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due contributions, payments in lieu of contributions and, benefit cost payments and interest assessments made under K.S.A. 44-710a, and amendments thereto.* Any employer or any officer or agent of an employer, who fails to file any wage report or contribution return by the last day of the month following the close of each calendar quarter to which they are related shall pay a penalty as provided by this subsection ~~(a)~~ for each month or fraction of a month until the report or return is received by the secretary of labor except that for calendar years 2010 and 2011 an employer or any officer or agent of the employer shall have up to 90 days past the due date for any of the first three calendar quarters in a calendar year to pay such employer's contribution without being charged any interest, however, when the 90 day period has passed, the provisions of this section shall apply. The penalty for each month or fraction of a month shall be an amount equal to .05% of the total wages paid by the employer during the quarter, except that no penalty shall be less than \$25 nor more than \$200 for each such report or return not timely filed. Contributions ~~and, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto,~~ unpaid by the last day of the month following the last calendar quarter to which they are related and payments in lieu of contributions unpaid 30 days after the mailing of the statement of benefit charges, shall bear interest at the rate of 1% per month or fraction of a month until payment is received by the secretary of labor except that an employing unit, which is not therefore subject to this law and which becomes an employer and does not refuse to make the reports, returns and contributions, payments in lieu of contributions and benefit cost payments required under this law, shall not be liable for such penalty or interest if the wage reports and contribution returns required are filed and the contributions, payments in lieu of contributions or benefit cost payments required are paid within 10 days following notification by the secretary of labor that a determination has been made fixing its status as an employer subject to this law. Upon written request and good cause shown, the secretary of labor may abate any penalty or interest or portion thereof provided for by this subsection ~~(a)~~. Interest amounting to less than \$5 shall be waived by the secretary of labor and shall not be collected. Penalties and interest collected pursuant to this subsection shall be paid into the special employment security fund. For all purposes under this section, amounts assessed as surcharges under subsection (j) or under K.S.A. 44-710a, and amendments thereto, shall be considered to be contributions and shall be subject to penalties and interest imposed under this section and to collection in the manner provided by this

section. *For all purposes under this section, amounts assessed under K.S.A. 44-710a, and amendments thereto, shall be subject to penalties and interest imposed under this section and to collection in the manner provided in this section.* For purposes of this subsection, a wage report, a contribution return, a contribution, a payment in lieu of contribution ~~or a benefit cost payment~~, *a benefit cost payment or an interest assessment made pursuant to K.S.A. 44-710a, and amendments thereto*, is deemed to be filed or paid as of the date it is placed in the United States mail.

(2) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(i) Will cause the Indian tribe to be liable for taxes under FUTA;

(ii) will cause the Indian tribe to lose the option to make payments in lieu of contributions;

(iii) could cause the Indian tribe to be excepted from the definition of “employer,” as provided in paragraph (h)(3) of K.S.A. 44-703, and amendments thereto, and services in the employ of the Indian tribe, as provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments thereto, to be excepted from “employment.”

(b) *Collection.* (1) If, after due notice, any employer defaults in payment of any penalty, contributions, payments in lieu of contributions, benefit cost payments, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, or interest thereon the amount due may be collected by civil action in the name of the secretary of labor and the employer adjudged in default shall pay the cost of such action. Civil actions brought under this section to collect contributions, payments in lieu of contributions, benefit cost payments, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, penalties, or interest thereon from an employer shall be heard by the district court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen’s compensation act. All liability determinations of contributions due, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, due shall be made within a period of five years from the date such contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, were due except such determinations may be made for any time when an employer has filed fraudulent reports with intent to evade liability.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance

of process in any civil action under this subsection. In instituting such an action against any such employing unit the secretary of labor shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit and shall be of the same force and validity as if served upon it personally within this state. The secretary of labor shall send notice immediately of the service of such process or notice, together with a copy thereof, by registered or certified mail, return receipt requested, to such employing unit at its last-known address and such return receipt, the affidavit of compliance of the secretary of labor with the provisions of this section, and a copy of the notice of service, shall be appended to the original of the process filed in the court in which such civil action is pending.

(3) The district courts of this state shall entertain, in the manner provided in subsections (b)(1) and (b)(2), actions to collect contributions, payments in lieu of contributions, ~~benefit cost payments~~ *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, and other amounts owed including interest thereon for which liability has accrued under the employment security law of any other state or of the federal government.

(c) *Priorities under legal dissolutions or distributions.* In the event of any distribution of employer's assets pursuant to an order of any court under the laws of this state, including but not limited to any probate proceeding, interpleader, receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceedings, contributions ~~or payments in lieu of contributions~~ *payments in lieu of contributions or interest assessments made under K.S.A. 44-710a, and amendments thereto*, then or thereafter due shall be paid in full from the moneys which shall first come into the estate, prior to all other claims, except claims for wages of not more than \$250 to each claimant, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

(d) *Assessments.* If any employer fails to file a report or return required by the secretary of labor for the determination of contributions, or payments in lieu of contributions, or benefit cost payments, the secretary of labor may make such reports or returns or cause the same to be made, on the basis of such information as the secretary may be able to obtain and shall collect the contributions, payments in lieu of contributions or benefit cost payments as determined together with any interest due under this act. The secretary of labor shall immediately forward to the employer a copy of the assessment by registered or certified mail to the employer's address as it appears on the records of the agency, and such assessment shall be final unless the employer protests such assessment and files a corrected report or return for

the period covered by the assessment within 15 days after the mailing of the copy of assessment. Failure to receive such notice shall not invalidate the assessment. Notice in writing shall be presumed to have been given when deposited as certified or registered matter in the United States mail, addressed to the person to be charged with notice at such person's address as it appears on the records of the agency.

(e) (1) *Lien.* If any employer or person who is liable to pay contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, neglects or refuses to pay the same after demand, the amount, including interest and penalty, shall be a lien in favor of the state of Kansas, secretary of labor, upon all property and rights to property, whether real or personal, belonging to such employer or person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the secretary of labor in the office of register of deeds in any county in the state of Kansas, in which such property is located, and when so filed shall be notice to all persons claiming an interest in the property of the employer or person against whom filed. The register of deeds shall enter such notices in the financing statement record and shall also record the same in full in miscellaneous record and index the same against the name of the delinquent employer. The register of deeds shall accept, file, and record such notice without prepayment of any fee, but lawful fees shall be added to the amount of such lien and collected when satisfaction is presented for entry. Such lien shall be satisfied of record upon the presentation of a certificate of discharge by the state of Kansas, secretary of labor. Nothing contained in this subsection ~~(e)~~ shall be construed as an invalidation of any lien or notice filed in the name of the unemployment compensation division or the employment security division and such liens shall be and remain in full force and effect until satisfied as provided by this subsection ~~(e)~~.

(2) *Authority of secretary or authorized representative.* If any employer or person who is liable to pay any contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, including interest and penalty, neglects or refuses to pay the same within 10 days after notice and demand therefor, the secretary or the secretary's authorized representative may collect such contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, including interest and penalty, and such further amount as is sufficient to cover the expenses of the levy, by levy upon all property and rights to property which belong to the employer or person or which have a lien created thereon by this subsection ~~(e)~~ for the payment of such contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and*

*amendments thereto*, including interest and penalty. As used in this subsection ~~(e)~~, “property” includes all real property and personal property, whether tangible or intangible, except such property which is exempt under K.S.A. 60-2301 et seq., and amendments thereto. Levy may be made upon the accrued salary or wages of any officer, employee or elected official of any state or local governmental entity which is subject to K.S.A. 60-723, and amendments thereto, by serving a notice of levy as provided in subsection (d) of K.S.A. 60-304, and amendments thereto. If the secretary or the secretary’s authorized representative makes a finding that the collection of the amount of such contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a*, and amendments thereto, including interest and penalty, is in jeopardy, notice and demand for immediate payment of such amount may be made by the secretary or the secretary’s authorized representative and, upon failure or refusal to pay such amount, immediate collection of such amount by levy shall be lawful without regard to the 10-day period provided in this subsection ~~(e)~~.

(3) *Seizure and sale of property.* The authority to levy granted under this subsection ~~(e)~~ includes the power of seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the secretary or the secretary’s authorized representative may levy upon property or rights to property, the secretary or the secretary’s authorized representative may seize and sell such property or rights to property.

(4) *Successive seizures.* Whenever any property or right to property upon which levy has been made under this subsection ~~(e)~~ is not sufficient to satisfy the claim of the secretary for which levy is made, the secretary or the secretary’s authorized representative may proceed thereafter and as often as may be necessary, to levy in like manner upon any other property or rights to property which belongs to the employer or person against whom such claim exists or upon which a lien is created by this subsection ~~(e)~~ until the amount due from the employer or person, together with all expenses, is fully paid.

(f) *Warrant.* In addition or as an alternative to any other remedy provided by this section and provided that no appeal or other proceeding for review permitted by this law shall then be pending and the time for taking thereof shall have expired, the secretary of labor or an authorized representative of the secretary may issue a warrant certifying the amount of contributions, payments in lieu of contributions, benefit cost payments, interest or penalty, and the name of the employer liable for same after giving 15 days prior notice. Upon request, service of final notices shall be made by the sheriff within the sheriff’s county, by the sheriff’s deputy or some person specially appointed by the secretary for that purpose, or by the secretary’s designee. A person specially appointed by the secretary or the sec-

retary's designee to serve final notices may make service any place in the state. Final notices shall be served as follows:

(1) *Individual.* Service upon an individual, other than a minor or incapacitated person, shall be made by delivering a copy of the final notice to the individual personally or by leaving a copy at such individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, by leaving a copy at the business establishment of the employer with an officer or employee of the establishment, or by delivering a copy to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by a statute to receive service, such further notice as the statute requires shall be given. If service as prescribed above cannot be made with due diligence, the secretary or the secretary's designee may order service to be made by leaving a copy of the final notice at the employer's dwelling house, usual place of abode or business establishment.

(2) *Corporations and partnerships.* Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such, shall be made by delivering a copy of the final notice to an officer, partner or resident managing or general agent thereof by leaving a copy at any business office of the employer with the person having charge thereof or by delivering a copy to any other agent authorized by appointment or required by law to receive service of process, if the agent is one authorized by law to receive service and, if the law so requires, by also mailing a copy to the employer.

(3) *Refusal to accept service.* In all cases when the person to be served, or an agent authorized by such person to accept service of petitions and summonses, shall refuse to receive copies of the final notice, the offer of the duly authorized process server to deliver copies thereof and such refusal shall be sufficient service of such notice.

(4) *Proof of service.* (A) Every officer to whom a final notice or other process shall be delivered for service within or without the state, shall make return thereof in writing stating the time, place and manner of service of such writ, and shall sign such officer's name to such return.

(B) If service of the notice is made by a person appointed by the secretary or the secretary's designee to make service, such person shall make an affidavit as to the time, place and manner of service thereof in a form prescribed by the secretary or the secretary's designee.

(5) *Time for return.* The officer or other person receiving a final notice shall make a return of service promptly and shall send such return to the secretary or the secretary's designee in any event within 10 days after the service is effected. If the final notice cannot be served it shall be returned to the secretary or the secretary's designee within 30 days after the date of issue with a statement of the reason for the failure to serve the same. The original return shall be attached to and filed with any warrant thereafter filed.

(6) *Service by mail.* (A) Upon direction of the secretary or the secretary's designee, service by mail may be effected by forwarding a copy of the notice to the employer by registered or certified mail to the employer's address as it appears on the records of the agency. A copy of the return receipt shall be attached to and filed with any warrant thereafter filed.

(B) The secretary of labor or an authorized representative of the secretary may file the warrant for record in the office of the clerk of the district court in the county in which the employer owing such contributions, payments in lieu of contributions, benefit cost payments, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, interest, or penalty has business property. The warrant shall certify the amount of contributions, payments in lieu of contributions, benefit cost payments, interest and penalty due, and the name of the employer liable for such amount. It shall be the duty of the clerk of the district court to file such warrant of record and enter the warrant in the records of the district court for judgment and decrees under the procedure prescribed for filing transcripts of judgment.

(C) The clerk shall enter, on the day the warrant is filed, the case on the appearance docket, together with the amount and the time of filing the warrant. From the time of filing such warrant, the amount of the contributions, payments in lieu of contributions, benefit cost payments, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, interest, and penalty, certified therein, shall have the force and effect of a judgment of the district court until the same is satisfied by the secretary of labor or an authorized representative or attorney for the secretary. Execution shall be issuable at the request of the secretary of labor, an authorized representative or attorney for the secretary, as is provided in the case of other judgments.

(D) Postjudgment procedures shall be the same as for judgments according to the code of civil procedure.

(E) Warrants shall be satisfied of record by payment to the clerk of the district court of the contributions, payments in lieu of contributions, benefit cost payments, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, penalty, interest to date, and court costs. Warrants may also be satisfied of record by payment to the clerk of the district court of all court costs accrued in the case and by filing a certificate by the secretary of labor, certifying that the contributions, payments in lieu of contributions, benefit cost payments, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, interest and penalty have been paid.

(g) *Remedies cumulative.* The foregoing remedies shall be cumulative and no action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action under this section to the exclusion of any other remedy or action for which provision is made.

(h) *Refunds.* If any individual, governmental entity or organization makes application for refund or adjustment of any amount paid as contri-

butions, benefit cost payments, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, or interest under this law and the secretary of labor determines that such amount or any portion thereof was erroneously collected, except for amounts less than \$5, the secretary of labor shall allow such individual or organization to make an adjustment thereof, in connection with subsequent contribution payments, or if such adjustment cannot be made the secretary of labor shall refund the amount, except for amounts less than \$5, from the employment security fund, except that all interest erroneously collected which has been paid into the special employment security fund shall be refunded out of the special employment security fund. No adjustment or refund shall be allowed with respect to a payment as contributions, ~~benefit cost payments~~ *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, or interest unless an application therefor is made on or before whichever of the following dates is later: (1) One year from the date on which such payment was made; or (2) three years from the last day of the period with respect to which such payment was made. For like cause and within the same period adjustment or refund may be so made on the secretary's own initiative. The secretary of labor shall not be required to refund any contributions, payments in lieu of contributions or benefit cost payments based upon wages paid which have been used as base-period wages in a determination of a claimant's benefit rights when justifiable and correct payments have been made to the claimant as the result of such determination. For all taxable years commencing after December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968, and amendments thereto, shall be allowed on a contribution or benefit cost payment which the secretary has determined was erroneously collected pursuant to this section.

(i) (1) *Cash deposit or bond.* If any contributing employer is delinquent in making payments under the employment security law during any two quarters of the most recent four-quarter period, the secretary or the secretary's authorized representative shall have the discretionary power to require such contributing employer either to deposit cash or to file a bond with sufficient sureties to guarantee the payment of contributions, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, penalty and interest owed by such employer.

(2) The amount of such cash deposit or bond shall be not less than the largest total amount of contributions, *interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, penalty and interest reported by the employer in two of the four calendar quarters preceding any delinquency. Such cash deposit or bond shall be required until the employer has shown timely filing of reports and payment of contributions *and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, for four consecutive calendar quarters.

(3) Failure to file such cash deposit or bond shall subject the employer to a surcharge of 2.0% which shall be in addition to the rate of contributions

assigned to the employer under K.S.A. 44-710a, and amendments thereto. Contributions paid as a result of this surcharge shall not be credited to the employer's experience rating account. This surcharge shall be effective during the next full calendar year after its imposition and during each full calendar year thereafter until the employer has filed the required cash deposit or bond or has shown timely filing of reports and payment of contributions for four consecutive calendar quarters.

(j) Any officer, major stockholder or other person who has charge of the affairs of an employer, which is an employing unit described in section 501(c)(3) of the federal internal revenue code of 1954 or which is any other corporate organization or association, or any member or manager of a limited liability company, or any public official, who willfully fails to pay the amount of contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, required to be paid under the employment security law on the date on which such amount becomes delinquent, shall be personally liable for the total amount of the contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, and any penalties and interest due and unpaid by such employing unit. The secretary or the secretary's authorized representative may assess such person for the total amount of contributions, payments in lieu of contributions ~~or benefit cost payments~~, *benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, and any penalties, and interest computed as due and owing. With respect to such persons and such amounts assessed, the secretary shall have available all of the collection remedies authorized or provided by this section.

(k) *Electronic filing of wage report and contribution return and electronic payment of contributions, benefit cost payments or, reimbursing payments or interest assessments under K.S.A. 44-710a, and amendments thereto.* The following employers or third party administrators shall file all wage reports and contribution returns and make payment of contributions, benefit cost payments or reimbursing payments electronically as follows:

(1) Wage reports, contribution returns and payments due after June 30, 2008, for those employers with 250 or more employees or third party administrators with 250 or more client employees at the time such filing or payment is first due;

(2) wage reports, contribution returns and payments due after June 30, 2009, for those employers with 100 or more employees or third party administrators with 100 or more client employees at the time such filing or payment is first due; and

(3) wage reports, contribution returns ~~and payments~~, *payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto*, due after June 30, 2010, for those employers with 50 or more

*employees and for those third party administrators with 50 or more client employees at the time such filing or payment is first due.*

The requirements of this subsection may be waived by the secretary for an employer if the employer demonstrates a hardship in complying with this subsection.

Sec. 8. K.S.A. 2010 Supp. 44-712 is hereby amended to read as follows: 44-712. (a) *Establishment and control.* There is hereby established as a special fund in the state treasury, separate and apart from all public moneys or funds of this state, an employment security fund, which shall be administered by the secretary as provided in this act. This fund shall consist of: (1) All contributions collected under this act; (2) interest earned upon any moneys in the fund; (3) all moneys credited to this state's account in the federal unemployment trust fund, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended; (4) any property or securities acquired through the use of moneys belonging to the fund, and all other moneys received for the fund from any other source; (5) all earnings of such property or securities. All moneys in this fund shall be mingled and undivided.

(b) *Accounts and deposits.* The state treasurer shall be ex officio custodian of the fund. Payments from the fund, and for the purposes of this act deposits with the secretary of the treasury of the United States shall not be deemed to be payments from the fund, shall be made by any commercially-accepted means approved by the secretary. There shall be maintained within the fund three separate accounts: (1) A clearing account; (2) an unemployment trust fund account, and (3) a benefit account. All money payable to the fund upon receipt thereof by the secretary, 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 clearing account of the fund. Refunds payable pursuant to K.S.A. 44-717, and amendments thereto, may be paid from the clearing account of the fund by any commercially-accepted means approved by the secretary. After clearance thereof, all other moneys in the clearing account of the fund shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the federal unemployment trust fund established and maintained pursuant to section 904 of the social security act, 42 U.S.C.A. § 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account of the fund shall consist of all moneys requisitioned from this state's account in the federal unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts of the fund may be deposited by the state treasurer in any bank or public depository as is now provided by law for the deposit

of general funds of the state, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts of the fund shall not be commingled with other state funds and shall be maintained in separate bank accounts.

(c) *Withdrawals.* Moneys shall be requisitioned from this state's account in the federal unemployment trust fund solely for the payment of benefits and in accordance with the provisions of this act and the rules and regulations adopted by the secretary, except that moneys credited to this state's account pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be used exclusively as provided in subsection (d) of this section. The secretary shall from time to time requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as deemed necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the state treasurer shall deposit such moneys in the benefit account of the fund and payments of benefits shall be charged solely against such benefit account of the fund. Expenditures of such moneys in the benefit account and refunds from the clearing account of the fund shall not be subject to any provisions of law requiring specific appropriations. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account of the fund after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the secretary shall be directed to be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the federal unemployment trust fund, as provided in subsection (b) of this section. All balances accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the provisions of K.S.A. 10-812, and amendments thereto, shall remain in the benefit account of the fund, and be disbursed in accordance with the provisions of this act relating to such account.

(d) *Administrative use.* (1) Money credited to the account of this state in the federal unemployment trust fund by the secretary of the treasury of the United States of America, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may be requisitioned and used for the payment of expenses incurred in the administration of this act pursuant to a specific appropriation by the legislature, if expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (C) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to

the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, (ii) the aggregate of the amounts obligated pursuant to this subsection and amounts paid out for benefits and charged against the amounts credited to the account of this state. For the purposes of this subsection, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged.

(2) Money credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may not be withdrawn or obligated except for the payment of benefits and for the payment of expenses for the administration of this act and of public employment offices pursuant to this subsection (d).

(3) Money appropriated as provided by this subsection (d) for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition shall be deposited in the state treasury to the credit of the employment security administration fund from which such payments shall be made. Money so deposited and credited shall, until expended, remain a part of the federal unemployment trust fund, and, if it will not be expended, shall be returned promptly to the account of this state in the federal unemployment trust fund.

(4) Notwithstanding paragraph (1), money credited with respect to federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

(e) *Management of funds upon discontinuance of federal unemployment trust fund.* The provisions of subsections (a), (b), (c) and (d) of this section, to the extent that they relate to the federal unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the employment security fund of this state, shall be transferred to the state treasurer, to be administered by the secretary as a trust fund for the purpose of paying benefits under this act, and the director of investments upon the direction of the secretary shall have authority to hold, invest, transfer, sell, deposit, and release such moneys, and any properties, securities, or earnings acquired as an incident to such administration.

(f) *Loans from the pooled money investment board, when authorized.*  
(1) *Pursuant to K.S.A. 2010 Supp. 75-4209(d), and amendments thereto,*

*the pooled money investment board is hereby authorized and directed to make loans as requested by the secretary of labor to fund debt obligations to the federal government as may have been, or continue to be, incurred by the employment security fund.*

*(A) The line of credit so extended shall be at an interest rate not to exceed 2%; and*

*(B) shall remain in effect for a period of three years from the date of the first loan requested. The pooled money investment board may reauthorize this line of credit following the initial three year period if deemed mutually beneficial by the board and the secretary of labor.*

*(2) The secretary of labor is hereby authorized to request and receive loans from the pooled money investment fund for the purposes described herein.*

*(3) The outstanding balances of such loans in the aggregate shall not exceed the limit imposed by K.S.A. 2010 Supp. 75-4209(d), and amendments thereto.*

*(4) Any such loan shall not be deemed to be an indebtedness or debt of the state of Kansas within the meaning of section 6 of article 11 of the constitution of the state of Kansas.*

*(5) The pooled money investment board, secretary of labor, and state treasurer shall coordinate as needed to make the appropriate transfers and payment of moneys anticipated hereunder.*

Sec. 9. K.S.A. 2010 Supp. 44-718 is hereby amended to read as follows: 44-718. (a) *Waiver of rights void.* No agreement by an individual to waive, release or commute such individual's rights to benefits or any other rights under this act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contribution or payments in lieu of contributions required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from remuneration to finance the employer's contributions required from such employer, or require or accept any waiver of any right hereunder by any individual in such employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than \$100 nor more than \$1,000 or be imprisoned for not more than six months, or both.

(b) *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the secretary of labor or representatives of the secretary or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the secretary of labor or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the secretary of labor. Any person who violates any provision of this subsection shall, for each such

offense, be fined not less than \$50 nor more than \$500, or imprisoned for not more than six months, or both.

(c) *No assignment of benefits; exemptions.* No assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this act shall be valid; and such rights to benefits shall be exempt from levy, except in accordance with section 6331 of the federal internal revenue code of 1986, and shall be exempt from, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or such individual's spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

(d) *Support exception.* (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations as defined under paragraph (7). If any such individual discloses that such individual owes support obligations, and is determined to be eligible for unemployment compensation, the secretary shall notify the state or local support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual that owes support obligations as defined under paragraph (7):

(A) The amount specified by the individual to the secretary to be deducted and withheld under this subsection, if neither (B) nor (C) is applicable; or

(B) the amount, if any, determined pursuant to an agreement submitted to the secretary under section 454(20)(B)(i) of the social security act by the state or local support enforcement agency, unless subparagraph (C) is applicable; or

(C) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process (as that term is defined in section 459(i)(5) of the social security act) properly served upon the secretary.

(3) Any amount deducted and withheld under paragraph (2) shall be paid by the secretary to the appropriate state or local support enforcement agency.

(4) Any amount deducted and withheld under paragraph (2) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local support enforcement agency in satisfaction of the individual's support obligations.

(5) For purposes of paragraphs (1) through (4), "unemployment compensation" means any compensation payable under the employment se-

curity law after application of the recoupment provisions of subsection (d) of K.S.A. 44-719, and amendments thereto, (including amounts payable by the secretary pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) This subsection applies only if appropriate arrangements have been made for reimbursement by the state or local support enforcement agency for the administrative costs incurred by the secretary under this section which are attributable to support obligations being enforced by the state or local support enforcement agency.

(7) For the purposes of this subsection, “support obligations” means only those obligations which are being enforced pursuant to a plan described in section 454 of the federal social security act which has been approved by the secretary of health and human services under part D of title IV of the federal social security act.

(8) For the purposes of this subsection, “state or local support enforcement agency” means any agency of this state or a political subdivision thereof operating pursuant to a plan described in paragraph (7).

(e) (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(A) Unemployment compensation is subject to federal, state and local income tax;

(B) requirements exist pertaining to estimated tax payments;

(C) the individual may elect to have federal income tax deducted and withheld from the individual’s payment of unemployment compensation at the amount specified in the federal internal revenue code;

(D) *the individual may elect to have state income tax deducted and withheld at the rate of 3.5% from the individual’s payment of unemployment compensation; and*

~~(E)~~ (E) the individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal *or* state taxing authority as a payment of income tax.

(3) The secretary shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, food stamp overissuances or any other amounts required to be deducted and withheld under this act.

(f) (1) An individual filing a new claim for unemployment compensation at the time of filing such claim, shall disclose whether or not such individual owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons. The secretary shall

notify the state food stamp agency enforcing such obligation of any individual who discloses that such individual owes an uncollected overissuance of food stamps and who is determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance:

(A) The amount specified by the individual to the secretary to be deducted and withheld under this clause;

(B) the amount (if any) determined pursuant to an agreement submitted to the state food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977; or

(C) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of such act.

(3) Any amount deducted and withheld under this section shall be paid by the secretary to the appropriate state food stamp agency.

(4) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state food stamp agency as repayment of the individual's uncollected overissuance.

(5) For purposes of this section, the term "unemployment compensation" means any compensation payable under this act including amounts payable by the secretary pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(6) This section applies only if arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the secretary under this section which are attributable to the repayment of uncollected overissuances to the state food stamp agency.

Sec. 10. K.S.A. 2010 Supp. 44-703, 44-704a, 44-710, 44-710a, 44-712, 44-717 and 44-718 are hereby repealed.

Sec. 11. On July 1, 2011, K.S.A. 2010 Supp. 44-705 and 44-706 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 18, 2011.

Published in the *Kansas Register* May 19, 2011.

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## CHAPTER 86

## HOUSE BILL No. 2312

AN ACT concerning regulated scrap metal; relating to licensure for scrap metal dealers; unlawful acts; criminal penalties; amending K.S.A. 2010 Supp. 50-6,109, 50-6,110, 50-6,111 and section 87 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections.

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

New Section 1. (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 section 87 of chapter 136 of the 2010 Session Laws of Kansas, theft of property lost, mislaid or delivered by mistake, as defined in K.S.A. 21-3703, prior to its repeal, or section 88 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 89 of chapter 136 of the 2010 Session Laws of Kansas, 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.

New Sec. 2. (a) After examining the information contained in a filing for a scrap metal dealer registration and determining the registration meets the statutory requirements for such registration, the governing body of the city or the board of county commissioners shall accept such filing and the scrap metal dealer shall be deemed to be properly registered.

(b) No scrap metal registration shall be accepted for:

(1) A person who is under 18 years of age and whose parents or legal guardians have been convicted of a felony or other crime which would disqualify a person from registration under this section and such crime was committed during the time that such parents or legal guardians held a registration under this act.

(2) A person who, within five years immediately preceding the date of filing, has pled guilty to, been convicted of, released from incarceration for or released from probation or parole for committing, attempting to commit, or conspiring to commit a violation of article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or sections 87 through 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or section 128 of chapter 136 of the 2010 Session Laws of Kansas, compounding a crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or official duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A. 21-3818, prior to its repeal, interference with law enforcement, section 129 of chapter 136 of the 2010 Session Laws of Kansas, interference with judicial process, section 130 of chapter 136 of the 2010 Session Laws of Kansas, or any crime involving moral turpitude.

(3) A person who, within the five years immediately preceding the date of registration, has pled guilty to, been found guilty of, or entered a diver-

sion agreement for violating the provisions of section 1, and amendments thereto, K.S.A. 50-6,109 et seq., and amendments thereto, the laws of another state comparable to such provisions or laws of any county or city regulating the sale or purchase of regulated scrap metal three or more times.

(4) A person who within the three years immediately preceding the date of registration held a scrap metal dealer registration which was revoked, or managed a facility for a scrap metal dealer whose registration was revoked, or was an employee whose conduct led to or contributed to the revocation of such registration.

(5) A person who makes a materially false statement on the registration application or has made a materially false statement on a registration or similar filing within the last three years.

(6) A partnership or limited liability company, unless all members of the partnership or limited liability company are otherwise qualified to file a registration.

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, would be ineligible to receive a license hereunder for any reason.

(8) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all of the qualifications for registration.

(9) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from registration under this section and such crime was committed during the time that the spouse held a registration under this act.

New Sec. 3. (a) The board of county commissioners or the governing body of any city, upon five days notice to the persons holding a registration, may suspend the scrap metal dealer's registration for up to 30 days for any one of the following reasons:

(1) The registrant has been convicted of violating any of the provisions of K.S.A. 50-6,109 et seq., and amendments thereto, or any similar ordinance, resolution or rules or regulations made by the board or the city, as the case may be;

(2) the employment or continuation in employment of a person if the registered scrap metal dealer knows such person has, within the 24 months prior to the notice of suspension or revocation action, been convicted of violating any of the provisions of K.S.A. 50-6,109 et seq., and amendments thereto, or the laws of another state comparable to such provisions, or any city or county ordinance or resolution, or regulation controlling scrap metal sale or purchase in Kansas or any other state; or

(3) permitting any criminal activity under the Kansas criminal code, or similar ordinance, resolution or rules or regulations made by the board or city, as the case may be, in or upon the registrant's place of business.

(b) The board of county commissioners or the governing body of any city may revoke the registration of a scrap metal dealer who has had its registration suspended three or more times within a 24-month period.

(c) The board of county commissioners or the governing body of any city, upon five days' notice to the person holding the registration, shall revoke or suspend the registration for any one of the following reasons:

(1) The registrant has fraudulently registered by knowingly giving materially false information on the registration form;

(2) the registrant has become ineligible to obtain a registration under this act;

(3) the nonpayment of any registration fees after receiving written notice that such registration fees are more than 30 days past due; or

(4) within 20 days after the order of the board denying, revoking or suspending any registration, the registrant may appeal to the district court and the district court shall proceed to hear such appeal as though the court had original jurisdiction of the matter. Upon request by the registrant, the district court may enjoin the revocation or suspension of a registration until final disposition of any action brought under this act.

(d) Any action brought under subsections (a), (b) or (c) shall be brought individually against a single registrant's site and not against any other scrap metal sites or locations registered by the same individual, company or business entity.

Sec. 4. Section 87 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 87. (a) Theft is any of the following acts done with intent to permanently deprive the owner of the possession, use or benefit of the owner's property or services:

(1) Obtaining or exerting unauthorized control over property or services;

(2) obtaining control over property or services, by deception;

(3) obtaining control over property or services, by threat;

(4) obtaining control over stolen property or services knowing the property or services to have been stolen by another; or

(5) knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel.

(b) *Except as provided in subsection (c)*, theft of:

(1) Property or services of the value of \$100,000 or more is a severity level 5, nonperson felony;

(2) property or services of the value of at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;

(3) property or services of the value of at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony;

(4) property or services of the value of less than \$1,000 is a class A nonperson misdemeanor, except as provided in subsection (b)(5) or (b)(6);

(5) property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony; and

(6) property of the value of less than \$1,000 is a severity level 9, nonperson felony if committed by a person who has been convicted of theft two or more times.

(c) As used in this section:

(1) “Conviction” or “convicted” includes being convicted of a violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal ordinance which prohibits the acts that this section prohibits;

(2) “regulated scrap metal” means the same as in K.S.A. 2010 Supp. 50-6,109, and amendments thereto; and

(3) “value” means the value of the property or, if the property is regulated scrap metal, the cost to restore the site of the theft of such regulated scrap metal to its condition at the time immediately prior to the theft of such regulated scrap metal, whichever is greater.

Sec. 5. K.S.A. 2010 Supp. 50-6,109 is hereby amended to read as follows: 50-6,109. As used in sections 1 through 3, and amendments thereto, and K.S.A. ~~2009~~ 2010 Supp. 50-6,109 through 50-6,112, and amendments thereto:

(a) “Scrap metal dealer” means any person that operates a business out of a fixed location, and that is also either:

(1) Engaged in the business of buying and dealing in regulated scrap metal;

(2) purchasing, gathering, collecting, soliciting or procuring regulated scrap metal; or

(3) operating, carrying on, conducting or maintaining a regulated scrap metal yard or place where regulated scrap metal is gathered together and stored or kept for shipment, sale or transfer.

(b) “Regulated scrap metal yard” means any yard, plot, space, enclosure, building or any other place where regulated scrap metal is collected, gathered together and stored or kept for shipment, sale or transfer.

(c) “Regulated scrap metal” shall mean wire, cable, bars, ingots, wire scraps, pieces, pellets, clamps, aircraft parts, junk vehicles, vehicle parts, pipes or connectors made from aluminum; catalytic converters containing platinum, palladium or rhodium; and copper, titanium, tungsten, stainless steel and nickel in any form; for which the purchase price described in K.S.A. 2010 Supp. 50-6,110 and 50-6,111, and amendments thereto, was primarily based on the content therein of aluminum, copper, titanium, tungsten, nickel, platinum, palladium, stainless steel or rhodium; any item com-

posed in whole or in part of any nonferrous metal other than an item composed of tin, that is purchased or otherwise acquired for the purpose of recycling or storage for later recycling. Aluminum shall not include food or beverage containers.

(d) “Bales of regulated metal” means regulated scrap metal property processed with professional recycling equipment by compression, shearing or shredding, to a form in which it may be sold by a scrap metal dealer consistent with industry standards.

(e) “Ferrous metal” means a metal that contains iron or steel.

(f) “Junk vehicle” means a vehicle not requiring a title as provided in chapter 8 of the Kansas Statutes Annotated, and amendments thereto, aircraft, boat, farming implement, industrial equipment, trailer or any other conveyance used on the highways and roadways, which has no use or resale value except as scrap.

(g) “Nonferrous metal” means a metal that does not contain iron or steel, including but not limited to, copper, brass, aluminum, bronze, lead, zinc, nickel and their alloys.

(h) “Tin” means a metal consisting predominantly of light sheet metal ferrous scrap, including large and small household appliances, construction siding and construction roofing.

(i) “Vehicle part” means the front clip consisting of the two front fenders, hood, grill and front bumper of an automobile assembled as one unit; or the rear clip consisting of those body parts behind the rear edge of the back doors, including both rear quarter panels, the rear window, trunk lid, trunk floor panel and rear bumper, assembled as one unit; or any other vehicle part.

Sec. 6. K.S.A. 2010 Supp. 50-6,110 is hereby amended to read as follows: 50-6,110. (a) Except as provided in subsection (d), it shall be unlawful for any person to sell any item or items of regulated scrap metal to a scrap metal dealer, or employee or agent of a dealer, in this state unless such person presents to such scrap metal dealer, or employee or agent of such dealer, at or before the time of sale, the following information: The seller’s name, address, sex, date of birth and the identifying number from the seller’s driver’s license, military identification card, passport or personal identification license. The identifying number from an official governmental document for a country other than the United States may be used to meet this requirement provided that a legible fingerprint is also obtained from the seller.

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

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

(2) the seller's name, address, sex, date of birth and the identifying number from the seller's driver's license, military identification card, passport or personal identification license; the identifying number from an official governmental document for a country other than the United States may be used to meet this requirement provided that a legible fingerprint is also obtained from the seller;

(3) a copy of the identification card or document containing such identifying number;

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

(5) a general description, made in accordance with the custom of the trade, of the predominant types of junk vehicle or other regulated scrap metal property purchased in the transaction;

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

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

(8) the amount of consideration given in a purchase transaction for the junk vehicle or other regulated scrap metal property; and

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

(c) The scrap metal dealer's register, including copies of identification cards, may be kept in electronic format.

(d) Notwithstanding the foregoing, this section shall not apply to:

(1) Transactions involving regulated scrap metal, except for catalytic converters, for which the total sale price for all regulated scrap metal is \$50.00 or less;

(2) transactions involving only catalytic converters for which the total sale price is \$30.00 or less;

(3) transactions in which the seller is also a scrap metal dealer; or

(4) transactions for which the seller is known to the purchasing scrap metal dealer to be an established business that operates out of a fixed business location and that can reasonably be expected to generate regulated scrap metal.

(e) *The exceptions contained in subsections (d)(1) and (d)(2) shall not apply to any purchase from any seller of the following materials:*

(1) *Catalytic converters purchased separate from a vehicle;*

(2) *coated or insulated wire or stripped wire or burnt wire;*

(3) *refrigeration condensing units or air conditioning coils of any type;*

*or*

(4) *copper tubing, bars, plate, buss bar and sheet copper.*

(f) *It shall be unlawful for any scrap metal dealer, or employee or agent*

*of the dealer, to pay for any of the items described in subsections (e)(1) through (4) by any means other than:*

*(1) A prenumbered check drawn on a regular bank account in the name of the scrap metal dealer and with such check made payable to the person documented as the seller in accordance with subsection (b); or*

*(2) a system for automated cash or electronic payment distribution which photographs or videotapes the payment recipient and identifies the payment with a distinct transaction in the register maintained in accordance with subsection (b).*

Sec. 7. K.S.A. 2010 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. 2010 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 information obtained in compliance with the requirements in K.S.A. 2010 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. 2010 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. 2010 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; ~~and~~
- (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. 8. K.S.A. 2010 Supp. 50-6,109, 50-6,110, 50-6,111 and section 87 of chapter 136 of the 2010 Session Laws of Kansas 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 19, 2011.

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## CHAPTER 87

## SENATE BILL No. 97

AN ACT concerning courts; relating to court fees and costs; relating to the judicial branch surcharge fund; docket fees for expungement of records; amending Section 254 of chapter 136 of the 2010 Session Laws of Kansas and K.S.A. 2010 Supp. 8-2107, 8-2110, 20-3002, 22-2410, 23-108a, 28-170, 28-172a, 28-177, 28-178, 38-2215, 38-2312, 38-2314, 59-104, 60-1621, 60-2001, 60-2203a, 61-2704 and 61-4001 and repealing the existing sections.

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

Section 1. K.S.A. 2010 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 forfeiture 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$22 per docket fee, to fund the costs of non-judicial personnel.

Sec. 2. K.S.A. 2010 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 immedi-

ately 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 programs 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. 2010 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$22 per reinstatement fee, to fund the costs of non-judicial personnel.

Sec. 3. Section 254 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 254. (a) (1) Except as provided in subsections (b) and (c), 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) and (c), 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 subsection (c), 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, post-release 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 ~~by~~ *in K.S.A. 21-3405, prior to its repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas*, 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 amend-

ments 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) 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 section 67 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(4) aggravated criminal sodomy as defined in *K.S.A. 21-3506, prior to its repeal, or section 68 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 72 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(6) sexual exploitation of a child as defined in *K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(7) aggravated incest as defined in *K.S.A. 21-3603, prior to its repeal, or section 81 of chapter 136 of the 2010 Session Laws of Kansas*, 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 section 78 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(9) abuse of a child as defined in *K.S.A. 21-3609, prior to its repeal,*

or section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(10) capital murder as defined in *K.S.A. 21-3439, prior to its repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(11) murder in the first degree as defined in *K.S.A. 21-3401, prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(12) murder in the second degree as defined in *K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(13) voluntary manslaughter as defined in *K.S.A. 21-3403, prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(14) involuntary manslaughter as defined in *K.S.A. 21-3404, prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(15) sexual battery as defined in *K.S.A. 21-3517, prior to its repeal, or section 69 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(17) a violation of *K.S.A. 8-1567, and amendments thereto, including any diversion for such violation;*

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

(19) any conviction for any offense in effect at any time prior to ~~the effective date of this act~~ *July 1, 2011, that is comparable to any offense as provided in this subsection.*

(d)(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 ~~further, there shall be no docket fee for filing a petition pursuant to this section~~ *by law, a petition for expunge-*

*ment shall be accompanied by a docket fee in the amount of \$100. ~~On and after July 1, 2009 through June 30, 2010;~~ On and after the effective date of this act through June 30, 2012,* the supreme court may impose a charge, not to exceed ~~\$10~~ \$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.

(e) 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.

(f) 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. ~~2009~~ 2010 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. ~~2009~~ 2010 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.

(g) 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 sus-

pending 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.

(h) Subject to the disclosures required pursuant to subsection (f), 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.

(i) 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.

Sec. 4. K.S.A. 2010 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$15~~ \$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 section 177 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto. 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) 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) 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) 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. 2010 Supp. 23-108a is hereby amended to read as follows: 23-108a. (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. 2010 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$21~~ \$26.50 per marriage license fee, to fund the costs of non-judicial personnel.

Sec. 6. K.S.A. 2010 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 government. 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. 2010 Supp. 38-2201 et seq., and amendments thereto), the revised Kansas juvenile justice code (K.S.A. 2010 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. 2010 Supp. 38-2201 et seq., and amendments thereto), the revised Kansas juvenile justice code (K.S.A. 2010 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$22 per bond, lien or judgment fee, to fund the costs of non-judicial personnel.

Sec. 7. K.S.A. 2010 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 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 April 15, 2010, through June 30, 2011, On and after the effective date of this act through June 30, 2012,~~ the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$22 per docket fee, to fund the costs of non-judicial personnel.

Sec. 8. K.S.A. 2010 Supp. 28-177 is hereby amended to read as follows: 28-177. (a) Except as provided further, 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, 2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$21~~ \$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 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 K.S.A. 2010 Supp. 28-178, 38-2215, 38-2312 and 38-2314 *and section 254 of chapter 136 of the 2010 Session Laws of Kansas*, 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. 2010 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, ~~2011~~ 2012, the supreme court may impose a charge, not to exceed ~~\$10~~ \$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. 2010 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$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. 11. K.S.A. 2010 Supp. 38-2312 is hereby amended to read as follows: 38-2312. (a) Except as provided in subsection (b), 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 section 37 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, murder in the first degree;; K.S.A. 21-3402, *prior to its repeal, or section 38 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, murder in the second degree;; K.S.A. 21-3403, *prior to its repeal, or section 39 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, voluntary manslaughter;; K.S.A. 21-3404, *prior to its repeal, or section 40 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, involuntary manslaughter;; K.S.A. 21-3439, *prior to its repeal, or section 36 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, capital murder;; K.S.A. 21-3442, *prior to its repeal, or subsection (a)(3) of section 40 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs;; K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, rape;; K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, indecent liberties with a child;; K.S.A. 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated indecent liberties with a child;; K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated criminal sodomy;; K.S.A. 21-3510, *prior to its repeal, or subsection (a) of section 72 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, indecent solicitation of a child;; K.S.A. 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated indecent solicitation of a child;; K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, sexual exploitation;; K.S.A. 21-3603, *prior to its repeal, or subsection (b) of section 81 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, aggravated incest;; K.S.A. 21-3608, *prior to its repeal, or subsection (a) of section 78 of chapter 124 of the 2010 Session Laws of Kansas*, and amendments thereto, endangering a child;; K.S.A. 21-3609, *prior to its repeal, or section 79 of chapter 124 of the 2010 Session Laws of Kansas*, 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) 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, ~~2011~~ 2012, the supreme court may impose a charge, not to exceed ~~\$15~~ \$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) (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) 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) Copies of any order made pursuant to subsection (a) or (c) shall be sent to each public officer and agency in the county having possession of any 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 agency may be adjudged in contempt of court and punished accordingly.

(g) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(h) 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) 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) 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.

Sec. 12. K.S.A. 2010 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, ~~2011~~ 2012, the supreme court may impose

an additional charge, not to exceed ~~\$17.50~~ \$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. 13. K.S.A. 2010 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 et seq. ....	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 et seq. ....	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, 2011 2012, the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$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. 14. K.S.A. 2010 Supp. 60-1621 is hereby amended to read as follows: 60-1621. (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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$22 per docket fee, to fund the costs of non-judicial personnel.

Sec. 15. K.S.A. 2010 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$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 de-

posits, 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. 16. K.S.A. 2010 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$17.50~~ \$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. 17. K.S.A. 2010 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$10~~ \$12.50 per docket fee, to fund the costs of non-judicial personnel.

Sec. 18. K.S.A. 2010 Supp. 61-4001 is hereby amended to read as follows: 61-4001. (a) Docket fee. 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) 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, ~~2011~~ 2012, the supreme court may impose an additional charge, not to exceed ~~\$15~~ \$19 per docket fee, to fund the costs of non-judicial personnel.

Sec. 19. K.S.A. 2010 Supp. 20-3002 is hereby amended to read as follows: 20-3002. (a) On and after January 1, 2008, through December 31, ~~2011~~ 2012, the court of appeals shall consist of 13 judges whose positions shall be numbered one to 13. On and after January 1, ~~2012~~ 2013, the court of appeals shall consist of 14 judges whose positions shall be numbered one to 14. Judges of the court of appeals shall possess the qualifications prescribed by law for justices of the supreme court.

(b) Judges of the court of appeals shall be selected in the manner provided by K.S.A. 20-3003 through 20-3010, and amendments thereto. Each judge of the court of appeals shall receive an annual salary in the amount prescribed by law. No judge of the court of appeals may receive additional compensation for official services performed by the judge. Each such judge shall be reimbursed for expenses incurred in the performance of such judge's official duties in the same manner and to the same extent justices of the supreme court are reimbursed for such expenses.

(c) The supreme court may assign a judge of the court of appeals to serve temporarily on the supreme court.

(d) Any additional court of appeals judge position created by this section shall be considered a position created by the supreme court and not a civil appointment to a state office pursuant to K.S.A. 46-234, and amendments thereto.

Sec. 20. Section 254 of chapter 136 of the 2010 Session Laws of Kansas and K.S.A. 2010 Supp. 8-2107, 8-2110, 20-3002, 22-2410, 23-108a, 28-170, 28-172a, 28-177, 28-178, 38-2215, 38-2312, 38-2314, 59-104, 60-1621, 60-2001, 60-2203a, 61-2704 and 61-4001 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 19, 2011.

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## CHAPTER 88

## SENATE BILL No. 10

AN ACT concerning taxation; relating to sales taxation, countywide retailers' sales tax, periods of limitation for certain refunds and credits; property taxation, delinquent or underpaid taxes and overpayment of taxes, clerical errors, rate of interest; amending K.S.A. 79-2968 and K.S.A. 2010 Supp. 12-187, 12-189, 12-192, 79-1701a and 79-3609 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 12-187 is hereby amended to read as follows: 12-187. (a) No city shall impose a retailers' sales tax under the provisions of this act without the governing body of such city having first submitted such proposition to and having received the approval of a majority of the electors of the city voting thereon at an election called and held therefor. The governing body of any city may submit the question of imposing a retailers' sales tax and the governing body shall be required to submit the question upon submission of a petition signed by electors of such city equal in number to not less than 10% of the electors of such city.

(b) (1) The board of county commissioners of any county may submit the question of imposing a countywide retailers' sales tax to the electors at an election called and held thereon, and any such board shall be required to submit the question upon submission of a petition signed by electors of such county equal in number to not less than 10% of the electors of such county who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than  $\frac{2}{3}$  of the membership of the governing body of each of one or more cities within such county which contains a population of not less than 25% of the entire population of the county, or upon receiving resolutions requesting such an election passed by  $\frac{2}{3}$  of the membership of the governing body of each of one or more taxing subdivisions within such county which levy not less than 25% of the property taxes levied by all taxing subdivisions within the county.

(2) The board of county commissioners of Anderson, Atchison, Barton, Brown, Butler, Chase, Cowley, Cherokee, Crawford, Ford, Franklin, Jefferson, Linn, Lyon, Marion, Miami, Montgomery, Neosho, Osage, Ottawa, Reno, Riley, Saline, Seward, Sumner, Wabaunsee, Wilson and Wyandotte counties may submit the question of imposing a countywide retailers' sales tax and pledging the revenue received therefrom for the purpose of financing the construction or remodeling of a courthouse, jail, law enforcement center facility or other county administrative facility, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire when sales tax sufficient to pay all of the costs incurred in the financing of such facility has been collected by retailers as determined by the secretary of revenue. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Butler, Chase, Cowley, Lyon, Montgom-

ery, Neosho, Riley, Sumner or Wilson county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189, and amendments thereto.

(3) (A) Except as otherwise provided in this paragraph, the result of the election held on November 8, 1988, on the question submitted by the board of county commissioners of Jackson county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the Banner Creek reservoir project. The tax imposed pursuant to this paragraph shall take effect on the effective date of this act and shall expire not later than five years after such date.

(B) The result of the election held on November 8, 1994, on the question submitted by the board of county commissioners of Ottawa county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the erection, construction and furnishing of a law enforcement center and jail facility.

(C) Except as otherwise provided in this paragraph, the result of the election held on November 2, 2004, on the question submitted by the board of county commissioners of Sedgwick county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be used only to pay the costs of: (i) Acquisition of a site and constructing and equipping thereon a new regional events center, associated parking and infrastructure improvements and related appurtenances thereto, to be located in the downtown area of the city of Wichita, Kansas, (the "downtown arena"); (ii) design for the Kansas coliseum complex and construction of improvements to the pavilions; and (iii) establishing an operating and maintenance reserve for the downtown arena and the Kansas coliseum complex. The tax imposed pursuant to this paragraph shall commence on July 1, 2005, and shall terminate not later than 30 months after the commencement thereof.

(D) Except as otherwise provided in this paragraph, the result of the election held on August 5, 2008, on the question submitted by the board of county commissioners of Lyon county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended for the purposes of *ad valorem* tax reduction and capital outlay. The tax imposed pursuant to this paragraph shall terminate not later than five years after the commencement thereof.

(E) Except as otherwise provided in this paragraph, the result of the election held on August 5, 2008, on the question submitted by the board of county commissioners of Rawlins county for the purpose of increasing its countywide retailers' sales tax by .75% is hereby declared valid, and the revenue received therefrom by the county shall be expended for the purposes of financing the costs of a swimming pool. The tax imposed pursuant

to this paragraph shall terminate not later than 15 years after the commencement thereof or upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(F) The result of the election held on December 1, 2009, on the question submitted by the board of county commissioners of Chautauqua county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received from such tax by the county shall be expended for the purposes of financing the costs of constructing, furnishing and equipping a county jail and law enforcement center and necessary improvements appurtenant to such jail and law enforcement center. Any tax imposed pursuant to authority granted in this paragraph shall terminate upon payment of all costs authorized pursuant to this paragraph incurred in the financing of the project described in this paragraph.

(4) The board of county commissioners of Finney and Ford counties may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing all or any portion of the cost to be paid by Finney or Ford county for construction of highway projects identified as system enhancements under the provisions of paragraph (5) of subsection (b) of K.S.A. 68-2314, and amendments thereto, to the electors at an election called and held thereon. Such election shall be called and held in the manner provided by the general bond law. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Finney or Ford county pursuant to this paragraph to exceed the maximum rate prescribed in K.S.A. 12-189, and amendments thereto. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in Finney county, the state treasurer shall remit such funds to the treasurer of Finney county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in Ford county, the state treasurer shall remit such funds to the treasurer of Ford county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund.

(5) The board of county commissioners of any county may submit the question of imposing a retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the provision of health care services, as enumerated in the question, to the electors at an election called and held thereon. Whenever any county imposes a tax pursuant to this paragraph, any tax imposed pursuant to paragraph (2) of subsection (a) by any city located in such county shall expire upon the effective date of the imposition of the countywide tax, and thereafter the state treasurer shall remit to each such city that portion of the

countywide tax revenue collected by retailers within such city as certified by the director of taxation. The tax imposed pursuant to this paragraph shall be deemed to be in addition to the rate limitations prescribed in K.S.A. 12-189, and amendments thereto. As used in this paragraph, health care services shall include but not be limited to the following: Local health departments, city or county hospitals, city or county nursing homes, preventive health care services including immunizations, prenatal care and the postponement of entry into nursing homes by home care services, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, rural health clinics, integration of health care services, home health services and rural health networks.

(6) The board of county commissioners of Allen county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of operation and construction of a solid waste disposal area or the modification of an existing landfill to comply with federal regulations to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs incurred in the financing of the project undertaken. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Allen county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189 and amendments thereto.

(7) The board of county commissioners of Clay, Dickinson and Miami county may submit the question of imposing a countywide retailers' sales tax at the rate of .50% in the case of Clay and Dickinson county and at a rate of up to 1% in the case of Miami county, and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. Except as otherwise provided, the tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected. The result of the election held on November 2, 2004, on the question submitted by the board of county commissioners of Miami county for the purpose of extending for an additional five-year period the countywide retailers' sales tax imposed pursuant to this subsection in Miami county is hereby declared valid. The countywide retailers' sales tax imposed pursuant to this subsection in Clay and Miami county may be extended or reenacted for additional five-year periods upon the board of county commissioners of Clay and Miami county submitting such question to the electors at an election called and held thereon for each additional five-year period as provided by law.

(8) The board of county commissioners of Sherman county may submit the question of imposing a countywide retailers' sales tax at the rate of 1% and pledging the revenue received therefrom for the purpose of financing the costs of street and roadway improvements to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall

expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(9) The board of county commissioners of Cowley, Crawford, Russell and Woodson county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% in the case of Crawford, Russell and Woodson county and at a rate of up to .25%, in the case of Cowley county and pledging the revenue received therefrom for the purpose of financing economic development initiatives or public infrastructure projects. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(10) The board of county commissioners of Franklin county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing recreational facilities. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such facilities.

(11) The board of county commissioners of Douglas county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purposes of ~~preservation~~ *conservation*, access and management of open space, ~~and for industrial and business park related economic development~~; *preservation of cultural heritage; and economic development projects and activities.*

(12) The board of county commissioners of Shawnee county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom to the city of Topeka for the purpose of financing the costs of rebuilding the Topeka boulevard bridge and other public infrastructure improvements associated with such project to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such project.

(13) The board of county commissioners of Jackson county may submit the question of imposing a countywide retailers' sales tax at a rate of .4% and pledging the revenue received therefrom as follows: 50% of such revenues for the purpose of financing for economic development initiatives; and 50% of such revenues for the purpose of financing public infrastructure projects to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after seven years from the date such tax is first collected. *The board of county commissioners of Jackson county may submit the question of imposing a countywide retailers' sales tax at a rate of .4% which such tax shall take effect after the expiration of the tax imposed pursuant to this paragraph prior to the effective date of this act, and pledging the revenue received therefrom for the purpose of financing public infrastructure projects to the electors at an election called and held thereon. Such tax shall expire after seven years from the date such tax is first collected.*

(14) The board of county commissioners of Neosho county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(15) The board of county commissioners of Saline county may submit the question of imposing a countywide retailers' sales tax at the rate of up to .5% and pledging the revenue received therefrom for the purpose of financing the costs of construction and operation of an expo center to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(16) The board of county commissioners of Harvey county may submit the question of imposing a countywide retailers' sales tax at the rate of 1.0% and pledging the revenue received therefrom for the purpose of financing the costs of property tax relief, economic development initiatives and public infrastructure improvements to the electors at an election called and held thereon.

(17) The board of county commissioners of Atchison county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing the costs of construction and maintenance of sports and recreational facilities to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such facilities.

(18) The board of county commissioners of Wabaunsee county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of bridge and roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after 15 years from the date such tax is first collected.

(19) The board of county commissioners of Jefferson county may submit the question of imposing a countywide retailers' sales tax at the rate of 1% and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after six years from the date such tax is first collected. The countywide retailers' sales tax imposed pursuant to this paragraph may be extended or reenacted for additional six-year periods upon the board of county commissioners of Jefferson county submitting such question to the electors at an election called and held thereon for each additional six-year period as provided by law.

(20) The board of county commissioners of Riley county may submit the question of imposing a countywide retailers' sales tax at the rate of up to 1% and pledging the revenue received therefrom for the purpose of financing the costs of bridge and roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(21) The board of county commissioners of Johnson county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing the construction and operation costs of public safety projects, including, but not limited to, a jail, detention center, sheriff's resource center, crime lab or other county administrative or operational facility dedicated to public safety, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after 10 years from the date such tax is first collected. The countywide retailers' sales tax imposed pursuant to this subsection may be extended or reenacted for additional periods not exceeding 10 years upon the board of county commissioners of Johnson county submitting such question to the electors at an election called and held thereon for each additional ten-year period as provided by law.

(22) The board of county commissioners of Wilson county may submit the question of imposing a countywide retailers' sales tax at the rate of up to 1% and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvements to federal highways, the development of a new industrial park and other public infrastructure improvements to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project or projects.

(23) The board of county commissioners of Butler county may submit the question of imposing a countywide retailers' sales tax at the rate of either .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the costs of public safety capital projects or bridge and roadway construction projects, or both, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such projects.

(24) The board of county commissioners of Barton county may submit the question of imposing a countywide retailers' sales tax at the rate of up to .5% and pledging the revenue received therefrom for the purpose of financing the costs of roadway and bridge construction and improvement and infrastructure development and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after 10 years from the date such tax is first collected.

(25) The board of county commissioners of Jefferson county may submit the question of imposing a countywide retailers' sales tax at the rate of

.25% and pledging the revenue received therefrom for the purpose of financing the costs of the county's obligation as participating employer to make employer contributions and other required contributions to the Kansas public employees retirement system for eligible employees of the county who are members of the Kansas police and firemen's retirement system, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such purpose.

(26) The board of county commissioners of Pottawatomie county may submit the question of imposing a countywide retailers' sales tax at the rate of up to .5% and pledging the revenue received therefrom for the purpose of financing the costs of construction or remodeling of a courthouse, jail, law enforcement center facility or other county administrative facility, or public infrastructure improvements, or both, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such project or projects.

(27) The board of county commissioners of Kingman county may submit the question of imposing a countywide retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the costs of constructing and furnishing a law enforcement center and jail facility and the costs of roadway and bridge improvements to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire not later than 20 years from the date such tax is first collected.

(28) *The board of county commissioners of Edwards county may submit the question of imposing a countywide retailers' sales tax at the rate of .375% and pledging the revenue therefrom for the purpose of financing the costs of economic development initiatives to the electors at an election called and held thereon.*

(c) The boards of county commissioners of any two or more contiguous counties, upon adoption of a joint resolution by such boards, may submit the question of imposing a retailers' sales tax within such counties to the electors of such counties at an election called and held thereon and such boards of any two or more contiguous counties shall be required to submit such question upon submission of a petition in each of such counties, signed by a number of electors of each of such counties where submitted equal in number to not less than 10% of the electors of each of such counties who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than  $\frac{2}{3}$  of the membership of the governing body of each of one or more cities within each of such counties which contains a population of not less than 25% of the entire population of each of such counties, or upon receiving resolutions requesting such an election passed by  $\frac{2}{3}$  of the membership of the governing body of each of one or more taxing subdivisions

within each of such counties which levy not less than 25% of the property taxes levied by all taxing subdivisions within each of such counties.

(d) Any city retailers' sales tax being levied by a city prior to July 1, 2006, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax or until repealed by the adoption of an ordinance for such repeal. Any countywide retailers' sales tax in the amount of .5% or 1% in effect on July 1, 1990, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax.

(e) Any city or county proposing to adopt a retailers' sales tax shall give notice of its intention to submit such proposition for approval by the electors in the manner required by K.S.A. 10-120, and amendments thereto. The notices shall state the time of the election and the rate and effective date of the proposed tax. If a majority of the electors voting thereon at such election fail to approve the proposition, such proposition may be resubmitted under the conditions and in the manner provided in this act for submission of the proposition. If a majority of the electors voting thereon at such election shall approve the levying of such tax, the governing body of any such city or county shall provide by ordinance or resolution, as the case may be, for the levy of the tax. Any repeal of such tax or any reduction or increase in the rate thereof, within the limits prescribed by K.S.A. 12-189, and amendments thereto, shall be accomplished in the manner provided herein for the adoption and approval of such tax except that the repeal of any such city retailers' sales tax may be accomplished by the adoption of an ordinance so providing.

(f) The sufficiency of the number of signers of any petition filed under this section shall be determined by the county election officer. Every election held under this act shall be conducted by the county election officer.

(g) The governing body of the city or county proposing to levy any retailers' sales tax shall specify the purpose or purposes for which the revenue would be used, and a statement generally describing such purpose or purposes shall be included as a part of the ballot proposition.

Sec. 2. K.S.A. 2010 Supp. 12-189 is hereby amended to read as follows: 12-189. The rate of any city retailers' sales tax shall be fixed in increments of .05% and in an amount not to exceed 2% for general purposes and not to exceed 1% for special purposes which shall be determined by the governing body of the city. For any retailers' sales tax imposed by a city for special purposes, such city shall specify the purposes for which such tax is imposed. All such special purpose retailers' sales taxes imposed by a city shall expire after 10 years from the date such tax is first collected. The rate of any countywide retailers' sales tax shall be fixed in an amount not to exceed 1% and shall be fixed in increments of .25%, and which amount shall be determined by the board of county commissioners, except that:

(a) The board of county commissioners of Wabaunsee county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%; the board of county commissioners of Osage or Reno county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25% or 1.5%; the board of county commissioners of Cherokee, Crawford, Ford, Saline, Seward or Wyandotte county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, the board of county commissioners of Atchison county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5% or 1.75%; the board of county commissioners of Anderson, Barton, Jefferson or Ottawa county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%; the board of county commissioners of Marion county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.5%; the board of county commissioners of Franklin, Linn and Miami counties, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the respective board of county commissioners on July 1, 2007, plus up to 1.0%; and the board of county commissioners of Brown county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 2%;

(b) the board of county commissioners of Jackson county, for the purposes of paragraph (3) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%;

(c) the boards of county commissioners of Finney and Ford counties, for the purposes of paragraph (4) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at .25%;

(d) the board of county commissioners of any county for the purposes of paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by a board of county commissioners on the effective date of this act plus .25%, .5%, .75% or 1%, as the case requires;

(e) the board of county commissioners of Dickinson county, for the purposes of paragraph (7) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, and the board of county commissioners of Miami county, for the purposes of paragraph (7) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%, 1.5%, 1.75% or 2%;

(f) the board of county commissioners of Sherman county, for the purposes of paragraph (8) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.25%;

(g) the board of county commissioners of Crawford or Russell county

for the purposes of paragraph (9) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%;

(h) the board of county commissioners of Franklin county, for the purposes of paragraph (10) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.75%;

(i) the board of county commissioners of Douglas county, for the purposes of paragraph (11) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%;

(j) the board of county commissioners of Jackson county, for the purposes of subsection (b)(13) of K.S.A. 12-187 and amendments thereto, may fix such rate at 1.4%;

(k) the board of county commissioners of Sedgwick county, for the purposes of paragraph (3)(C) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%;

(l) the board of county commissioners of Neosho county, for the purposes of paragraph (14) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.0% or 1.5%;

(m) the board of county commissioners of Saline county, for the purposes of ~~subsection~~ paragraph (15) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 1.5%;

(n) the board of county commissioners of Harvey county, for the purposes of paragraph (16) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.0%;

(o) the board of county commissioners of Atchison county, for the purpose of paragraph (17) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the board of county commissioners of Atchison county on the effective date of this act plus .25%;

(p) the board of county commissioners of Wabaunsee county, for the purpose of paragraph (18) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the board of county commissioners of Wabaunsee county on July 1, 2007, plus .5%;

(q) the board of county commissioners of Jefferson county, for the purpose of paragraphs (19) and (25) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.25%;

(r) the board of county commissioners of Riley county, for the purpose of paragraph (20) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the board of county commissioners of Riley county on July 1, 2007, plus up to 1%;

(s) the board of county commissioners of Johnson county for the purposes of paragraph (21) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum

of the rate allowed to be imposed by the board of county commissioners of Johnson county on July 1, 2007, plus .25%;

(t) the board of county commissioners of Wilson county for the purposes of paragraph (22) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 2%;

(u) the board of county commissioners of Butler county for the purposes of paragraph (23) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate otherwise allowed pursuant to this section, plus .25%, .5%, .75% or 1%;

(v) the board of county commissioners of Barton county, for the purposes of paragraph (24) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 1.5%;

(w) the board of county commissioners of Lyon county, for the purposes of paragraph (3)(D) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%;

(x) the board of county commissioners of Rawlins county, for the purposes of paragraph (3)(E) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.75%;

(y) the board of county commissioners of Chautauqua county, for the purposes of paragraph (3)(F) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.0%;

(z) the board of county commissioners of Pottawatomie county, for the purposes of ~~subsection~~ *paragraph* (26) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 1.5%; ~~and~~

(aa) the board of county commissioners of Kingman county, for the purposes of paragraph (27) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate otherwise allowed pursuant to this section, plus .25%, .5%, .75%, or 1%; *and*

*(bb) the board of county commissioners of Edwards county, for the purposes of paragraph (28) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.375%.*

Any county or city levying a retailers' sales tax is hereby prohibited from administering or collecting such tax locally, but shall utilize the services of the state department of revenue to administer, enforce and collect such tax. Except as otherwise specifically provided in K.S.A. 12-189a, and amendments thereto, such tax shall be identical in its application, and exemptions therefrom, to the Kansas retailers' sales tax act and all laws and administrative rules and regulations of the state department of revenue relating to the Kansas retailers' sales tax shall apply to such local sales tax insofar as such laws and rules and regulations may be made applicable. The state director of taxation is hereby authorized to administer, enforce and collect such local sales taxes and to adopt such rules and regulations as may be

necessary for the efficient and effective administration and enforcement thereof.

Upon receipt of a certified copy of an ordinance or resolution authorizing the levy of a local retailers' sales tax, the director of taxation shall cause such taxes to be collected within or without the boundaries of such taxing subdivision at the same time and in the same manner provided for the collection of the state retailers' sales tax. Such copy shall be submitted to the director of taxation within 30 days after adoption of any such ordinance or resolution. All moneys collected by the director of taxation under the provisions of this section shall be credited to a county and city retailers' sales tax fund which fund is hereby established in the state treasury, except that all moneys collected by the director of taxation pursuant to the authority granted in paragraph (22) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be credited to the Wilson county capital improvements fund. Any refund due on any county or city retailers' sales tax collected pursuant to this act shall be paid out of the sales tax refund fund and reimbursed by the director of taxation from collections of local retailers' sales tax revenue. Except for local retailers' sales tax revenue required to be deposited in the redevelopment bond fund established under K.S.A. 74-8927, and amendments thereto, all local retailers' sales tax revenue collected within any county or city pursuant to this act shall be apportioned and remitted at least quarterly by the state treasurer, on instruction from the director of taxation, to the treasurer of such county or city.

Revenue that is received from the imposition of a local retailers' sales tax which exceeds the amount of revenue required to pay the costs of a special project for which such revenue was pledged shall be credited to the city or county general fund, as the case requires.

The director of taxation shall provide, upon request by a city or county clerk or treasurer or finance officer of any city or county levying a local retailers' sales 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. Such report shall be made available to the clerk or treasurer or finance officer of such city or county within a reasonable time after it has been requested from the director of taxation. The director of taxation shall be allowed to assess a reasonable fee for the issuance of such report. Information received by any city or county pursuant to this section shall be confidential, and it shall be unlawful for any officer or employee of such city or county to divulge any such information in any manner. Any violation of this paragraph by a city or county officer or employee is a class A misdemeanor, and 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 violations of this paragraph.

Sec. 3. K.S.A. 2010 Supp. 12-192 is hereby amended to read as follows: 12-192. (a) Except as otherwise provided by subsection (b), (d) or (h), all revenue received by the director of taxation from a countywide retailers' sales tax shall be apportioned among the county and each city located in such county in the following manner: (1) One-half of all revenue received by the director of taxation shall be apportioned among the county and each city located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit bear to the total of all such levies made in the preceding year, and (2)  $\frac{1}{2}$  of all revenue received by the director of taxation from such countywide retailers' sales tax shall be apportioned among the county and each city located in such county, first to the county that portion of the revenue equal to the proportion that the population of the county residing in the unincorporated area of the county bears to the total population of the county, and second to the cities in the proportion that the population of each city bears to the total population of the county, except that no persons residing within the Fort Riley military reservation shall be included in the determination of the population of any city located within Riley county. All revenue apportioned to a county shall be paid to its county treasurer and shall be credited to the general fund of the county.

(b) (1) In lieu of the apportionment formula provided in subsection (a), all revenue received by the director of taxation from a countywide retailers' sales tax imposed within Johnson county at the rate of .75%, 1% or 1.25% after July 1, 2007, shall be apportioned among the county and each city located in such county in the following manner: (A) The revenue received from the first .5% rate of tax shall be apportioned in the manner prescribed by subsection (a) and (B) the revenue received from the rate of tax exceeding .5% shall be apportioned as follows: (i) One-fourth shall be apportioned among the county and each city located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit bear to the total of all such levies made in the preceding year and (ii) one-fourth shall be apportioned among the county and each city located in such county, first to the county that portion of the revenue equal to the proportion that the population of the county residing in the unincorporated area of the county bears to the total population of the county, and second to the cities in the proportion that the population of each city bears to the total population of the county and (iii) one-half shall be retained by the county for its sole use and benefit.

(2) In lieu of the apportionment formula provided in subsection (a), all money received by the director of taxation from a countywide sales tax imposed within Montgomery county pursuant to the election held on No-

vember 8, 1994, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged. All revenue apportioned and paid from the imposition of such tax to the treasurer of any city prior to the effective date of this act shall be remitted to the county treasurer and expended only for the purpose for which the revenue received from the tax was pledged.

(3) In lieu of the apportionment formula provided in subsection (a), on and after the effective date of this act, all moneys received by the director of taxation from a countywide retailers' sales tax imposed within Phillips county pursuant to the election held on September 20, 2005, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged.

(c) (1) Except as otherwise provided by paragraph (2) of this subsection, for purposes of subsections (a) and (b), the term "total tangible property tax levies" means the aggregate dollar amount of tax revenue derived from ad valorem tax levies applicable to all tangible property located within each such city or county. The ad valorem property tax levy of any county or city district entity or subdivision shall be included within this term if the levy of any such district entity or subdivision is applicable to all tangible property located within each such city or county.

(2) For the purposes of subsections (a) and (b), any ad valorem property tax levied on property located in a city in Johnson county for the purpose of providing fire protection service in such city shall be included within the term "total tangible property tax levies" for such city regardless of its applicability to all tangible property located within each such city. If the tax is levied by a district which extends across city boundaries, for purposes of this computation, the amount of such levy shall be apportioned among each city in which such district extends in the proportion that such tax levied within each city bears to the total tax levied by the district.

(d) (1) All revenue received from a countywide retailers' sales tax imposed pursuant to paragraphs (2), (3)(C), (3)(F), (6), (7), (8), (9), (12), (14), (15), (16), (17), (18), (19), (20), (22), (23), (25) ~~and~~, (27) *and* (28) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged.

(2) Except as otherwise provided in paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, all revenues received from a countywide retailers' sales tax imposed pursuant to paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged.

(3) All revenue received from a countywide retailers' sales tax imposed pursuant to paragraph (26) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax

was pledged unless the question of imposing a countywide retailers' sales tax authorized by paragraph (26) of subsection (b) of K.S.A. 12-187, and amendments thereto, includes the apportionment of revenue prescribed in subsection (a).

(e) All revenue apportioned to the several cities of the county shall be paid to the respective treasurers thereof and deposited in the general fund of the city. Whenever the territory of any city is located in two or more counties and any one or more of such counties do not levy a countywide retailers' sales tax, or whenever such counties do not levy countywide retailers' sales taxes at a uniform rate, the revenue received by such city from the proceeds of the countywide retailers' sales tax, as an alternative to depositing the same in the general fund, may be used for the purpose of reducing the tax levies of such city upon the taxable tangible property located within the county levying such countywide retailers' sales tax.

(f) Prior to March 1 of each year, the secretary of revenue shall advise each county treasurer of the revenue collected in such county from the state retailers' sales tax for the preceding calendar year.

(g) Prior to December 31 of each year, the clerk of every county imposing a countywide retailers' sales tax shall provide such information deemed necessary by the secretary of revenue to apportion and remit revenue to the counties and cities pursuant to this section.

(h) The provisions of subsections (a) and (b) for the apportionment of countywide retailers' sales tax shall not apply to any revenues received pursuant to a county or countywide retailers' sales tax levied or collected under K.S.A. 74-8929, and amendments thereto. All such revenue collected under K.S.A. 74-8929, and amendments thereto, shall be deposited into the redevelopment bond fund established by K.S.A. 74-8927, and amendments thereto, for the period of time set forth in K.S.A. 74-8927, and amendments thereto.

Sec. 4. On and after July 1, 2011, K.S.A. 2010 Supp. 79-1701a is hereby amended to read as follows: 79-1701a. Any taxpayer, the county appraiser or the county clerk shall, on their own motion, request the board of county commissioners to order the correction of the clerical errors in the appraisal, assessment or tax rolls as described in K.S.A. 79-1701, and amendments thereto. The board of county commissioners of the several counties are hereby authorized to order the correction of clerical errors, specified in K.S.A. 79-1701, and amendments thereto, in the appraisal, assessment or tax rolls for the current year and the immediately preceding two years during the period on and after November 1 of each year. If a county treasurer has collected and distributed the property taxes of a taxpayer and it shall thereafter be determined that the tax computed and paid was based on an erroneous assessment due to a clerical error which resulted in an overpayment of taxes by the taxpayer, and such error is corrected under the provisions hereof then the county commissioners may direct a

refund in the amount of the overpayment plus interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, *plus two percentage points, per annum*, from the date of payment from tax moneys collected during the current year and approve a claim therefor. If all or any portion of the taxes on such property remain unpaid, the board of county commissioners shall cancel that portion of such unpaid taxes which were assessed on the basis of the error which is being corrected. In lieu of taking such a refund the taxpayer may, at the taxpayer's option, be allowed a credit on the current year's taxes in the amount of the overpayment plus interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, from the date of payment for the previous year. In the event the error results in an understatement of value or taxes as a result of a mathematical miscomputation on the part of the county, the board of county commissioners of the several counties are hereby authorized to correct such error and order an additional assessment or tax bill, or both, to be issued, except that, in no such case shall the taxpayer be assessed interest or penalties on any tax which may be assessed. If such error applies to property which has been sold or otherwise transferred subsequent to the time the error was made, no such additional assessment or tax bill shall be issued.

Sec. 5. On and after July 1, 2011, K.S.A. 79-2968 is hereby amended to read as follows: 79-2968. Except as otherwise specifically provided by law, whenever interest is charged under any law of this state upon any delinquent or unpaid taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, or whenever interest is allowed under any law of this state upon any overpayment of taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, the rate thereof shall be: ~~(a) One and one-half percent per month for any period prior to January 1, 1995, 4% per month for the period commencing on January 1, 1995, and ending on December 31, 1997, and 1/2 of the annual rate prescribed in subsection (b) thereafter, if computed monthly; and (b) eighteen percent per annum for any period prior to January 1, 1995, 12% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and for any period thereafter, the underpayment rate per annum prescribed and determined under paragraph (2) of subsection (a) of section 6621, without regard to subsection (c) thereof, of the federal internal revenue code, as in effect on September 1, 1996, and which rate is in effect thereunder on July 1 of the year immediately preceding the calendar year for which the rate is being annually fixed hereunder, plus one percentage point, if computed annually. Beginning on January 1, 2012, the rate for property tax delinquencies or underpayments of \$10,000 or more shall be as provided for under this section or 10% per annum, whichever is greater.~~

In the event the interest rate prescribed under this section cannot be determined by reference to section 6621 of the federal internal revenue code, as in effect on September 1, 1996, the rate at which interest shall be col-

lected on underpayments shall be the rate prescribed by K.S.A. 16-204, and amendments thereto, for interest on judgments for the applicable period.

Sec. 6. On and after July 1, 2011, K.S.A. 2010 Supp. 79-3609 is hereby amended to read as follows: 79-3609. (a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption, except as follows: (1) A retailer is relieved of liability for tax otherwise applicable if the retailer obtains a fully completed exemption certificate or captures the relevant data elements required by the director within 90 days subsequent to the date of the sale; or (2) if the retailer has not obtained an exemption certificate or all relevant data elements, the retailer, within 120 days subsequent to a request for substantiation by the director, either may obtain a fully completed exemption certificate from the purchaser, taken in good faith which meets the requirements specified in this subsection, or obtain other information establishing that the transaction was not subject to tax. Otherwise, the sales shall be deemed to be taxable sales under this act. The seller shall obtain an exemption certificate that claims an exemption that was authorized pursuant to Kansas law on the date of the transaction in the jurisdiction where the transaction is sourced pursuant to law, could be applicable to the item being purchased and is reasonable for the purchaser's type of business. If the seller obtains an exemption certificate or other information as described in this subsection, the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, and it must be established that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

(b) The amount of tax imposed by this act is to be assessed within three

years after the return is filed, and no proceedings in court for the collection of such taxes shall ~~be begun~~ *begin* after the expiration of such period. 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~~ *begin* at any time, within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. For any refund or credit claim filed after ~~June 15, 2009~~ *July 1, 2011*, no refund or credit shall be allowed by the director after ~~one year~~ *three years* from the due date of the return for the reporting period as provided by K.S.A. 79-3607, and amendments thereto, unless before the expiration of such period a claim therefor is filed by the taxpayer, and, except as otherwise provided in K.S.A. 2010 Supp. 79-3694, and amendments thereto, 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 such claim satisfying the requirements specified by K.S.A. 2010 Supp. 79-3693, and amendments thereto, therefor with the director. A refund claim shall not be deemed filed unless such claim is complete as required by K.S.A. 2010 Supp. 79-3693, and amendments thereto. For all mailed returns, including refund claims, each return or refund claim shall be presumed to have been filed with the department on the postmark date of such return or refund claim or if such date is illegible, the date three days prior to the date such return or refund claim is received.

(c) 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 period 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. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) Interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall be allowed on any overpayment of tax computed from the filing date of the return claiming the refund, except that no interest shall be allowed on any such refund if the same is paid within 120 days after the filing date of the return claiming the refund or the date of payment, whichever is later, provided that such return or refund claim satisfies the requirements specified by K.S.A. 2010 Supp. 79-3693, and amendments thereto, at the time the return or refund claim is received.

(e) Notwithstanding any other provision of this section or the provisions of the Kansas compensating tax act:

(1) (A) Any claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions

of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act which is without dispute shall be allowed, but, with respect to any claim exceeding \$10,000, the refund associated therewith shall not be paid until after 510 days from the date such claim was filed and shall not include interest from such date. As used in this subparagraph, a claim for refund without dispute shall not include any claim the basis for which is a judicial or quasi-judicial interpretation of such subsection occurring after the effective date of this act.

(B) Any refund of tax resulting from a final determination or adjudication with regard to any claim submitted or to be submitted for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act not described by subparagraph (A) shall, with respect to any refund exceeding \$50,000, be paid in equal annual installments over 10 years commencing with the year of such final determination or adjudication. Interest shall not accrue during the time period of such payment.

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606, *and amendments thereto*, pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled In re appeal of Water District No. 1 of Johnson County shall be allowed for tax paid prior to the effective date of this act. The provisions of this subsection shall not be applicable to water district no. 1 of Johnson county.

Sec. 7. K.S.A. 2010 Supp. 12-187, 12-189 and 12-192 are hereby repealed.

Sec. 8. On and after July 1, 2011, K.S.A. 79-2968 and K.S.A. 2010 Supp. 79-1701a and 79-3609 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 19, 2011.

Published in the *Kansas Register* May 26, 2011.

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